

Flexible Working Policy

W23

Additionally refer to: Equality, Diversity and Inclusion Policy
Grievance Policy
Retirement Policy
NHS Pensions policy
Parental Leave
Employment Breaks
Job Evaluation Policy
Development and Training Policy
Statutory and Mandatory Training Policy

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1. **Policy on a Page**

1.1 The Trust is committed to developing “*positive flexible working arrangements which allow people to balance work responsibilities with other aspects of their lives*” (National Terms and Conditions 34.1). Flexible working also supports parents and employees with caring responsibilities as well as those staff who prefer different working patterns.

1.2 This policy outlines the arrangements in place to support staff in requesting flexible working arrangements.

1.3 The Employment Relations (Flexible Working) Act 2023 received Royal Assent in August 2023

and this policy now reflects those key changes as follows:

- Employers must consult with the employee before rejecting their flexible working request (the Trust’s current policy made this part of its procedure).
- Employers must make a decision within 2 months of the request (currently 3 months).
- Employees are no longer required to set out a business case (The Trust currently does not require a business case simply to complete an application so this will continue, but the manager will continue to assess the relative impact of the request).

1.4 There is not an automatic right for employees to work flexibly but the Trust will ensure that reasonable consideration is given to any request.

1.5 Policy into Practice (See also the policy process as set out in Appendix A) In summary this involves:

- Employee submits written request: Line manager meets and consults with their employee to explore how the request for flexible working maybe accommodated. If the line manager approves the request they must do so in writing outlining the new working arrangement.
- Flexible working request declined: The manager must write to the employee and copy People Services setting out their reasons why the request has been declined.
- Recruitment: Recruiting managers should consider whether to include flexible working in the job advert.
- Reviewing flexible working arrangements: It is good practice to regularly review these arrangements to assess the benefits, as well as identifying any issues which may need to be addressed.
- Conditions of service: A variation in terms and conditions to reflect working arrangements is all that is required.
- Appeals procedure: An employee can appeal if the decision for flexible working is turned down.

1.6 To apply for flexible working, staff should use the form in Appendix C. (Please note if you are applying for your pension through Flexible Retirement options, please complete the form at Appendix F in the Retirement Policy).

2. Policy Statement

2.1 The Trust is committed to providing members of staff with access to flexible working arrangements, which support them in balancing work responsibilities with personal commitments.

2.2 The Trust recognises the importance of domestic or out-of-work commitments and acknowledges that, at certain times in an employee's working life, circumstances may arise where it is appropriate to adopt flexible working arrangements. This policy sets out the arrangements within the Trust to enable all employees to request flexible working arrangements to balance their working life with non-work related commitments. It does not provide an automatic right for employees to work flexibly but will ensure that reasonable consideration is given to any request.

2.3 The Employment Relations (Flexible Working) Act 2023 received Royal Assent in August 2023 and this policy now reflects the key changes as follows:

- Employers must consult with the employee before rejecting their flexible working request (the Trust's current policy made this part of its procedure).
- Employers must make a decision within 2 months of the request (currently 3 months).
- Employees are no longer required to set out a business case (The Trust currently does not require a business case simply to complete an application so this will continue, but the manager will continue to assess the relative impact of the request).

3. Scope

3.1 This policy applies to all staff who are directly employed by the Trust, whether full-time or part-time, permanent, or temporary, including those working via the Temporary Staffing Department. Employees applying for Flexible Retirement options refer to the Retirement policy.

3.2 Whilst it is the Trust policy to consider Flexible Working requests for all eligible employees, there may be situations where precedence is given to those who have a statutory right to request flexible working, to ensure that the organisation complies with its legal obligations.

3.3 The Trust is required to consider flexible working options as part of their duty to make reasonable adjustments for disabled staff, staff with dependents, job applicants under the Equality Act and staff who are returning from maternity leave.

3.4 The policy does not apply to individuals employed by agencies or other contractors.

3.5 In implementing this policy, managers must ensure that all staff are treated fairly and within the provisions and spirit of the Trust's Equality and Diversity Policy (W30). Special attention should be paid to ensuring the policy is understood when using it for staff new to the NHS or Trust.

3.6 Managers must respect the confidentiality of the employee at all times and not disclose any personal information to a third party, with the exception of where advice is being sought from their line manager, the People Services or the Occupational Health Department.

4. Flexible Working Arrangements

- 4.1 The Trust has developed a range of working arrangements which may enable staff to work more flexibly, whilst maintaining service provision. These are explained in more detail in Appendix B. A list is given below; however, it is not exhaustive and is provided as a guide only:
- Annual/annualised Hours
 - Compressed/Condensed Hours (Long Shifts)
 - Employment Breaks (Career Breaks or Sabbaticals)
 - Flexitime
 - Home (Remote) Working
 - Job-share
 - Part-time Working
 - Phased return to work
 - Shift Working
 - Staggered hours
 - Team-based / Employee based self-rostering
 - Term-time Working
 - Time off in lieu of banked hours
 - V-time working
 - Variable Working Patterns

- 4.2 Wherever possible, requests for flexible working patterns will be accommodated. However in some circumstances a manager may be unable to accept the flexible working pattern or accommodate a suitable alternative. The manager must arrange to meet with the individual to discuss their request for flexible working.

5. **Eligibility**

- 5.1 Flexible working arrangements maybe requested by all employees from day one of their employment with the Trust. There is no limit to the number of flexible working requests that can be made.

6. **Responsibilities of Employees**

- 6.1 Employees are encouraged to have informal conversations with their line manager about flexible working at any time, including through regular one-to-ones and health and wellbeing conversations.
- 6.2 A written application should be submitted using Appendix C and the line manager must make and communicate their decision within two months' of receiving the request. Employees are not required to set out a business case in support of their request, but it is reasonable to provide reasons for their request.
- 6.3 Line managers are expected to meet and consult with their member of staff who has made the flexible working request. Consultation meetings about requests should be approached with an open mind to discuss what may be suitable. Meetings are an opportunity to listen carefully and engage meaningfully so that a fully informed, evidence based decision can be made.
- 6.4 Employees have the right to withdraw an application for flexible working provided permanent arrangements have not been put in place to accommodate their request (e.g. additional hours have been offered and accepted by another employee). Employees are encouraged to discuss any potential changes to their request with their manager at the earliest opportunity.

6.5 Employees must ensure that they have fully understood the procedure for requesting flexible working arrangements before submitting their application form. Further advice is available from the line manager, HR or the Trade Union or Professional Organisation Representative.

7. Responsibilities of Managers

7.1 Managers at all levels enable their staff, including doctors, to work in ways that meet their personal needs, and the needs of the service, at different times in their careers and structures are in place to support flexible working practices.

7.2 Managers are encouraged to hold regular discussions about flexible working through staff induction, one-to-one meetings, team meetings, health and wellbeing conversations and appraisals. Please note this policy is for Flexible Working requests only. For Flexible Retirement options, please advise your employees to refer to the Retirement Policy and complete Appendix F. Line managers have a key role in considering requests for retirement.

7.3 Managers are required to consider flexible working options for all staff in the workplace, from day one of employment, for example:

- disabled staff and staff with health conditions
- staff returning to work following maternity/paternity leave, parental leave, adoption leave or shared parental leave
- staff in need of temporary changes to their employment arrangements following a domestic crisis, bereavement, or sickness absence.

7.4 Managers must openly consider requests for flexible working arrangements meeting and consulting with their staff (see 6.2), taking into account:

- the legal requirement to reasonably consider the request, where relevant
 - the nature and urgency of the request
 - the cost of the proposed arrangement
 - the effect of the proposed arrangement on other staff
 - the impact of the request on the current needs of the service
 - the impact of the request on the responsibilities of the post including supervision requirements, department structure, staff resources, workload of role
 - implications for lone working (for individual or other colleagues)
 - the impact of any potential solutions proposed by the member of staff
- the length of time for which flexibility is required (temporary or permanent).

8. Stages of Application Process

8.1 Exploratory stage

- On receipt of a written request, managers must arrange to meet and consult with their employee to discuss the request. This is an opportunity for both the manager and the employee to openly explore the proposed working pattern in depth and explore how it might be accommodated. The manager should also agree with the individual whether and how any proposals are discussed with other team members. If the manager is able to approve the request without further discussion, a further meeting may not be required. A flexible working request cannot be declined at this stage and should be referred on to the escalation stage.
- The individual can be accompanied at the meeting/discussion by their Trade Union/Professional organisation representative or by a colleague employed by the Trust at any stage if they wish. Where the person is to be accompanied it is the individual's responsibility to arrange this.

8.2 Escalation stage

- If the flexible working request cannot be agreed at the exploratory stage, a meeting at the escalation stage can be used to check for other possible solutions. This could include managers seeking a second opinion to verify a decision or exploring whether the flexible working request could be accommodated in a different team, location, or role.
- Managers should communicate all viable options with the employee and if necessary, agree a reasonable extension to timescales where this would allow a more thorough investigation of alternative options.
- A member of HR must be consulted at this stage, to provide advice and support to all parties. The individual can be accompanied.

8.3 Decision stage – flexible working change agreed

- Managers must confirm the outcome in writing within two months of receiving the written request (Using Section C of Appendix C) outlining the new working arrangement including a change in hours, work pattern, location, role and/or team (this may include an alternative pattern that has been discussed), whether it is a permanent arrangement or a temporary arrangement, trial periods agreed and review dates.
- Where a change is agreed an ESR Change of Circumstances form must be completed by the manager and submitted to the ESR Team to notify of any changes which will impact on the individual's pay.

8.4 Decision stage – flexible working change declined

- Managers may reject an application where the desired working practices cannot be accommodated within the needs of the service. When a request is received, the manager must consider the needs of the service at that particular point in time. It is not acceptable to turn down a request on the basis that others might then request similar working arrangements. Equally, there may be sound and defensible reasons for refusing a request even though there are already flexible arrangements in place within the department for other staff members. All job roles should be considered for flexible working; if this is not possible the manager must provide written, objectively justifiable reasons for this and give a clear, demonstrable operational reason why this is not practicable along with an account of alternatives considered. Managers should ensure an equality check that identifies whether the individual has any protected characteristics under the Equality Act that are relevant to their flexible working request. Where a request is refused the manager must copy the completed application form to HR (email sath.hradvice@nhs.net).
- Requests must be considered within a relevant timeframe (i.e. relevant to the request made and recognising that some requests need urgent attention). All requests will be considered within two months.
- When considering advertising vacancies, managers should give consideration as to whether it is possible to accommodate flexible working arrangements.
- Managers must ensure that no employee suffers any detriment or discrimination as a result of making a request for, or undertaking flexible working arrangements, and must ensure fairness and consistency in approach.

9. Reviewing Flexible Working Arrangements

- 9.1 The manager and the employee will jointly agree working arrangements based on the individual circumstances and service needs; and a timescale for the review agreed. Where temporary changes have been agreed, timescales and review periods must be stated at the time flexible working arrangements are implemented and confirmed in writing by the Manager. Arrangements should be reviewed regularly to ensure that they are working satisfactorily and that any issues are raised and resolved as soon as possible.

- 9.2 A trial period can be an option that the line manager and the employee agree which usually will be for 4 weeks. Arrangements for this period should be set out in writing.
- 9.3 Any subsequent changes made should be subject to full consultation between the manager and employee and implemented from an agreed date. Where the review determines that it is not possible to continue the flexible working arrangements a meeting must be held between the line manager and employee and the outcome put in writing. After which, the employee will commence the standard working hours for the department from an agreed date.
- 9.4 If the department undergoes service changes that impact upon working arrangements existing flexible arrangements may be reviewed at that time.

10. **Conditions of Service**

- 10.1 Where a change to working arrangements is agreed the manager should confirm in writing the changes to the individuals terms and conditions. A variation in the Statement of Main Terms and Conditions of Employment to reflect the new working arrangements is all that is required. This may include a reduction in hours, pay and annual leave adjusted pro rata.
- 10.2 An employee reducing their hours of work or changing their work pattern should normally maintain their existing conditions of service. However, if the changes are permanent to the job role, or the job location the employee's conditions of service will need to be adjusted accordingly.

11. **Appeals Procedure**

- 11.1 The Trust procedure includes the right to request a further meeting where a request for flexible working has been refused.
- 11.2 To request this meeting, the employee must write to HR from the escalation and decision stage. The HR support will then identify a suitable independent manager within the Trust to consider the appeal.
- 11.3 The employee must send their appeal within 14 days of receipt of the decision (confirmed on section C of Appendix C), clearly setting out the reasons why they consider the decision to be unfair.
- 11.4 Where there are justifiable reasons for doing so, an individual may request that an alternative manager be appointed to hear the appeal. Such a request must be made in writing, giving detailed reasons, to the HR representative supporting the matter as early as possible. Such a request will be considered and may or may not be accommodated. Where such a request is refused, the individual will be informed of the reasons.
- 11.5 A meeting will be arranged as soon as possible to discuss why the employee considers the decision to be unfair. Those hearing the appeal should review the evidence and the other options considered and all relevant background information. This evidence should be provided ahead of the appeals meeting. The employee may be accompanied by a Trade Union/Professional organisation representative or by a colleague employed by the Trust. The outcome of this meeting will be confirmed in writing normally within 7 calendar days of the meeting. Outcomes could include upholding the decision, agreeing the request or implementing alternative arrangements.

12. Training

12.1 Management training required to fulfil this policy will be provided in accordance with the Trust's Training Needs Analysis. Management and monitoring of training will be in accordance with the Trust's Development and Training Policy.

12.2 This information can be accessed via the Learning Zone pages on the Trust intranet.

13. Review Process and Equality Impact Assessment (EQIA)

13.1 The Trust will review this policy when there are changes to relevant legislation or good practice, or within the normal policy review cycle.

13.2 This policy applies to all employees, however where a legal obligation exists precedence will be given to considering this request in order to ensure the organisation complies with its legal obligations.

14. Process for Monitoring Compliance

Aspect of compliance or effectiveness being monitored	Monitoring method	Responsibility for monitoring	Frequency of monitoring	Group or Committee that will review the findings and monitor completion of any resulting action plan
Number of requests and outcomes to be monitored	At policy review access and uptake of policy to be reviewed	HR Team	On policy review	JNCC
Organisations expectations in relation to staff training	Management and monitoring of training will be in accordance with the Trust's Development & Training Policy and Statutory and Mandatory Training Policy			

15. References

Legislation

- Equality Act 2010
- Employment Rights Act 1996
- Employment Act 2002, especially section 47
- Flexible Working (Procedural Requirements) Regulations 2002
- Employee Relations (Flexible Working) Act 2023

Other references

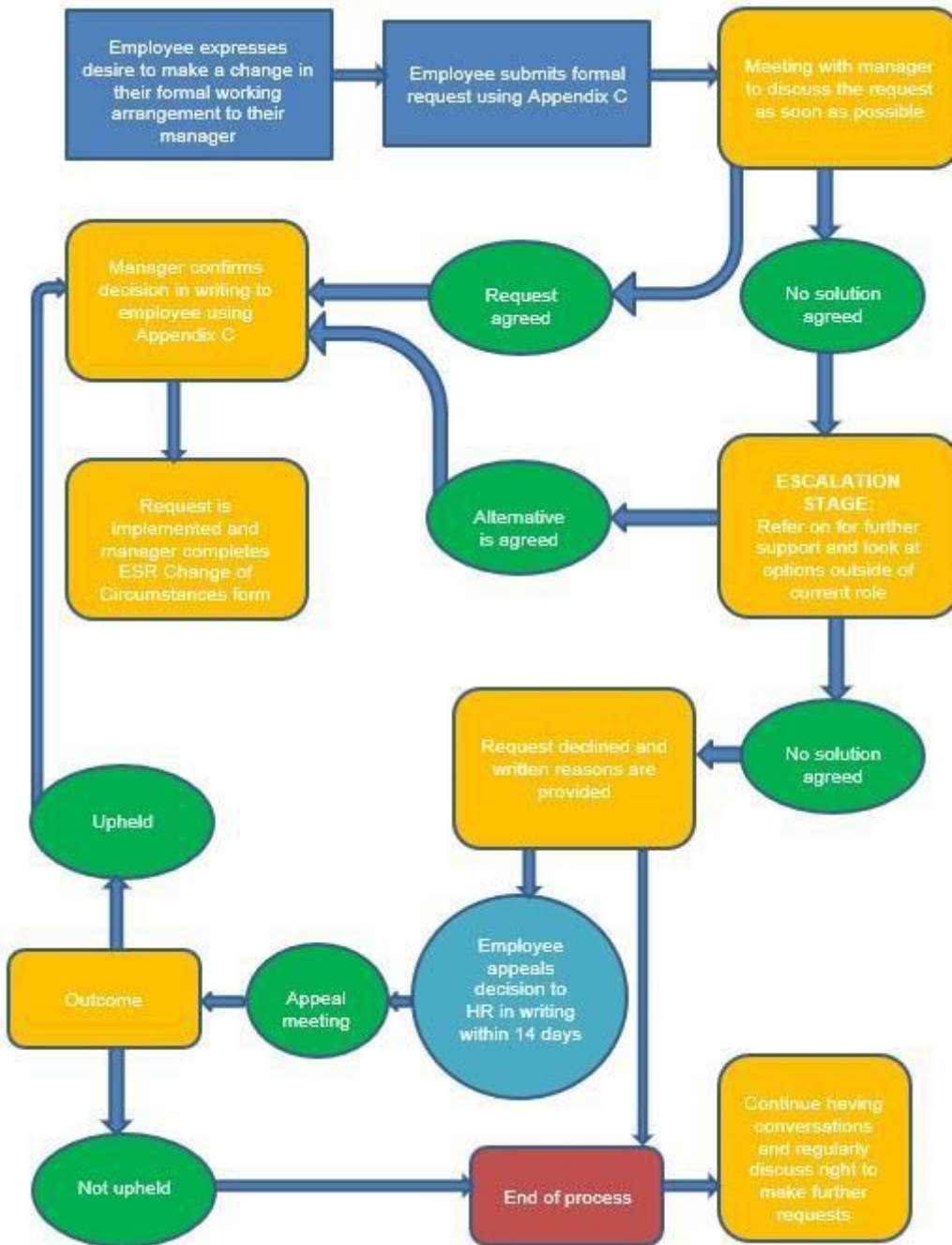
The NHS Employers Website provides further information and resources on employee's entitlements - www.nhsemployers.org

National Terms and conditions Handbook. Section 34 Flexible Working Arrangements (AfC)

NHS Employers Flexible Working A-Z Guide

Acas code of practice on flexible working requests

Appendix A – Overview of Flexible Working Process (NB For Flexible Retirement please refer to Retirement Policy).



Appendix B Flexible Working Practices (incorporating the NHS Employers A-Z of Flexible Working)

Annual Hours

Employees who are contracted to work a number of hours over the whole year rather than monthly or weekly. Employees are paid exactly the same each month but are expected to respond to peaks and troughs in work load by increasing or decreasing the hours worked when appropriate. A large number of the hours may be allocated to set shifts leaving the remaining hours to be worked at short notice or as agreed with the employee as demand dictates. Such a scheme is also used for allowing employees greater personal flexibility, although the needs of the organisation must always be considered.

Example:-

An employee is contracted (paid) 25 hours per week but works their hours over 40 weeks. They have 5 years' service for the purposes of annual leave and take all their annual leave in their 12 non-working weeks.

$25\text{hours} \times 52.14 \text{ (weeks per year)} = 1303.5 \text{ hours per year (before annual leave and bank holidays)}$

$\text{Annual leave} = 29 \times 7.5 = 217.5 / 37.5 \times 25 = 145 \text{ hours leave per year}$

$\text{Public Holidays} = 8 \times 7.5 = 60 / 37.5 \times 25 = 40 \text{ hours per year (figure to be recalculated yearly)}$

$\text{Total hours to be worked} = 1303.5 - 145 - 40 = 1118.5$

$\text{Weekly hours working over 40 weeks} = 1118.5 / 40 = 27.96 \text{ hours per week}$

39 weeks at 28 hours per week (1092 hours)

1 week at 26.5 hours

Compressed/Condensed Hours (Long Shifts)

Allows employees to work their total number of agreed hours over fewer working days. For example a five day working week compressed into four days or a nine day fortnight (ten working days compressed into nine).

Employment Breaks (Career Breaks or Sabbaticals)

An employment break is a period of unpaid time out from the workplace. See Leave Policy Chapter 3 – Employment Breaks.

Flexitime

Allows employees to choose, within agreed limits, when to begin work and end work, and may be planned to enable individuals to attend to domestic or other responsibilities. Employees may be required to work during some essential periods (known as core times) and must work an agreed number of hours within an 'accounting period' which is typically four weeks. Outside core times are flexible bands when employees may choose whether to be at work or not. This enables employees to vary their start, finish, and lunchtimes. Usually, within agreed limits, employees can carry over any excess or deficit in the number of hours they are required to work to the next accounting period.

Flexible Retirement

An alternative to simply stopping work, to assist in preparing for retirement. See the Trust's Retirement Policy.

Home (Remote) Working

Employees who work from home on a regular basis (to meet their contractual obligations) for reasons of self development or work related purposes; this can be on a temporary, occasional, programmed or (in exceptional circumstances) permanent basis (see Home working policy).

Job-share

A situation where two or more people share one full-time job, dividing the pay, holidays and other benefits in proportion to the number of hours they work. There is no set model for managing time, which may involve working a set number of hours each day, each week, or alternate weeks.

Part-time Working

Employees working less than the designated full-time hours within any particular grade or position. There is no set pattern to part-time working. It may involve a later start and earlier finish time than a full-time position, working mornings or afternoons only, fewer working days in the week or any other arrangement of working time whereby the employee is contracted to work less than normal basic full-time hours.

Phased return to work

Used after a period of extended leave such as maternity leave, employment break or after serious or prolonged illness. Normal hours of working are reduced initially on a temporary basis (usually for a period of up to 6 weeks) before returning to normal hours of work.

For more information regarding return to work following sickness absence see the relevant Trust policy. In other circumstances employees may use accrued annual leave to work part time or temporarily change their contracted hours for an agreed period subject to service need.

Shift Working

Employees working shift patterns either on a regular or rotation basis. This is the pattern of work in which one employee replaces another in the same job within a 24-hour period. Shift systems typically operate over morning, afternoon, long and/or night shift periods and may provide continuous cover 24 hours a day, seven days a week.

Additional variations of this are:

- Shift swapping - enables employees to negotiate their working times by re-arranging shifts among themselves with the proviso that the required shifts are covered.
- Self-rostering - allows employees to nominate the shifts they would like to work, leaving employers to compile shift patterns that match the preferences of individual staff to agreed staffing levels.
- Requesting Days off – enables employees to request a set number of days off during a roster period which subject to service need can be authorised by their roster organiser.

Staggered hours

Allows normal working hours to be varied to suit an individual's needs whilst working full contracted hours. Working may be staggered on a permanent or temporary basis throughout the week; or just on one or two days of the week. Can be a very effective way of covering longer opening hours i.e. allowing members of staff to have different start/lunch/and finishing times.

Team-based / Employee based self-rostering

Employees who manage their own working hours within a team or individually, usually within set boundaries and in compliance with departmental/team needs. (See also Flexitime and Shift Working)

Term-time Working

Enables an employee to remain on a permanent contract but also to take paid or unpaid leave during school holidays.

Variations include:-

- Employees work for the 39 weeks of the school year. Annual holiday is pro-rated and is deemed to be taken during the 13-week non working period; salary is adjusted accordingly and paid equally over 12 months.

Example:-

An employee is contracted (paid) 25 hours per month but works their hours over 39 weeks. They have 5 years' service for the purposes of annual leave and take all their annual leave in their 13 non-working weeks.

$25\text{hours} \times 52.14 \text{ (weeks per year)} = 1303.5 \text{ hours per year (before annual leave and bank holidays)}$

$\text{Annual leave} = 29 \times 7.5 = 217.5 / 37.5 \times 25 = 145 \text{ hours leave per year}$

$\text{Public Holidays} = 8 \times 7.5 = 60 / 37.5 \times 25 = 40 \text{ hours per year (figure to be recalculated yearly)}$

$\text{Total hours to be worked} = 1303.5 - 145 - 40 = 1118.5$

$\text{Weekly hours working over 39 weeks} = 1118.5 / 39 = 28.68 \text{ hours per week}$

38 weeks at 28.5 hours per week (1083 hours)

1 week at 35.5 hours

Or

38 weeks at 29 hours per week (1102 hours)

1 week at 16.5 hours

Time off in lieu of banked hours

This allows employees to take time off to compensate for extra hours worked. Time worked must be agreed in advance. For overtime payment rules see national terms and conditions.

V-time working (Temporary Reduction in Hours)

This is a voluntary arrangement whereby an employee reduces the number of hours worked for an agreed period with a guarantee that contractual hours (full or part-time) will be available again at the end of this time. In exceptional circumstances this could include a period of unpaid leave.

Variable Working Patterns

Irregular days off fixed in advance to enable, for example, separate parents to have access to children.

All the above Flexible Working arrangements can be requested using the Flexible Working Request forms and requests will not be unreasonably refused.

Appendix C Application for Flexible Working – W23

Please ensure that you have read and understood the Flexible Working Policy before completing this form. Once completed please pass this form to your manager who will arrange to meet with you to discuss your request. (Please note if you are applying for your pension through Flexible Retirement options, please complete the form at Appendix F in the Retirement Policy).

Section A - To be completed by the employee:			
Part 1 - Personal Details			
First Name:		Surname:	
Employee No:		Department:	
Start Date with NHS:		Start Date with Trust:	
Job Title:		Band:	
Part 2 - Current Working Pattern			
Days worked:		Times worked:	
No of Hours Worked:		No of Shifts per week / month:	
Part 3 - Requested Working Pattern			
Days worked:		Times worked:	
No of Hours Worked:		Duration of Change Requested (See section 7.1)	
Start date of change:		End date of change:	

Part 4 – Do you consider your request a reasonable adjustment in respect of a disability?			
Part 5 - Declaration			
I declare that I have:			
1.			
read and understood the Flexible Working Policy and wish to apply for a flexible worked pattern as requested above.			
Signed:		Date:	

Section B Continued (To be completed jointly by the manager and the employee)

Part 1 – Impact of new working pattern: (please state how this change will affect your department / colleagues) Employee may wish to discuss this with their manager

Part 2 –Accommodating the new working pattern: (please state how the department / colleagues can support your requested change) Employee may wish to discuss this with their manager

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Section C - To be completed by the Manager:

I confirm I have met with the individual to discuss their application and having considered their above request under the Flexible Working Policy (W23):

I approve the individual's above request to work flexible, (please tick)	
--	--

I have moved the request to the Escalation Stage for further consideration	
--	--

Escalation stage – evidence gathered to check for other possible solutions, the reasons they are or aren't suitable and/or a second opinion

Following the escalation stage, I have accepted the request or found alternative arrangements	
---	--

I have rejected the individual's above request to work flexible for the following reason/s (please tick):

- | | |
|---|--|
| • Unreasonable burden of additional costs | |
| • Detrimental affect on the ability of the service to meet service demands | |
| • Detrimental impact on the provision of continuous standards of care to patients | |
| • Inability to reorganise work among existing staff | |
| • Inability to recruit additional staff | |
| • Detrimental impact on quality or performance | |
| • Insufficiency of work during the periods the employee proposes to work | |
| • Planned structural changes | |
| • Other (please state below) | |

If the request is refused employees are able to appeal this decision. If refused insert the name and email address of the HR support to whom an appeal should be addressed. Appeals must be submitted within 14 days of receipt of this returned form.

Further comments/reasons for refusal to give a clear, demonstrable operational reason for the reasons ticked above, consideration of any disability (or other protected characteristics) and to demonstrate why the working arrangements are not practicable:

Name (Print):		Job Title:	
Signed:		Date:	
Date 'Change of Circumstances form' submitted to ESR (if required)			

Line Manager Action:

- Confirm decision in writing to employee using Section C of this form
- Complete change of circumstances form if required
- Re-issue Statement of Main Terms and Conditions of Employment if required
- Retain a copy of the signed documentation and change of circumstance form on the individual's file and
- Submit a Change of Circumstances form to ESR (if required).

IF AN APPLICATION IS DECLINED PLEASE SEND A COPY OF THIS FORM TO THE HR ADVISORY TEAM