NHS
Kernow
Clinical Commissioning Group

Flexible working policy

Date approved: 10 August 2021

This policy was adopted by NHS Cornwall and Isles of Scilly Integrated Care Board (ICB) on 1 July 2022.

We are working to change the branding on our policies and to make sure they are accessible.

We intend to complete this work by 1 April 2023. While this work is underway, all references to NHS Kernow, the CCG and related structures should be taken to relate to the ICB.

This policy may not be suitable for users of assistive technology. If you use assistive technology (such as a screen reader) and need a version of this document in a more accessible format, please email ciosicb.corporategovernance@nhs.net. Please tell us what format you need. It will help us if you say what assistive technology you use.

Document control sheet

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	28 April 2015	Unknown	Flexible working (working parents and carers) policy
	28 April 2015	POD	Update
V.1	February 2021	Senior POD consultant	Accessibility, minor changes
V.2	May 2021	POD	Inclusion that colleagues can request flexible working from day 1 of their employment.
V.3	August 2021	POD board	Updates ratified by the POD board.
V.4	November 2021	POD	Final accessibility checks made.

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1. Introduction

NHS Kernow Clinical Commissioning Group (NHS Kernow) believes that flexible working can increase a colleague's motivation, promote work life balance, reduce stress, and improve performance and productivity.

All colleagues have the right from their first day of work to request flexible working and have their request considered.

NHS Kernow will consider all requests in line with the resources required to meet its key performance targets.

2. Purpose

To communicate NHS Kernow's position on flexible working requests and to recognise the benefits of allowing colleagues to balance their work and home life, where possible and in line with the needs of the organisation.

NHS Kernow also has an agile working policy, pertinent all colleagues. This policy relates to colleague requests to change their working arrangements.

The policy aims to adhere to the principles of the Advisory, Conciliation and Arbitration service (ACAS) code of practice. ACAS is a government funded organisation that exists to promote and facilitate strong industrial relations practice.

This policy and procedure applies to all colleagues, regardless of their contract type such as substantive, fixed term, and those returning from flexible retirement.

3. Responsibilities

Managers

- Consider each application on a case-by-case basis.
- Seek further information should a request not contain the required information.
- Have regard to equal opportunities when considering requests.
- Start a contract amendment form (CAF) to detail any agreed contractual changes.
- Record applications and outcomes formally in writing on the personal file.
- Seek advice from the POD team where necessary.

People and organisational development

- Provide advice about the process.
- Provide advice about the implications of certain working arrangements.
- Support formal meetings where required.

Individual colleagues

- Complete an application as fully as possible.
- Consider the implications of their request, including the impact on their team.
- Meet with their manager to discuss their application, when necessary.
- Inform manager in suitable time if not able to attend arranged meetings.

NHS Kernow's commissioning responsibilities

In addition to directly employed workers, it is NHS Kernow's responsibility to ensure that commissioned and independent contractors have arrangements in place to respond to requests for flexible working in line with legislation.

This requirement forms part of NHS Kernow's quality schedule, which is included within each of NHS Kernow's key contacts and service level agreements. Contract monitoring and quality assurance processes will confirm that the individual, independently contracted practices, have arrangements in place to deal with requests for flexible working in line with legislation. The frequency of contract monitoring is recommended as monthly, in the department of health contract guidance.

4. Policy statement

NHS Kernow recognises the importance of helping its colleague's balance their work and home life while ensuring staffing levels always remain in line with the demands of the business. It also recognises the legal requirements and the need to ensure equity of access across all protected characteristics

The policy statement considers the following options, but NHS Kernow recognises that there may be alternatives, and that the working pattern that may suit any individual could be a unique one involving a combination of options:

Part time working

Where a person works to a pattern and number of hours by mutual agreement.

Job sharing

Where 2 or more people share the responsibilities of 1 or more full time jobs, dividing the hours, duties and pay between them.

Flexi time

Where colleagues can choose their own start and finish time around fixed core hours.

Annual hours contracts

Where people work a specific number of hours each year, with the hours being unevenly distributed throughout the year.

Flexible rostering

Using periods of work of differing lengths within an agreed overall period.

Term time working and school time working

Where people work during the school term or specifically around school time hours but not during school holidays.

Home working

Where people work from home for all or part of their hours with a computer or telecommunication link to their organisation.

Voluntary reduced working time

Where people work reduced hours by agreement at a reduced salary.

Fixed work patterns

Where, by agreement, days off can be irregular to enable, for example, separated parents to have access to their children and flexible rostering.

Retirement

Retirements that are not standard retirement including step down, wind down and retire and return.

Business needs

Although the organisation is committed to providing the widest possible range of working patterns for its workforce, both management and colleagues need to be realistic and recognise that the full range of flexible working options will not be appropriate for all jobs across all areas of the business.

Where an instance of flexible working is proposed, NHS Kernow will need to consider several criteria including, but not limited to, the following:

- cost of the proposed arrangement
- effect of the proposed arrangement on other colleagues
- the level of supervision that the post holder requires
- structure of the department and colleague resources

- an analysis of:
  - the tasks specific to the role, including their frequency and duration
  - the workload of the role
  - how available hours due to any reduction in hours may be utilised

They will also need to consider other issues specific to the individual's department, such as the implications of the proposed arrangements on service or team performance targets.

Eligibility

Although it is recognised that not all the flexible working patterns considered will be suitable for all sections of NHS Kernow's workforce, there should be no arbitrary barriers.

Colleagues in all areas and levels of the organisation will be considered for flexible working regardless of their age, sex, sexual orientation, race, or religion or belief, or whether they have a disability, their level of seniority, their current working pattern, or whether they are employed on a permanent or fixed term basis.

However, there is no automatic right for colleagues to change to any of the flexible working patterns, each application will be considered based on the work involved and any detrimental effect the change could have on the individual, team, or organisational performance.

Right to request flexible working

The Employment Rights Act 1996 and Flexible Working Regulations 2014 give colleagues with 26 weeks' continuous service the right to request a change to the number of hours that they work, the times that they work or their place of work.

Returning after maternity or paternity leave, parental leave, adoption leave or shared parental leave

If a colleague wishes to return to work on different hours, NHS Kernow has a duty to facilitate this, wherever possible. The colleague will return to work on different hours, in the same job. If this is not possible, the employer must provide written, objectively justifiable reasons for this and the colleague should return to the same pay band and work of a similar nature and status, to that which they held prior to their leave.

If it is agreed that the colleague will return to work on a flexible basis, including changed or reduced hours, for an agreed temporary period, this will not affect the colleague’s right to return to their job under their original contract, at the end of the agreed period.

Breastfeeding

Managers should consider requests for flexible working arrangements to support breastfeeding women at work.

Carers

NHS Kernow also has a duty to facilitate flexible working arrangements for carers of children and dependant adults. Where requests cannot be accommodated the manager must provide written, objectively justifiable reasons.

Reasonable adjustments

Managers are required to consider flexible working options as part of their duty to make reasonable adjustments for colleagues:

- with disabilities
- with dependants and job applications under the Equality Act
- returning from maternity leave

5. Procedure

Requests for flexible working

A request for flexible working could include a request:

- for a change to the number of hours that the colleague works
- for a change to the pattern of hours worked
- to job share
- to retire flexibly
- to perform some or all the work from the colleague's home.

All requests must be made in writing via an application form. Any request made under this policy must include:

- the date of the application
- the changes that the colleague is seeking to their terms and conditions
- the date on which the colleague would like the terms to come into effect
- what effect the colleague thinks the requested change would have on NHS Kernow
- how, in their opinion, any such effect might be dealt with
- a statement that this is a statutory request
- whether or not the colleague has made a previous application for flexible working
- if the colleague has made a previous request and when the colleague made it

Where the request is being made by a person with a disability as part of a request for a reasonable adjustment to their working arrangements, the colleague should state this in the written application.

Meeting to discuss a flexible working request

Once the line manager receives the request, it will be dealt with as soon as possible, but no later than the deadline set out below. The line manager will usually arrange a meeting to deal with the request. Where a request can without further discussion be approved in the terms stated in the colleague's written application, a meeting will not be necessary.

A colleague should be given the right to be accompanied by a work colleague at any flexible working meeting. The meeting should take place in a private meeting room. The aim of the meeting is to find out more about the proposed working arrangements and how they could be of benefit to both the colleague and NHS Kernow.

Outcome of a flexible working request

After the meeting, the line manager will consider the proposed flexible working arrangements carefully, weighing up the potential benefits to the colleague and to NHS Kernow against any adverse impact of implementing the changes. Each request will be considered on a case-by-case basis: agreeing to 1 request will not set a precedent or create the right for another colleague to be granted a similar change to their working pattern.

The colleague will be informed in writing of the decision as soon as is reasonably practicable after the meeting, but no later than the deadline set out below. The request may be granted in full or in part: for example, NHS Kernow may propose a modified version of the request, the request may be granted on a temporary basis, or the colleague may be asked to try the flexible working arrangement for a trial period. The colleague will be given the right to appeal the decision if the colleague's request is not upheld or is upheld in part.

Reasons for turning down a flexible working request

The line manager will give reasons for the rejection of any request. Those reasons must be for 1 or more prescribed business reasons, which are:

- burden of additional costs
- inability to reorganise work among existing colleagues
- inability to recruit additional colleagues
- detrimental impact on quality
- detrimental impact on performance
- detrimental effect on ability to meet customer demand
- insufficient work for the periods the colleague proposes to work
- planned structural change to the business

The line manager must not reject a request for any other reason.

Flexible working requests that are granted

If the request is upheld, the colleague and the line manager will discuss how and when the changes will take effect. Any changes to terms and conditions will be put in writing and sent to the colleague along with a CAF as soon as is reasonably practicable. The remainder of the contract stays the same, as does the job description and person specification unless there is a specific agreement to change these.

Once a flexible working request has been granted, it constitutes a permanent change, unless agreed otherwise or on a trial basis.

Timescales

All requests will be dealt with within a period of 3 months from first receipt to notification of the decision on appeal. The line manager should hold the meeting within 28 days of receiving the request and notify the decision to the colleague within 14 days of the meeting. This means that there is enough time for any appeal to be concluded. The colleague will be informed of the outcome of their appeal within 14 days of the appeal meeting. These time limits may be extended where both the colleague and employer agree. For example, the relevant manager and the colleague may agree to extend the time limit to give the colleague a trial period on the flexible working arrangements. This will be confirmed in writing with a copy placed on the personal file.

Problems with a flexible working request and appeals

If a colleague is dissatisfied or unclear at any stage throughout the process, they should speak to their manager or contact the POD team. If a colleague is dissatisfied with the way in which their request has been handled, they should arrange an informal discussion with the relevant line manager in the first instance and, if this does not resolve the matter, they may follow the steps described in the grievance procedure. Colleagues who are dissatisfied with the outcome of their request can lodge an appeal within 14 days of the notification, with the appeal to be heard within 14 days. The scheduling of an initial informal discussion with the manager does not affect the 14-day deadline for lodging an appeal.

An appeal panel hearing an appeal against the refusal of a flexible working request will only be able to determine whether the request should be reviewed. The appeal panel will not have the ability to overturn the decision.

If a colleague fails to attend a meeting, including an appeal meeting, and then fails to attend a rearranged meeting without good reason, their application will be deemed to have been withdrawn.

6. Fraud awareness

Fraud within NHS Kernow is unacceptable and diverts valuable resources away from patient care. Any concerns over deliberate misapplication of the flexible options

outlined in this policy and procedure should be highlighted with POD who may refer the matter to the local counter fraud specialist

7. Implementation plans and monitoring effectiveness

Applications and outcomes should be monitored annually, in partnership with local colleague representatives.

Monitoring information should be analysed and used to review and revise policies and procedures to ensure their continuing effectiveness.

Applications and outcomes, from both employer and colleagues, should be recorded and kept for a minimum of 1 year.

8. Update and review

This policy should be reviewed every 3 years.

9. Policies referred to in this document

- Retirement policy
- Agile working policy
- Grievance and dignity at work policy

These can be found in the document library or on IRIS.

Appendix 1: Equality impact assessment

Name of policy or service to be assessed: Flexible working policy
Department or section: POD
Date of assessment: 27 January 2021
Person(s) responsible for the assessment: Tricia Phillips POD
Is this a new or existing policy? Existing

Aims, objectives and purpose of the policy

Describe the aims, objectives, and purpose of the policy
To support the process of colleagues applying for flexible working.

Who is intended to benefit from this policy, and in what way?
All colleagues of NHS Kernow.

What outcomes are wanted from this policy?
Clear and consistent process.

What factors or forces could contribute or detract from the outcomes?
Failure to apply the appropriate process.

Who are the main stakeholders in relation to the policy?
Colleagues, trade union representatives and management.

Who implements the policy, and who is responsible for the policy?
Managers implement with POD support. POD are responsible for the policy.

Differential impacts

Perspective of race, nationality and or ethnic origin

Does this have a positive or negative impact on black, Asian and minority ethnic (BAME)?
There will be no negative impacts on this group providing the policy is applied consistently.

Perspective of sex

Does this have a positive or negative impact on people who identify as male, female or intersex?
There will be no negative impacts on this group providing the policy is applied consistently.

Perspective of disability

What is the positive or negative differential impact on people from the perspective of disability?

There will be no negative impacts on this group providing the policy is applied consistently.

Perspective of sexual orientation

Does this have a positive or negative impact on people who identify as heterosexual, lesbian, gay, bisexual, pansexual or asexual?
There will be no negative on this group providing the policy is applied consistently.

Perspective of age

What is the positive or negative differential impact on people from the perspective of age?
There will be no negative impacts on this group providing the policy is applied consistently.

Perspective of religion or belief

What is the positive or negative differential impact on people from the perspective of religion or belief?
There will be no negative impacts on this group providing the policy is applied consistently.

Perspective of marriage and civil partnership

What is the positive or negative differential impact on people from the perspective of marriage and civil partnership? This is particularly relevant for employment policies.
There will be no negative impacts on this group providing the policy is applied consistently.

Perspective of gender re-assignment

Does this have a positive or negative impact on people who identify as trans or transgender, non-binary or gender fluid?
There will be no negative impacts on this group providing the policy is applied consistently.

Perspective of pregnancy and maternity

Does this have a positive or negative impact on people who are pregnant, breast-feeding mothers, or those on maternity leave?
There will be no negative impacts on this group providing the policy is applied consistently.

Other identified groups

How will any negative impact be mitigated?
There will be no negative impacts on this group providing the policy is applied consistently.

Human rights values

How have the core human rights values of fairness, respect, equality, dignity, and autonomy been considered in the formulation of this policy, service, or strategy?
The policy aims to ensure fairness through consistent application for all colleagues.

Which of the human rights articles does this document impact?

☐ To life
☐ Not to be tortured or treated in an inhuman or degrading way
☐ To liberty and security
☐ To a fair trial
☒ To respect for home and family life, and correspondence
☐ To freedom of thought, conscience, and religion
☐ To freedom of expression
☐ To freedom of assembly and association
☐ To marry and found a family
☐ Not to be discriminated against in relation to the enjoyment of any of the rights contained in the European Convention
☐ To peaceful enjoyment of possessions

What existing evidence (either presumed or otherwise) do you have for this?
The ability to apply for flexible working is likely to impact on home and family life and a fair approach to this is part of this policy.

How will you ensure that those responsible for implementing the policy are aware of the human rights implications and equipped to deal with them?
POD involvement in the process will ensure consistency.

Public Service (Sector) Value Act 2012

NHS Kernow is committed and obliged to fulfil the requirements of the Public Sector Social Value Act 2012. This act requires the organisations to consider how services commissioned or procured might improve the economic, social, and environmental wellbeing of an area.

Please describe how this will support and contribute to the local system, wider system, and community.

Please consider:

- The inclusion of small medium size enterprises (SMEs) in the process and supply chain
- Economic – promote skills, tackle worklessness, maintain employment, increase volunteer hours to support the community and promote inclusion
- Social – reduce anti-social behaviour, tackle exclusion by promoting inclusion including to vulnerable groups

- Environmental – support local, reduce congestion.

This policy strives to support all colleagues to fulfil their duties at work, tackling exclusion and helping to maintain employment by providing an avenue so that colleagues can request flexible working from day one of employment and make repeated requests in the same year.

Describe how the policy contributes towards eliminating discrimination, harassment and victimisation.
This allows colleagues to request a working pattern that fits their circumstances.

Describe how the policy contributes towards advancing equality of opportunity.
It provides an equal process for application of flexible working.

Describe how the policy contributes towards promoting good relations between people with protected characteristics.
It supports all colleagues both with and without protected characteristics.

If the differential impacts identified are positive, explain how this policy is legitimate positive action and will improve outcomes, services and or the working environment for that group of people.
Not applicable.

Explain what amendments have been made to the policy or mitigating actions have been taken, and when they were made.
Not applicable.

If the negative impacts identified have been unable to be mitigated through amendment to the policy or other mitigating actions, explain what your next steps are using the following equality impact assessment action plan.

Signed (completing officer): Tricia Phillips

Date: 17 February 2021

Signed (head of department or section): Emma Goudge

Date: 17 February 2021

Please ensure that a signed copy of this form is sent to both the corporate governance team with the policy and the equality and diversity lead.