

**GREAT YARMOUTH BOROUGH COUNCIL
FLEXIBLE WORKING 'RIGHT TO REQUEST' PROCEDURE**

Preamble

- (i) In view of certain legislative provisions, Great Yarmouth Borough Council has agreed this Flexible Working 'Right to Request' Procedure with UNISON. The Procedure sets out how an employee of the Council who is a 'parent' of a:
- child aged under 17, or
 - disabled* child aged under 18
- or a carer of an adult in need of care, may make their legal right to apply to work flexibly. The Council has a statutory duty to consider any such applications seriously.
- (* A disabled child is one for whom disability living allowance has been awarded.)
- (ii) The following paragraphs explain how the Procedure operates. The Procedure will be subject to review in the light of (for example) any precedents set by case law.
- (iii) For the purpose of this Procedure, the term 'Senior Manager' shall encompass the Managing Director, officers subject to the Conditions of Service for Chief Officers of Local Authorities, and Service Managers.
- (iv) Of course, many of the Council's employees already have an element of flexibility about how they work, particularly through application of the Flexitime Scheme. This legal right to apply is in addition to any scheme or arrangement that may be in operation at the Council.

1. Explanation of the Right

- 1.1 This right enables parents and carers of adults in need of care to request to work flexibly. It does not provide an *automatic* right to work flexibly and there may well be circumstances when the Council is unable to accommodate the employee's desired work pattern. The right aims to facilitate discussion and encourage both the employee and their Senior Manager (who will normally be their Service Manager) to consider flexible working patterns and to find a solution that suits them both. The employee has a responsibility to think carefully about their desired working pattern when making an application.

2. Eligibility

- 2.1 In order to be eligible to make a request under the right, an employee of the Council must:

General

- have worked with the Council continuously for 26 weeks at the date the application is made;

- not have made another application to work flexibly under the right during the past 12 months.

Parents

- make the application before the child's 17th birthday or 18th birthday in the case of a disabled child;
- be the mother, father, adopter, guardian, special guardian or foster parent of the child or be married to, or the partner (including same sex partner) of, one of the above;
- have or expect to have responsibility for the child's upbringing;
- be making the application to enable them to care for the child.

Carers

- be or expect to be caring for a spouse, partner, civil partner or relative**; or
- if not the spouse, partner, civil partner or relative**, live at the same address as the adult in need of care.

(**A relative for this purpose is a mother, father, adopter, guardian, special guardian, parent-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister, sister-in-law, uncle, aunt or grandparent. Step-relatives and half-blood relatives are also included. In relation to all the relatives mentioned, this includes adoptive relationships and relationships which would have existed but for an adoption i.e. the employee's natural relatives.)

3. Scope of a Request

3.1 Eligible employees are able to request changes to:

- the number of hours they work
- the times when they are required to work
- where they are required to work.

3.2 This covers such working patterns as annualised hours, compressed hours, homeworking, flexitime, job-sharing, part-time working and term-time working. Applications for a change in working pattern will not always require a significant alteration. For example, a parent may simply wish to start work half an hour later to take their child to school and make up the time later in the day.

4. The Procedure in Operation

The [Directgov](#) and [Business Link](#) websites provide standard forms for employees and employers to use when submitting and considering an application to work flexibly. It is recommended that these forms are used at the Council.

4.1 The initial onus is on the employee to make a considered application in writing to their Senior Manager. They are able to make only one application a year, and an accepted application will mean a **permanent** change to the employee's terms and conditions of employment. It is important therefore that, before making an application, the employee gives careful consideration to:

- which working pattern will help them best care for their child or the adult in need of care

- any financial implications it might have on them in cases where the desired working pattern will involve a drop in salary, and
- any effects it will have on the Council's operation and services and how these might be accommodated.

4.2 Within 28 days of receiving the employee's written request, the Senior Manager will arrange for a meeting to take place with the employee and other appropriate parties***. This will provide management and the employee with the opportunity to explore the desired work pattern in depth, and to discuss how best it might be accommodated. It will also provide an opportunity to consider other alternative working patterns should there be problems in accommodating the desired work pattern outlined in the employee's application.

(*** This may include the line manager and the employee's trade union representative or colleague, if they wish to be accompanied.)

4.3 Within 14 days of the date of the meeting the Senior Manager will write to the employee, to either:

- agree to a new work pattern and a start date, or
- provide a clear business ground(s) as to why the application cannot be accepted and the reasons why the ground(s) applies in the circumstances.

Legislation provides that the only reasons for refusing a request are:

- the burden of additional costs
- detrimental effect on ability to meet customer demand
- inability to re-organise work among existing staff
- inability to recruit additional staff
- detrimental impact on quality
- detrimental impact on performance
- insufficiency of work during periods the employee proposes to work
- planned structural changes.

4.4 If the employee disagrees with the Senior Manager's decision and wishes to appeal, they must make their appeal in writing within 14 days of the decision being notified to them. This will effectively mean that the local Grievance Procedure has been invoked. An appeal hearing must be held within 14 days after receiving the employee's notice and the employee must be informed (in writing) of the outcome of the appeal within 14 days after the date of the meeting.

4.5 There may be a number of reasons why the time limits specified above are too short and an extension may be required. For example, more time may be needed to explore an alternative working pattern or to enable the requested working pattern to operate for a trial period, subject to review. Time limits can be extended where the Senior Manager and employee agree. A written record of the agreement must be made which states which period the extension relates to and the date the extension is to end. This must be dated and sent to the employee by the Senior Manager and subsequently confirmed by the employee in writing (this is to prevent a dispute arising as to whether the Council has complied with the time limits required or not). Time limits will be automatically extended where the Senior Manager who would ordinarily consider the application is absent because of annual leave or sick leave when the application is received. The 28-day period begins when that Manager returns to work or 28 days after the application is made, whichever is the sooner.

- 4.6 There may be occasions when an application is treated as withdrawn and a written record must be made (either by the employee or the Senior Manager, depending on the circumstances). The three reasons why an application may be treated as withdrawn are where the employee:
- decides to withdraw the application
 - fails to attend two meetings to discuss their application
 - unreasonably refuses to provide the Senior Manager with the required information.

Notes

- (a) *If you have any queries about how this Procedure operates, please contact Human Resources.*
- (b) *It should be noted that an employee can complain to an Employment Tribunal that the Council:*
- *failed to hold the initial meeting or appeal meeting*
 - *failed to provide notice of a decision in accordance with the timescale*
 - *rejected the application based on incorrect facts (a claim for this reason can only be brought after the application has been rejected on appeal).*
- A tribunal can order the request to be reconsidered and can also award compensation. A claim cannot be made where the application has been disposed of by agreement or withdrawn. An employee has the right not to be subjected to any detriment for a reason connected with the right to request to work flexibly.*
- (c) *It is possible that Senior Managers will occasionally receive requests from employees who wish to work flexibly for other reasons. In such cases, it is recommended that employees and Senior Managers agree to follow a similar procedure to that set out above. But if simultaneous requests should ever be received from two or more people from the same section, then precedence may have to be given to employees who have statutory protection.*
- (d) *It is recognised that no enhancement to salary will apply where, for example, an employee requests to work at night and/or during weekends as part of their normal working week and this request is accepted, even though it is not a service requirement.*

Updated September 2011.