Department for
Business, Energy
& Industrial Strategy

Making Flexible Working the Default

Closing date: 1st December 2021

September 2021



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Foreword

1. Over the past 18 months, we have all faced substantial challenges as a result of the Covid-19 pandemic. Even for those not affected by the virus itself there has been a huge impact on how we have been able to live our lives – at home, at work and more widely. To address the immediate economic impacts, the Government has put in place an unprecedented package, providing businesses and individuals with support and certainty – and spending hundreds of billions to support people's jobs, businesses, and public services across the UK.

2. As we look beyond the initial response, we must ensure we are well placed to tackle the longer-term challenges of economic recovery. A world class approach to flexible working is a key part of the Government's ambition to build back better, ensuring that our flexible labour market is primed for the opportunities and challenges of the post-Covid-19 economy. This means focussing on all forms of flexibility – when you work as well as where you work – freeing employers and employees alike from the default 9-to-5 model in order to recruit and retain the talent we need.

3. The UK is a great place to start and grow a business, home to some of the world's best companies – large and small. But for many jobs there are still invisible restrictions that hold people back – like the need to live in high-cost accommodation close to the centre of cities or maintain working arrangements that are very hard to combine with family or other responsibilities. We want to enable a high skilled, high productivity, high wage economy that also delivers on our ambition to make the UK the best place in the world to work – whoever you are and wherever you live.

4. We know there are particular times in people's working lives when they may need a bit of extra flexibility, to balance their work with other commitments or responsibilities. That is why the Government's manifesto committed to build on existing leave entitlements by introducing two new leave rights for working carers and those with a baby in neonatal care, and also to make it easier for fathers to take paternity leave. But it is clear that there are also many other occasions when people may need that little extra flexibility – for instance as they approach retirement, need to care for elderly relative, recover from a longer-term health condition, or as childcare arrangements change. Or even just to get medical treatment or attend other appointments.

5. Flexible working is not just good for employees. We know that it can also bring considerable benefits for employers. By removing the invisible restrictions to jobs, flexible working fosters a more diverse workforce – and the evidence shows that this leads to improved financial returns for businesses[1]. Furthermore, workers who have more flexibility are more motivated at work and more likely to stay with their employer[2].

[1] McKinsey (2015) https://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters
[2] CIPD. (2012) 'Flexible working provision and uptake' cited in Women's Business Council. (2017) 'The Pipeline Effect: A toolkit for enabling gender parity beyond middle management. Available at: https://www.womensbusinesscouncil.co.uk/wp-content/uploads/2017/02/GEO-The-Pipeline-Effect-Report.pdf

There is also a strong, unmet demand for more flexible jobs. The business case for flexible working is absolutely clear.

6. For both these individual and business reasons the Government's manifesto committed to promote flexible working and, subject to consultation, introduce measures to help make it the default unless employers have good reasons not to.

7. Since then, there has been the experience of the pandemic, where many (but by no means all) employers and employees have made dramatic changes to how they work, particularly with a sharp increase in home working. This has prompted much debate about the future of work and how to learn from the positives and negatives of this experience. It has also highlighted that home working does not work for every organisation or every individual, and we must ensure that other forms of flexibility are equally part of the conversation.

8. This consultation includes a set of proposals which are built around the principle that working arrangements are best decided through a constructive, open-minded discussion between employer and employee. Whilst certain ways of working may suit some employers and employees, they won't suit all – and therefore it is important that Government does not prescribe specific arrangements in legislation but rather provides an enabling framework within which such conversations can take place openly and fairly.

9. The proposals in this consultation seek to ensure that this framework supports flexible working in all its forms – so that employers and employees are better able to consider and make arrangements which suit their particular circumstances. Central to this is encouraging conversations that support genuine two-sided flexibility, which can bring benefits to both individuals and businesses through greater employee motivation, a reduction in staff turnover and recruitment costs, and increased productivity.

10. Please do take the time to consider this consultation and the questions it poses. If we get it right, we really will have taken significant strides towards achieving our objective of building back better.

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Introduction

Policy Background

1. In April 2003, the UK Government first introduced the Right to Request flexible working for parents and certain other carers. The Right included requesting a change to work location, number of working hours and the associated working pattern. That Right was extended in 2014 to all employees with 26 weeks continuous service. The statutory framework was intended to:

- provide employees with access to contractual flexible working;
- help employees to better reconcile their work and non-work lives; and
- help employers to secure the business benefits of flexible working.

Impact of the Right to Request

2. The Post Implementation Review[3] (PIR) of the impact of the Flexible Working Regulations 2014 found that these objectives have been achieved to some extent, with more employees having greater choice over their working patterns.

3. However, flexible working take-up has remained consistent overall (disregarding the recent increases in working from home since the Covid-19 restrictions were implemented), female employees are still more likely to make use of flexible working than male employees, and some employees reported negative career consequences due to employer / colleague perceptions of flexible working. Significant differences in take-up were also reported among employees by sector and occupation, as well as size of workplace.

4. There is a clear case to consider what more the legislation might do to support flexible working.

2019 Manifesto commitment

5. The Government's 2019 manifesto committed to encourage flexible working and consult on making it the default unless employers have good reasons not to. The manifesto was clear that the Government could do more to make things easier for those balancing work with caring and other commitments.

[3] Find the full Post Implementation Review on https://www.legislation.gov.uk/

The impact of Covid-19

6. The pandemic has shifted the way we think about flexible working.

7. Covid-19 required many of us to change how we work – and employers have done a tremendous job in responding to this challenge, ensuring that many businesses which would otherwise have had to shut down have continued to operate. At the height of the first lockdown in April last year, 47% of the UK workforce was working from home[4]. This compares with 11% in 2018[5].

8. While there has been a lot of attention given to homeworking, for the majority of workers, including most key workers, this option has simply not been available.

9. Alongside homeworking, the pandemic has also led to a greater recognition of the need for flexibility to balance work with other personal commitments. Many employers will have agreed to change or reduce hours – to accommodate childcare responsibilities, eldercare responsibilities or to look after unwell family members for instance – so that those employees can still continue to fulfil their work responsibilities.

10. These experiences have shown us that we can do things differently in the workplace when we have to – and the mutual benefits of greater flexibility to both employers and employees appears to be influencing some organisations to look to more permanent changes. According to an IOD survey, 74% of company directors have stated their organisation intends to increase homeworking (from pre-pandemic levels) as part of their approach to returning to work and 43% intend to increase flexible working more widely, through measures such as flexitime, staggered hours and compressed hours[6].

Building back better

11. As we look to the future, we must ensure that we build on what we have learnt to rise to the longer-term challenges of economic recovery.

12. Many current flexible working practices have been a response to the particular demands of the pandemic and may not be sustainable in the longer term, on personal or business grounds. But they have opened our eyes to what may be possible, and we now have the chance to seize the moment and make flexible working – in all its forms – part of business DNA. This is an opportunity for employers and employees to free themselves

[4] ONS Statistics (July 2020) https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/coronavirusandhomeworkingintheuk/april2020
[5] British Social Attitudes Survey (2018) https://www.bsa.natcen.ac.uk/latest-report/british-social-attitudes-36/key-findings.aspx
[6] IOD Survey (Oct 2020) https://www.iod.com/news/news/articles/Home-working-here-to-stay-new-IoD-figures-suggest

from the default 9-to-5 in order to recruit and retain the talent that we need to build back better.

13. As we build back better, we must make the most of the technological advances made to support remote working during the pandemic. But we must do so in ways which acknowledge that remote working may not work well for everyone. For instance, some people will have reported higher levels of productivity while working from home, while others will have struggled to maintain or improve their performance[7]. Some will have benefited from saving time on their work commute, while others will be keen to redraw the line between work and home. It is similarly important that we take steps to build on the flexibility we have seen in relation to working hours. The opportunity is there to exploit the full range of options available – whether it is a part-time or job-sharing working arrangement to help individuals with caring responsibilities or flexing working hours, for example through compressed working.

14. From an organisational standpoint, the enhanced technological capability is focussing minds on which things we can only do – or do best – collectively in the workplace, such as building relationships and accessing training and development opportunities. Employers need the flexibility to work through the best solutions for their particular contexts.

15. We also need to consider the inequalities that have been exposed by Covid-19, perhaps in part highlighted by the lack of availability of homeworking. The number of people working from home has varied significantly in different parts of the country – 48% of the London workforce has worked from home at some point in 2020; this compares with 27% in Scotland, 33% in the West Midlands and 34% in Wales[8]. We need to look beyond homeworking if we are to make the most of the opportunity to build back better with flexible working. Hours and times of work are equally important for everyone, but especially for those who are unable to work from home.

16. Indeed, flexible working can have a beneficial impact for a number of different groups for whom employment during the pandemic has been particularly challenging, including those with caring responsibilities, new parents and disabled people. Offering these groups greater flexibility to balance their work and home life can be key to ensuring their participation and progression in the labour market – and to opening up employment opportunities for everyone regardless of their gender, age, disability or location.

17. Whether you are an office worker who is now hoping to work from home two or three days a week or a key worker who wants more say over when they work, making flexible working the default will be key to achieving better quality employment. From an

[7] Wiserd (Aug 2020) - Homeworking in the UK: Before and during the 2020 lockdown (self reported)
[8] ONS – Homeworking in the UK Labour Market (May 2021) https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/homeworkingintheuklabourmarket

employer's perspective it will help to secure employee productivity gains and build better relationships with the workforce, enabling businesses to thrive into the longer-term.

Our approach

18. Making flexible working the default is central to our ambition to build back better. But we are clear that there can be no "one-size-fits-all" solution. Determining what flexible working arrangements work best in any particular context will involve careful consideration of a wide range of personal and organisational issues.

19. Part of our thinking about how to make flexible working the default has included the potential to turn the current Right to Request into a "right to have", removing the ability of an employer to turn down a request. However, given the range of different roles and ways of working within them, the multiple forms of flexible working, the broad range of individual needs and the wide range of business models, even within sectors, we do not consider this achievable in a practical or sensible way.

20. Statutory flexible working needs to begin with a conversation between employer and employee about how best to balance particular work requirements and specific individual needs. That conversation needs to start somewhere – and it seems wholly appropriate that the starting point should be an employee request.

21. We are keen to ensure that that conversation helps make flexible working the default by supporting genuine, two-sided flexibility. Our starting point is to encourage a better discussion between employee and employer – rather than one side imposing certain ways of working on the other – or rejecting them. We believe that this can best be achieved by a rebalancing of the current framework so that it better supports a wider discussion of what may be possible – regardless of whether you are a time-served employee, a new entrant or a someone applying for job – rather than the current focus which is on what is not possible.

22. This consultation sets out five proposals for reshaping the existing regulatory framework so that it better supports the objective of making flexible working the default. The intention is to better support employees to start the conversation about contract changes, and employers to respond. It considers:

- making the Right to Request Flexible Working a day one right;
- whether the eight business reasons for refusing a Request all remain valid;
- requiring the employer to suggest alternatives;
- the administrative process underpinning the Right to Request Flexible Working; and
- requesting a temporary arrangement.

23. But making flexible working part of the workplace DNA is about much more than just the regulatory framework, important though the role of legislation can be in establishing a clear baseline. Making flexible working the default requires us to build on the changes we have seen during the pandemic and secure a cultural shift in the way we think about work and how, when and where it can be done.

24. This document therefore sets out a number of other steps to help make flexible working the default. These include:

- inviting the Flexible Working Taskforce to consider how to move on from the immediate response to Covid-19 and make the most of the lessons learnt (good and bad) over the last 18 months as more people start to return to the workplace and as employers respond with new approaches to working.
- the Government considering how to secure a genuinely flexible working friendly culture across and within organisations by launching a separate call for evidence in due course.

25. As part of this wider discussion about making flexible working the default, the consultation document also explains how we are taking forward the July 2019 "Good Work Plan: Proposals to support families"[9] consultation on measures to promote greater transparency about flexible working and family-related leave and pay policies, and the proposal to require employers to say whether jobs may be open to flexible working in the advert[10].

[9] https://www.gov.uk/government/consultations/good-work-plan-proposals-to-support-families

[10] A full analysis of the responses received to the July 2019 "Good Work Plan: Proposals to support families" consultation on measures to promote greater transparency about flexible working and family-related leave and pay policies is attached at Annex B.

Who are you?

1. **Are you (select the appropriate option):**

Are you:	**Answer**
An individual	
An employer	
Representing employers' or employees' interests	
Other (please specify)	

2. **Are you (select the appropriate option):**

Are you:	**Answer**
An employer or someone who is responding on behalf of an employer	
Employed	
Self-employed	
Unemployed - Looking for work	
Unemployed – Not looking for work	
Retired	
Not looking for work - other	

3. **If you are an employer, how would you classify your organisation?**

4. **If you are an employee, what type of organisation do you work for?**

Organisation	**Answer**
Private sector organisation	
Public sector	

Organisation	Answer
Charity/voluntary sector	
Other (please specify)	

5. **If you are an employer, how many employees work for your organisation?**

6. **If you are employed, how many people work for your organisation?**

Size	Answer
Micro-business (0-9 employees)	
Small business (10-49 employees)	
Medium-sized business (50-249 employees)	
Large-sized business (250+ employees)	

7. **If you represent employers or employees, who do you represent?**

Who do you represent	Answer
A trade union	
An industry or employer association	
Other (please specify)	

Building Back Better with Flexible Working

Legislative changes to better support better flexible working

26. This section of the consultation document covers:

- making the Right to Request Flexible Working a day one right;
- whether the eight business reasons for refusing a Request all remain valid;
- the administrative process underpinning the Right to Request Flexible Working;
- requiring the employer to suggest alternatives; and
- requesting a temporary arrangement.

The Right to Request Flexible Working[11]

Provisions set out in the Employment Rights Act 1996 and regulations made under it give all employees a statutory right to ask their employer to change their contractual terms and conditions of employment to work flexibly, provided they have worked for their employer for at least 26 weeks continuously at the date the application is made.

An employee can make one statutory request in any 12-month period.

A statutory application under the right to request flexible working legislation involves the following steps:

1) The employee notifies the employer of the request and that it is under the Right to Request Flexible Working legislation.

2) The employer considers the request and notifies the employee of the decision within 3 months – or longer if agreed with the employee.

3) If the employer agrees to the request, they must change the terms and conditions in the employee's contract.

4) If the employer disagrees, the refusal must be based on one of eight business reasons cited in the Employment Rights Act:

a) extra costs that will be a burden on the business
b) the work cannot be reorganised among other staff
c) people cannot be recruited to do the work
d) flexible working will negatively affect quality
e) flexible working will negatively affect performance

[11] Flexible Working Regulations https://www.gov.uk/flexible-working

f) the business' ability to meet customer demand will be negatively affected
g) there's a lack of work to do during the proposed working times
h) the business is planning structural changes.

5) The employee may be able to complain to an employment tribunal in certain circumstances.

The legislation is accompanied by a statutory code of practice on handling in a reasonable manner requests to work flexibly.

(1) Making the Right to Request Flexible Working a day one right

The statutory right to request flexible working is available once you have been working continuously for your employer for at least 26 weeks.

27. A number of organisations have requested that the Government should make the right to request flexible working a day one right including the Women and Equalities Committee in its recent report on the gendered impacts of Covid[12]. The pandemic has revealed how external events (which may require flexibility at work to deal with) do not discriminate between employees with differing lengths of service. Introducing a day one right would mean that an employee is able to make a statutory request for flexible working from the first day of their employment.

28. The objective in making the right to request flexible working the default a day one right would be to bring more employees into the scope of the legislation. It will also help to encourage, or nudge, certain behaviour changes from employers so that they consider flexible working options early in the job design/recruitment process and give employees more confidence to make a request.

29. We estimate that around 10% of employees have changed their jobs, or started one, within the last six months. That is 2.2 million people who currently are unable to make a statutory request for flexible working.

30. The 26-week qualifying period was introduced, in part, to balance off some of the potential business burdens of administering statutory requests for flexible working. The PIR did not find evidence of unreasonable cost burdens on employers resulting from administering or accommodating flexible working requests.

[12] WESC Report https://committees.parliament.uk/work/319/unequal-impact-coronavirus-and-the-gendered-economic-impact/publications/

31. However, a long qualification period has negative consequences for making flexible working the default. For instance, it can help reinforce the commonly held perception that flexible working is something an employee must earn or may receive as a "perk".

32. Making the Right to Request Flexible Working a day one right could also, in part at least, address the issues we consulted in the July 2019 consultation, "Good Work Plan: Proposals to support families"[13] which contained proposals to require an employer to say whether a job is open to flexible working in the advert. As a job applicant, you would know that the right to request flexible working applied from your first day at work – and that would enable you to ask questions about flexible working during the recruitment process. Additionally, if an employer knows that a job applicant can submit a statutory request on their first day at work, he or she is likely to have considered what the response might be in advance of the recruitment exercise.

33. A number of respondents to the July 2019 consultation also suggested that requiring an employer to say whether a job is open to flexible working in the advert would drive the wrong response from those we were most looking to influence – those employers not culturally ready would simply default to "no".

34. For these reasons, the Government does not feel that now is the right time to introduce a statutory requirement for employers to say in job adverts whether flexible working is available. We believe that making the Right to Request Flexible Working a day one right will better help deliver the culture change which could lead to flexible advertising becoming the norm, alongside the other proposals put forward in this consultation document.

35. This consultation therefore seeks views about whether the qualifying period may be removed and what benefits this might deliver.

8. **Do you agree that the Right to Request Flexible Working should be available to all employees from their first day of employment?**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

[13] A full analysis of the responses received to the July 2019 "Good Work Plan: Proposals to support families" consultation on measures to promote greater transparency about flexible working and family-related leave and pay policies is attached at Annex B.

9. **Please give reasons for your answer, including any considerations about costs and benefits that may affect employers and/or employees.**

10. **In your organisation, do you currently accept requests for flexible working arrangements from employees that have less than 26 weeks continuous service? Please answer this question from the perspective of the employer.**

- Yes
- No
- Don't know

(2) Whether the eight business reasons for refusing a Request all remain valid

The current statutory framework provides a specific but broad set of business grounds on which an employer can reject a statutory request to work flexibly. These are:

- extra costs that will be a burden on the business

- the work cannot be reorganised among other staff

- people cannot be recruited to do the work

- flexible working will negatively affect quality

- flexible working will negatively affect performance

- the business' ability to meet customer demand will be negatively affected

- there is a lack of work to do during the proposed working times

- the business is planning structural changes.

36. Flexible working is not just good for employees. We know that it can also bring considerable benefits for employers. Employees who feel more empowered to work flexibly to manage their personal and working lives are also more likely to be engaged at work, leading to greater employee motivation; a reduction in staff turnover and recruitment costs, and increased productivity.

37. There is also a strong, unmet demand for more flexible jobs – 87% of people want to work flexibly[14]. This rises to 92% for young people[15]. 9 in 10 employees consider flexible working to be a key motivator to their productivity at work (89% – even more

[14] Timewise Flexible Jobs Index (2018): https://timewise.co.uk/wp-content/uploads/2018/07/Timewise_Flexible_Jobs_-Index_2018.pdf quality jobs defined a £20k +FTE
[15] UKCES (2014) The future of work: jobs and skills in 2030: https://www.gov.uk/government/publications/

than financial incentives (77%[16])). The CBI Employment Trends[17] survey found that 99% of all businesses surveyed believed that a flexible workforce is vital or important to competitiveness and the prospects for business investment and job creation. The business case for flexible working is compelling.

38. At the same time, we are clear that employers should be able to reject a request for flexible working where there are sound business reasons to do so.

39. The PIR suggests that only a minority (9%) of statutory requests are in fact rejected. We do accept that people will naturally filter requests – why would you put in a statutory request if you felt your employer was simply going to reject it? But, on balance, we are broadly content that the current list of reasons for refusing a request do not present a disproportionate barrier to flexible working and do not see a case for fundamentally changing them.

40. We are aware that employers' experience of flexible working has changed dramatically since the Right to Request Flexible Working was first brought in, particularly over the course of the pandemic.

41. Given the significant change in the experience of many employers, this consultation seeks views on whether the business reasons for rejecting a request that were considered reasonable in 2014 remain so.

11. **Given your experiences of Covid-19 as well as prior to the pandemic, do all of the business reasons for rejecting a flexible working request remain valid? Please answer this question from the perspective of the employer.**

- Yes, the list of business reasons remains valid.
- No
- Don't know

12. **If yes, please give reasons for your answer.**

13. **If no, please state which reasons from the list above are no longer valid and why.**

[16] HSBC (2017) accessed at: https://www.about.hsbc.co.uk/-/media/uk/en/news.../171108-flexible-working.pdf
[17] CBI & Pertemps (2017) Employment Trends Survey: http://www.cbi.org.uk/index.cfm/_api/render/file/?method=inline&fileID=57DEC8F4-AF4B-4101-82B2406D3BE1CBCA
[5] ONS (2020): https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/whichjobscanbedonefromhome/2020-07-21

(3) Requiring the employer to suggest alternatives, where possible

Currently an employer simply has to say that a request to work flexibly cannot be accommodated and give the relevant business reason(s) why that is the case.

42. As set out in the introduction, effective flexible working, balancing both employer and employee requirements, needs to be a negotiation. Someone needs to start that process off and we suggest it is right that it should be the employee.

43. To support the aim of making flexible working the default, we want to ensure that the legislation genuinely supports an informed discussion between the employer and employee. That could involve whether and how different flexible working arrangements might be accommodated. If an employer felt that an employee's request was not possible, there might be a way to find another option. Working together to negotiate a compromise can help promote stronger working relationships and deliver more of the employer benefits flexible working can drive. To encourage a culture where employers give full consideration to requests for flexible working and what might be possible – rather than simply rejecting the immediate proposal which has been put forward – we would like to explore how practical it is to ask employers to set out, when rejecting a request, that alternatives have been considered.

44. For example:

- if an employer cannot make a change permanently, they could look at making the change for six months;
- if an employer cannot accommodate a particular part-time working pattern, they might consider an alternative; or
- if an employer cannot make a change on all working days, they could look at making the change on some working days only.

45. Some employers will already treat flexible working requests in this way but building a requirement into the legislation could influence organisational norms among those who may not have fully considered the opportunities for flexible working within their business.

14. **Do you agree that employers should be required to show that they have considered alternative working arrangements when rejecting a statutory request for flexible working?**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

- Don’t know

15. **Please give reasons for your answer.**

16. **Would introducing a requirement on employers to set out a single alternative flexible working arrangement and the business ground for rejecting it place burdens on employers when refusing requests?**

- Yes
- No
- Don’t know

17. **If yes, would this requirement have an effect on the time taken by employers to handle a request?**

- Yes, it would take additional time [please state estimate in minutes/hours]
- No
- Don’t know

(4) The administrative process underpinning the Right to Request Flexible Working

Currently an employee may make one statutory request every 12 months and an employer has three months to consider whether that request can be accommodated.

46. While there are clear business burdens in administering statutory requests to work flexibly and these need to be the fore, these restrictions do act as a brake on the flexibility of the legislative framework and may limit access to flexible working. We therefore want to explore whether allowing employees to make more than one statutory request per year would make the legislative framework more responsive to changes in an individual's circumstances and introduce more dynamism into the process. We want to ensure that the legislation is not placing unnecessary barriers to accessing flexible working among those whose personal situation may have changed within twelve months – newly disabled people or new parents, for example,

47. The intention behind introducing the three-month deadline for responding to requests in the existing legislation is to ensure that requests are dealt with promptly, whilst acknowledging that there may be challenging organisational issues to work through – such as rearranging shift patterns to accommodate a specific request.

48. This consultation therefore also considers whether the 3-month balance drawn in 2014 remains the right one as we look to build back better and make flexible working the default.

18. **Do you think that the current statutory framework needs to change in relation to how often an employee can submit a request to work flexibly?**

- Yes
- No
- Don't know

19. **Please give reasons for your answer.**

20. **Do you think that the current statutory framework needs to change in relation to how quickly an employer must respond to a flexible working request?**

- Yes
- No
- Don't know

21. **Please give reasons for your answer.**

22. **If the Right to Request flexible working were to be amended to allow multiple requests, how many requests should an employee be allowed to make per year?**

- No amendment is required
- Two requests
- Three requests
- There should not be a limit on the number of requests an individual can make
- Other, please specify

23. **Please give reasons for your answer, including any consideration about costs, benefits and practicalities.**

24. **If the Right to Request flexible working were amended to reduce the time period within which employers must respond to a request, how long should employers have to respond?**

- No amendment is required
- Less than two weeks
- More than two weeks, less than one month
- More than one month, less than two months
- More than two months, less than three months
- Other, please specify

25. **Please give reasons for your answer, including any consideration about costs, benefits and practicalities.**

(5) Requesting a temporary arrangement

It is possible to request a change in flexible working arrangements for a defined, time limited period[18].

49. We know there are particular times in people's working lives when they may need extra flexibility to balance their work with other commitments or responsibilities. That is why the Government's 2019 manifesto committed to introduce two new leave entitlements for working carers and those with a baby in neonatal care, and also to make it easier for

[18] https://www.acas.org.uk/making-a-flexible-working-request

fathers to take paternity leave. But it remains the case that there are also very many other occasions when people may need extra flexibility on a temporary basis.

50. The current legislative framework already provides for a temporary arrangement to be agreed between the employee and employer. However, we believe that this ability to request a contractual change for a defined, time-limited period is under-utilised.

51. For instance, it would be possible for a parent to request a change in working pattern so that they could support their child's transition from early years care into school – or for a son or daughter to request part-time working for a month so that they could support an elderly parent to move into a care home. Such contractual changes would be considered a request under the legislation as long as the start and end of the period was defined at the point of making the request.

26. **Are you aware that it is possible under the legislation to make a time-limited request to work flexibly?**

- Yes
- No
- Don't know

27. **What would encourage employees to make time-limited requests to work flexibly? Please provide examples.**

Additional actions: moving on from the immediate response to COVID-19

52. Legislative change is only part of the Government's flexible working agenda.

53. In the short-term, as employers move on from their immediate response to the Covid-19 pandemic into new ways of working, we want to provide them with the support they need to make informed decisions on their future approach to flexible working. Through the Flexible Working Taskforce – a partnership across business groups, trade unions, charities, and government departments – we are bringing together the necessary expertise to provide this support.

54. This section sets out what the Taskforce will be looking at over the coming months and the Government's response to previously-consulted-on proposals to introduce a new requirement for large employers to publish their flexible working policies.

Flexible Working Taskforce

55. In February this year, the Minister for Small Business, Consumers and Labour Markets wrote to the Chief Executive of the Chartered Institute of Personal and Development inviting him to reconvene the Flexible Working Taskforce[19]. The Taskforce has been asked to help take forward the best of what we have learned through the pandemic and to develop advice to support the change to the new ways of working we are expecting to see as the economy begins to fully open up.

56. Flexible working is defined as working arrangements which allow employees to vary the amount, timing, or location of their work[20], usually to the mutual benefit of the individual and organisation. In the early stages, the Taskforce will focus on the "location" aspect of flexible working – given the immediate priority created by the re-opening of many of our workplaces as lockdown restrictions continue to be eased – with a particular focus on "hybrid working[21]".

57. In this immediate phase, the Taskforce will consider the essential practical and legal issues associated with a return to a workplace and a change in working practices. These include:

[19] Members of the Flexible Working Taskforce: Chartered Institute of Personnel and Development; Chartered Management Institute; CBI, Federation of Small Businesses; British Chambers of Commerce; Institute of Directors; MAKE UK; TUC; Working Families; Timewise; SCOPE; REC; Age UK; Carers UK; Acas; Equalities and Human Rights Commission; BEIS; DWP; HMT; DHSC; GEO.
[20] De Menezes and Keliher (2011) Flexible Working and Performance: A systematic review of the evidence for a business case, International Journal of Management Reviews, 13:4
[21] At its simplest, hybrid working means that some employees work from a central workplace and others work from home or at another location. But it may not be the same ones working in the workplace all the time, or the same ones working away from the workplace.

- Consultation
- Policy and procedure
- Contractual issues
- Health and Safety, and remote working
- Equalities and fairness
- Performance management

58. It is of course the case that "hybrid working" is only available to those who can work from multiple locations. It is also clear that, even for those who can work at home, it is not necessarily a wholly positive experience – particularly where the home environment may be unsuitable for work. For instance, young people are not only more likely to be working in unsuitable home environments for long periods, but may also be missing out on critical learning and training, as well as opportunities to build networks and experience, at the beginning of their careers. For parents with younger children the ability to work at home may help with childcare issues, but working with small children around can present other challenges.

59. Following its initial focus, the Taskforce will therefore move on to provide wider advice on best practice, drawing on recent lessons learned, including on questions of line management and organisational culture so that employers are better able to support flexible working – whether the flexibility relates to amount, timing or location of work.

Publishing Flexible Working Policies

60. As we move out of the pandemic phase of Covid-19 and start to live with it in the longer term, we will be entering a period of change in how we work, with many employers taking a fresh look at their approach to flexible working. To make this a success both for individuals and organisations, there are key questions that need to be considered. Part of that consideration will require effective consultation with their workforce. New policies on flexible working will need to be developed. In many instances we would expect this to be an iterative process, involving trialling new approaches to see how they work for the business and for its employees.

61. This is to be encouraged and is where the Flexible Working Taskforce will initially be focused. But this process will take time and, for many organisations, it will inevitably be a while before more settled and formal post-pandemic flexible working policies are in place.

62. The Government's July 2019 consultation, "Good Work Plan: Proposals to support families"[22], contained proposals to introduce a new requirement for large employers (250+ employees) to publish their flexible working policies. The consultation responses demonstrated that employers (particularly those employing staff across a variety of job

[22] https://www.gov.uk/government/consultations/good-work-plan-proposals-to-support-families

roles which are more/less suited to certain types of flexible working) need the flexibility to be able to adapt their flexible working policies to specific workplace scenarios and points in time[23].

63. Recent experiences amplify this point. We need to give businesses the room to reflect on what they have learnt and work through and update their flexible working policies in response to a wide scale return to work – and consider how they would like those policies to develop in the longer term.

64. In addition, the consultation revealed concerns from an enforcement perspective. There are inherent legal and technical issues about what should be published, meaning that there would need to be a prescribed definition of what constitutes a policy. This could introduce rigid approaches into an organisation's approach to flexible working and possibly tie the hands of businesses by requiring set flexible working policies or statements. This would contradict our wider policy aim of wanting to encourage sensible conversations between employee and employer.

65. Weighing all the above, we will not be introducing a 'one-size-fits-all' approach to publishing a flexible working statement or policy, enforced by a legislative requirement – though we intend to continue to support it on a voluntary basis. In that vein, we have been pleased to see some recent examples of voluntary initiatives in the private sector, with employers signing up to commitments to embedding flexible working in a way that works for their specific set of circumstances[24].

66. The Government intends to support employers taking these steps on their flexible working journey, recognising that not all employers are currently in the same place.

[23] A full analysis of the responses received to the July 2019 "Good Work Plan: Proposals to support families" consultation on measures to promote greater transparency about flexible working and family-related leave and pay policies is attached at Annex B.
[24] Example of voluntary initiative (ABI – Making Flexible Work Charter, April 2021) https://www.abi.org.uk/about-the-abi/abi-diversity-hub/flexible-working/

Additional actions: beyond the current framework for flexible working

67. Our ambition to build back better takes a transformational approach, tackling long-term problems to deliver growth that creates high-quality jobs across the UK. Our mission is to unleash the whole potential of our country. We are clear that flexible working is a key part of that approach.

68. This consultation so far has been focused on the immediate consequences of Covid-19 and how we can make the legislative framework support flexible working work better.

69. In modern workplaces, our understanding of what it means to work flexibly – and therefore what it means to make flexible working the default – extends beyond requesting contractual changes to employment terms and conditions. It is also about getting the culture right.

70. Engagement with stakeholders (through the domestic abuse review, but also with parents, working carers, those with long-term health conditions, disabled people and older workers) has demonstrated an unmet need for time away from work on a temporary basis – to attend a one-off or regular appointment, for example.

71. As part of a separate exercise, we will launch a call for evidence looking at the sorts of 'extra' flexibility people may need to help them live their lives in the best way they can – both at work and at home. The call for evidence will explore the need for 'ad hoc' and informal flexibility and how this can best be supported.

28. **Please share your suggestions for the issues that the call for evidence on ad hoc and informal flexible working might consider.**

Consultation details

Issued: 23rd September 2021

Respond by: 1st December 2021 23:59

Enquiries to:

Matthew Wootton
Labour Markets Directorate
Department for Business, Energy and Industrial Strategy

Tel: 0300 068 6604

Email: labourmarketparticipation@beis.gov.uk

Consultation reference: Making Flexible Working the Default

Audiences:

72. Employers and employees, business representative groups, unions and those representing the interests of groups in the labour market (for example, parents, disabled people, older workers, younger workers).

73. Territorial extent: this applies across Great Britain (England, Wales & Scotland).

How to respond

Respond online at: https://beisgovuk.citizenspace.com/lm/flexible-working

or

Email to: labourmarketparticipation@beis.gov.uk

74. A response form is available on the GOV.UK consultation page: https://www.gov.uk/government/consultations/making-flexible-working-the-default

75. When responding, please state whether you are responding as an individual or representing the views of an organisation.

76. Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Confidentiality and data protection

77. Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

78. If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

79. We will process your personal data in accordance with all applicable data protection laws. See our privacy policy.

80. We will summarise all responses and publish this summary on GOV.UK. The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

81. This consultation has been carried out in accordance with the government's consultation principles.

82. If you have any complaints about the way this consultation has been conducted, please email: beis.bru@beis.gov.uk.

Next steps

83. Responses to this consultation will be used to inform government thinking as we develop proposals to support the agenda outlined in this document.

Annex A – How government policy helps people to work flexibly

84. Flexible working has been defined as, “changes to standard working arrangements…used in a broad sense to include arrangements whereby employees have some discretion to vary their place of work, the timing of their working hours (including carrying out their contractual hours in a fewer number of days than is normal for their workplace) and the number of hours they are contracted to work [25].”

85. Type of flexible working include:

- Job sharing: two people do one job and split the hours
- Working from home: it might be possible to do some or all of the work from home or anywhere else other than the normal place of work
- Part time: working less than full-time hours (usually by working fewer days)
- Compressed hours: working full-time hours but over fewer days
- Flexitime: the employee chooses when to start and end work (within agreed limits) but works certain ‘core hours’, for example 10am to 4pm every day.
- Annualised hours: the employee has to work a certain number of hours over the year but they have some flexibility about when they work. There are sometimes ‘core hours’ which the employee regularly works each week, and they work the rest of their hours flexibly or when there’s extra demand at work.
- Staggered hours: the employee has different start, finish and break times from other workers.
- Phased retirement: default retirement age has been phased out and older workers can choose when they want to retire. This means they can reduce their hours and work part time.

86. The Government is clear about the benefits of flexible working for employees and employers alike. It can give all employees much welcomed choice when looking to balance work and life at home – and from an employer’s perspective, offering flexible working arrangements can help to recruit and retain valued staff members, as well as enabling them to reach their full potential at work. We know access to flexible working can also be key to ensuring increased participation of some groups who are under-represented in the labour market – for instance, new parents, disabled people, and older workers.

[25] de Menezes, L. M. and Kelliher, C. (2011), “Flexible Working and Performance: A Systematic Review of the Evidence for a Business Case”, International Journal of Management Reviews, Vol. 13, Issue 4; pp 452–474. http://openaccess.city.ac.uk/8671/1/IJMR%200680%20Feb2011%20LdMCK.pdf

87. The Right to Request Flexible Working was extended in 2014 to all employees with 26 weeks continuous service. This right includes requesting a change to work location, the number of working hours and the associated working pattern. Prior to 2014, the right was available to parents and carers only.

88. The main aims of the 2014 extension were:

a. to provide more employees with access to contractual flexible working;

b. to help employees to better reconcile their work and non-work lives;

c. and help employers to secure the business benefits of flexible working.

89. It was anticipated that by extending these rights beyond parents and carers, wider take-up and demand would be encouraged, whilst ensuring businesses have the flexibility to refuse requests on business grounds. The extension was intended to remove the cultural expectation that flexible working only has benefits to parents and carers.

90. In 2021, the Government's objectives broadly remain the same, but – as set out in our 2019 manifesto – we are keen to go further to deliver these aims to normalise flexible working so that all individuals, who want to work flexibly, can work flexibly unless their employer has a good reason why they cannot. The key to making flexible working the default is to provide individuals with the capacity to choose how they carry out their work in a way that also works for their employer. Our legislative objective is to enable two-sided flexibility by providing a framework that facilitates a discussion between employee and employer about what flexible working options are possible – rather than one side imposing certain ways of working on the other.

91. Alongside the current Right to Request Flexible Working legislation, the UK has a range of policies that support employees to balance work and other commitments and responsibilities. These include generous and flexible leave and pay entitlements for mothers and fathers and entitlements to short periods of time away from work to deal with emergencies involving dependants.

92. Additionally, many employers will offer informal flexible working, where they agree working patterns and hours of work outside the statutory scheme, often temporarily. However, it is not possible to determine the extent to which such practices are influenced by the existence of the Right to Request legislation.

Annex B – Analysis of July 2019 Consultation Questions

93. In July 2019 we ran a consultation looking at ways to improve the availability of information for job applicants. This consultation looked at:

    a. proposals for large businesses to publish their parental leave and pay policies and flexible working policies;

    b. whether employers should report on the publication of these policies;

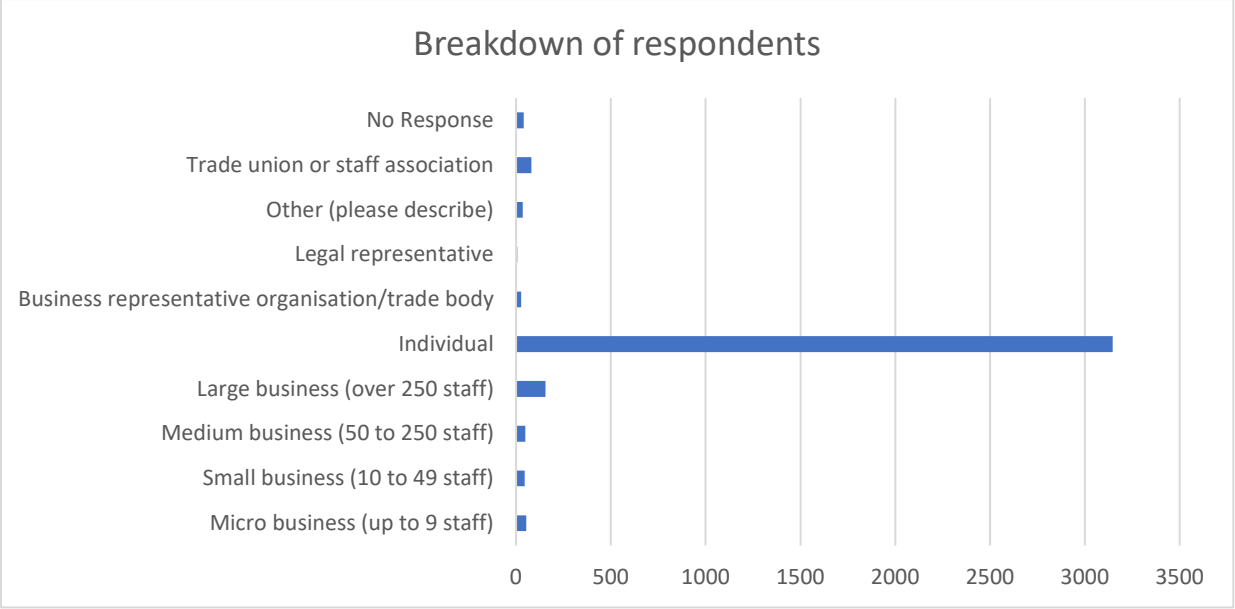
    c. and whether jobs should be advertised as flexible.

94. Overall, the consultation received 3638 responses. 86% (3146) were individuals, 8% (303) identified as either a large, medium, small or micro employer, 2% (80) were trade or staff unions and 1% were business/trade representative groups (27) and legal representative groups (6). The full breakdown is shown in the chart below.

95. In most questions there was little difference between the 'all respondents' group and 'individual' respondent type because the vast majority of responses were from individuals (86%). Therefore, we have typically focused our analysis on the 'all respondents' group.

96. Where there is notable difference between all respondents and business and/or employer responses, a comparable breakdown has been provided.

97. Unless otherwise stated, the "neutral response" incorporates those who responded with "neither agree nor disagree", "don't know", or did not answer the question.



Response to July 2019 Consultation

Publishing Flexible Working Policies and Advertising Jobs as Flexible

98. The July 2019 consultation contained proposals to require employers to publish and report on their flexible working policies. It also contained proposals to require employers to say whether jobs may be open to flexible working when advertising job vacancies. The Government has set out its response to these proposals in the core text of this consultation document (see pages 16 and 25-26).

Publishing Parental Leave and Pay Policies

99. The July 2019 consultation also contained proposals to require employers to publish and report on their family-related leave and pay policies. These were widely supported by consultation respondents.

100. The consultation proposed that this data might be accessed centrally through the Gender Pay Gap Reporting Portal and could form a key part of an organisation's action plan to tackle its gender pay gap.

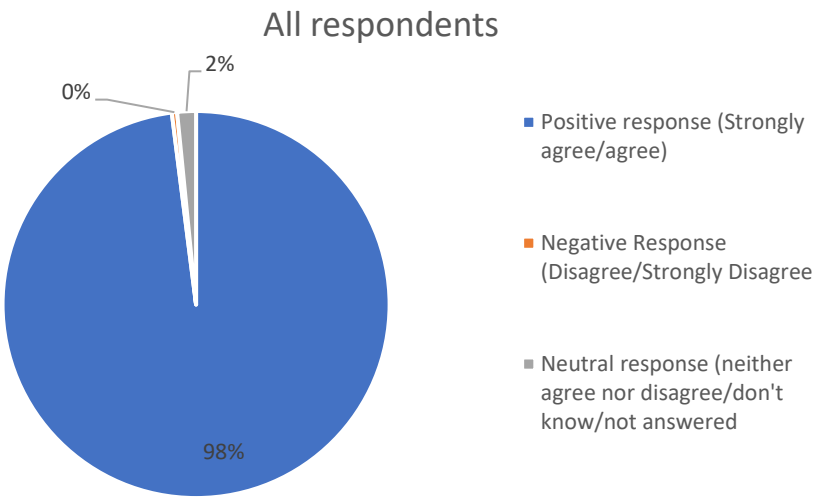
101. Covid-19 has meant that we have not pursued these proposals as quickly as may otherwise have been the case. The Government is due to review the impact of the Gender Pay Gap Reporting Regulations in 2022. A requirement on employers to publish their family-related leave and pay and flexible working policies should be considered as part of the process of considering how successful the Gender Pay Gap Reporting Regulations have been, and – in light of that – how Gender Pay Gap Reporting may be taken forward.

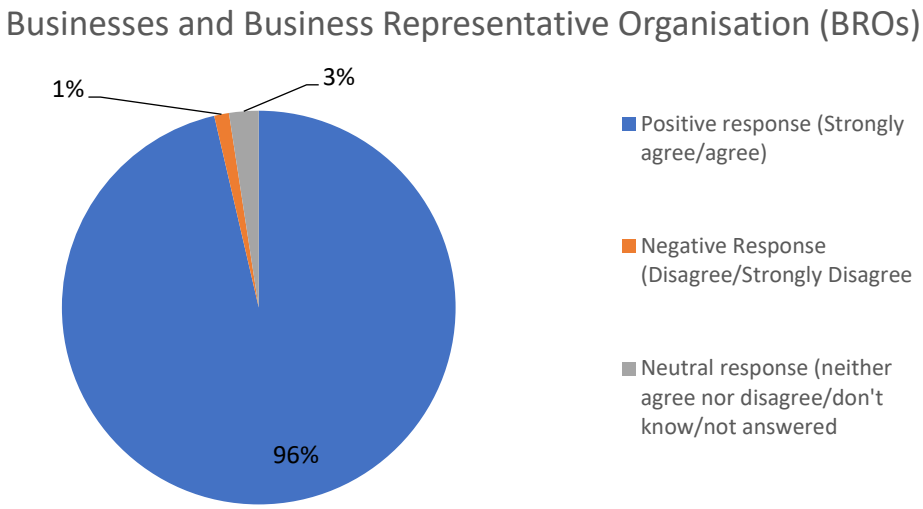
A full analysis of the responses received to the July 2019 "Good Work Plan: Proposals to support families" consultation on measures to promote greater transparency about flexible working and family-related leave and pay policies follows in the next section.

Section 1: Publishing family-related leave and pay and flexible working policies

Q1. Do you agree that large employers (250+ employees) should publish their family-related leave and pay policies on their website?

Overall respondents were in favour of employers publishing their Parental Leave and Pay policies. Below is the breakdown of responses categorised into respondent type. While business had a slightly higher negative response to this question, they were still 96% in favour of the proposal.





54% of individuals and 59% of businesses felt that improving the transparency of this information would ensure job applicants can make informed choices regarding employment.

15% of business respondents stated that publishing these policies would help them to attract top talent and improve retention of that talent. Both individual businesses and business

representative organisations stated that they or their members had either published or were planning to publish their policies on external-facing websites.

Association of British Insurers: “Publishing family related leave and pay policies on websites create important transparency for prospective employees. This is why the ABI and 21 of its insurance and long-term savings member firms took the step to make this important change….Transparent family related leave and pay policies also serve to underline an employer’s commitment to welcoming and supporting working parents and many ABI members signed up to the ABI transparency initiative are also using it to showcase other policies and initiatives they have in place to further support working parents.”

Deloitte: “We already publish a summary of our family related leave and pay policies on our website as it is in the interest of transparency with our potential candidates. The summary outlines the key elements of the policies, which will be of most relevance and interest to potential candidates.”

KPMG LLP: “We want to attract the best talent to our firm – no matter who they are, where they come from or their personal circumstances. We are committed to attracting applicants from all backgrounds, as well as creating an inclusive culture that helps retain and promote our people. To achieve this we look at how we can remove barriers at every stage of the recruitment process, so it makes absolute sense for us as a firm to publish our family related leave and pay policies to ensure uncertainty around these could not be a barrier to people applying. Excellent policies attract top talent.”

22% of individuals believed this proposal would improve fair treatment of employees within the workplace and 15% of individuals believed it would give both current and prospective employees awareness of their rights and entitlements, enabling them to plan for their families. Some respondents had either seen or experienced differential treatment, either at line managers’ discretion or in organisations where certain departments were treated more favourably. Individuals felt that by raising family-related leave and pay policies in an interview, they would be subject to unconscious bias from the recruiter. They felt that publication of these policies would help parents (but especially women) to return and remain in the workforce.

Individual: “A person is not able to make decisions about their affordability to parent if they do not have the information at hand as to what their financial situation would be, should they want or have children…That person needs to know which job provides for the most suitable leave and pay policies for their current or future family life.”

Individual: “It’s often not a topic discussed and - particularly for women - there is a stigma to asking about what the policy is during recruitment or even when employed less an employer think you *might* be considering children and it impact your recruitment or ongoing career progression. By publishing this information, it removes this barrier and also enables parents or potential parents to consider this as part of their package with company right from the start.”

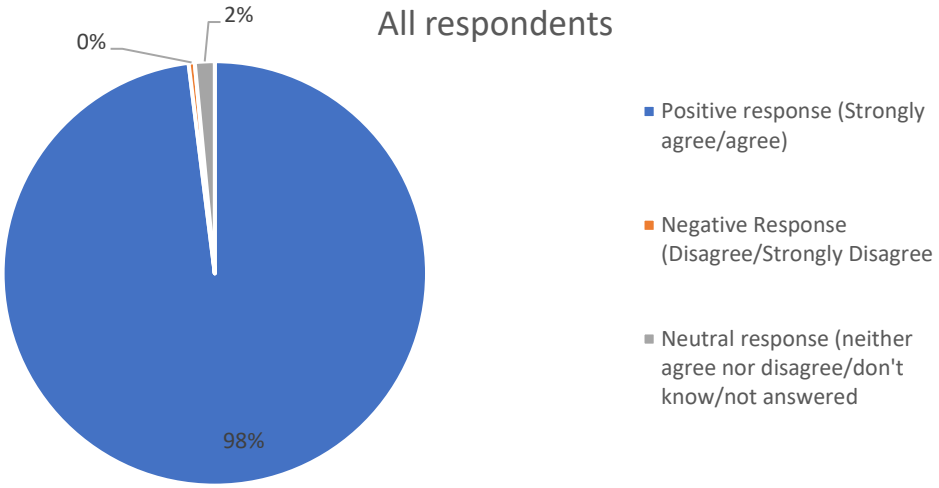
Q2. Do you agree that large employers (250+ employees) should publish their flexible working policies on their website?

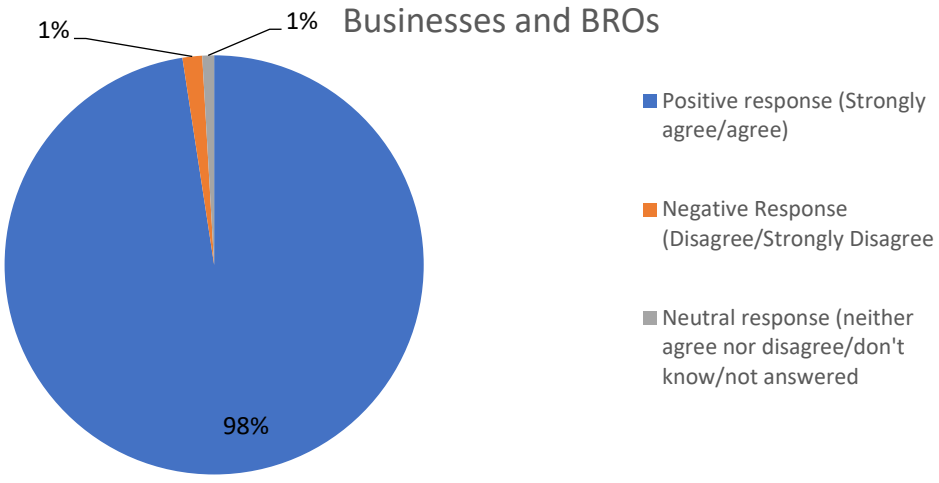
Once again respondents were very much in favour of employers publishing their flexible working policies, as seen in the charts below. 98% of individuals and the same figure of businesses and business representative organisations responded positively to the question.

The most common reasons given were the same as cited for the publication of parental leave and pay policies, with 58% of individuals and 53% of employers again stating that publication of these policies will improve transparency and help applicants make more informed decisions.

19% of individuals believed that publication of polices would lead to more equal treatment of employees. We were given anecdotal evidence of inconsistencies in how flexible working applied, and how individual line managers hold the discretion on whether an individual can have a better work life balance or not.

As with publishing parental leave and pay policies, businesses felt that publication of flexible working policies would improve staff retention and attract top talent (16%).





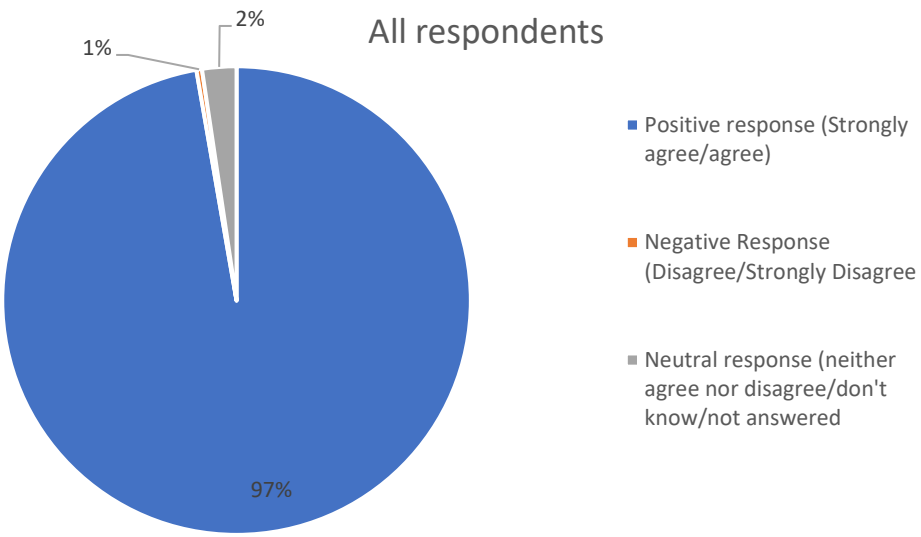
Q3. Do you agree that transparency of these policies will help employers to recruit and retain staff?

The majority (97%) of all respondents felt that publishing parental leave and pay, and flexible working policies would help employers to recruit and retain staff. Within this:

a. 38% of individuals stated that good policies will attract applicants.

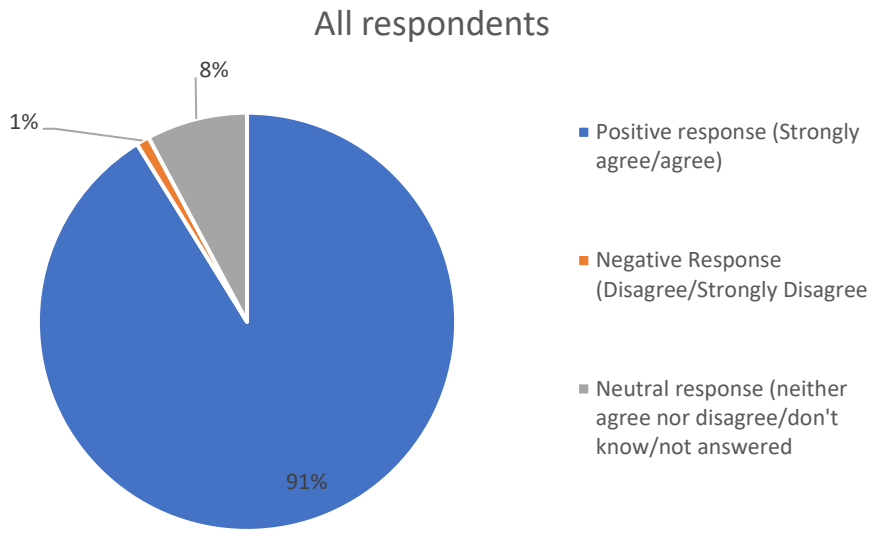
b. 43% of business and 34% of individuals felt that by being transparent about policies, individuals will understand what their rights and whether the job can work with their lifestyle.

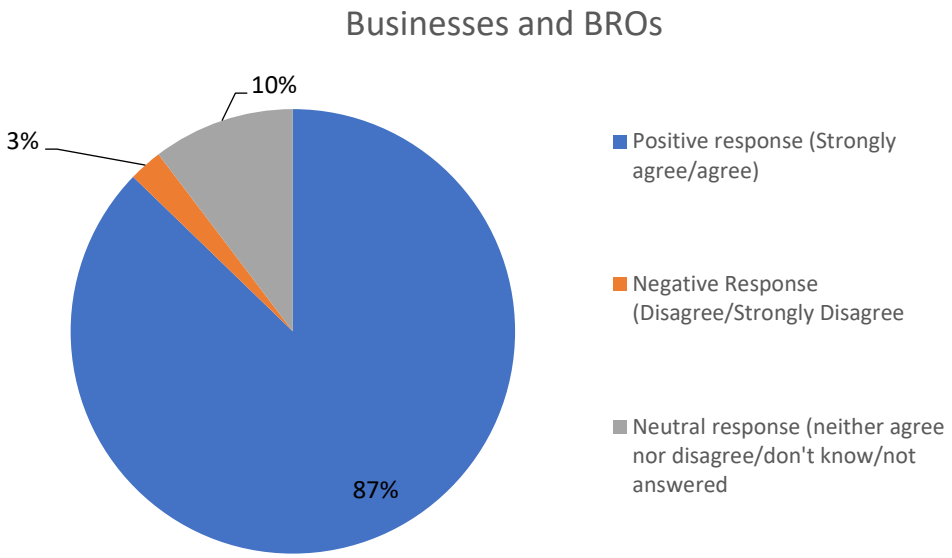
c. This in turn will help employers retain staff as they will be more satisfied with their terms and conditions.



Q4. Do you agree that, where the employer has a policy on family-related leave and pay which extends the statutory minima, reworking and publishing an internal policy document on a public-facing website would be simple and inexpensive?

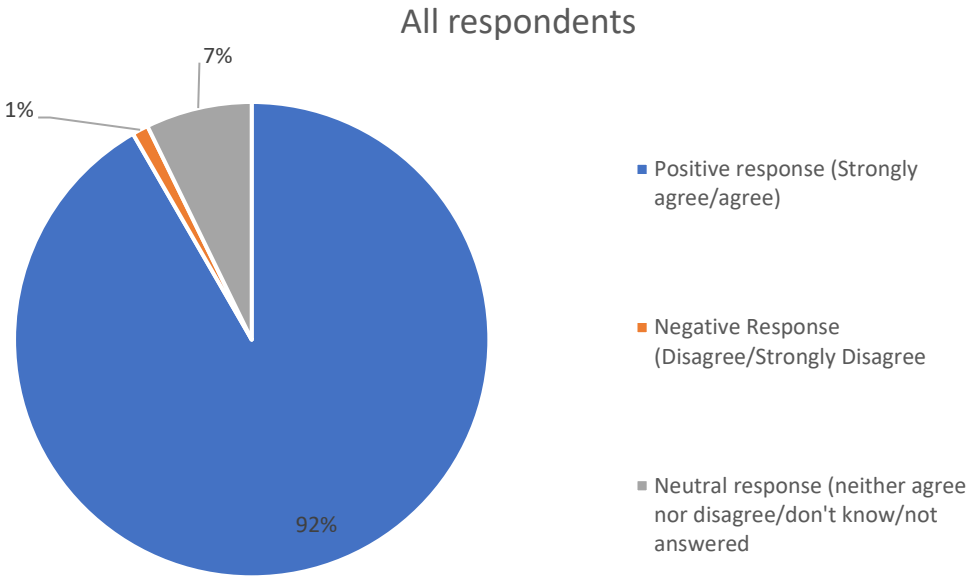
This question posed more uncertainty due to respondents not being sure of the cost of publishing policies. However, most felt that if the employer has policies already, it would be easy to publish these on their website. Others highlighted that they should only publish as a simplified version of the policy so costs would be low. They also felt that the benefits gained from staff retention and attracting more talent would outweigh any costs. While business had more concerns over the costs, the overwhelming majority considered this to be simple and inexpensive.

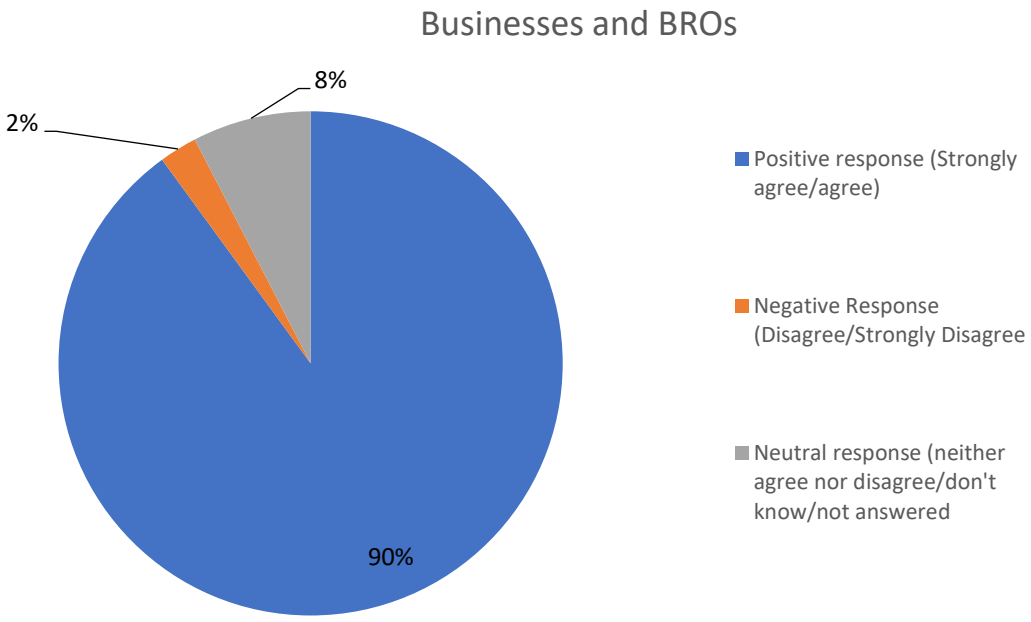




Q5. Do you agree that, as for family related leave and pay, reworking and publishing a flexible working policy on a public-facing website would be simple and inexpensive?

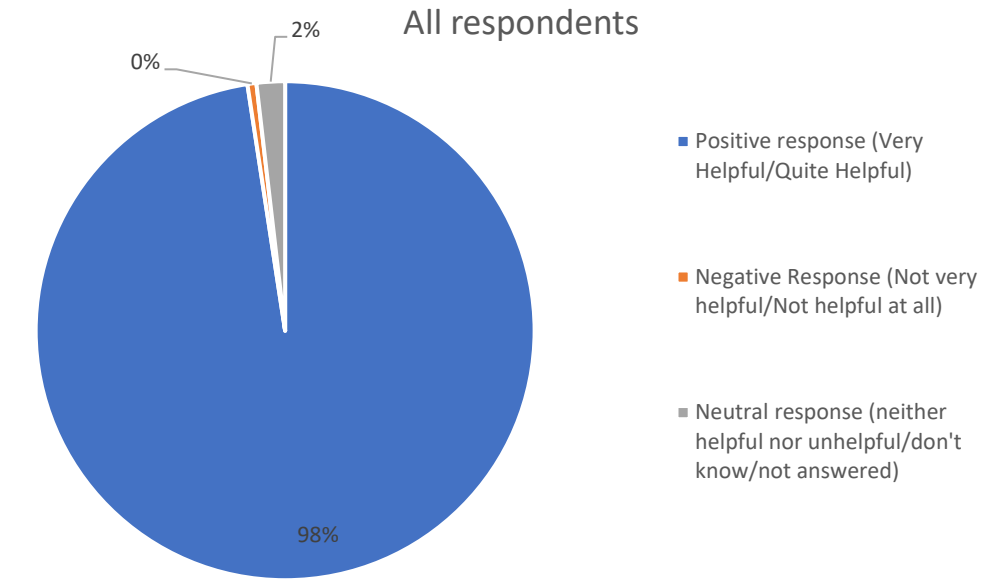
This question again posed uncertainty due to respondents not being familiar with how much publishing a policy would cost, but generally respondents felt this should be easy and inexpensive. Business were again in favour but appeared more positive than in the previous question.

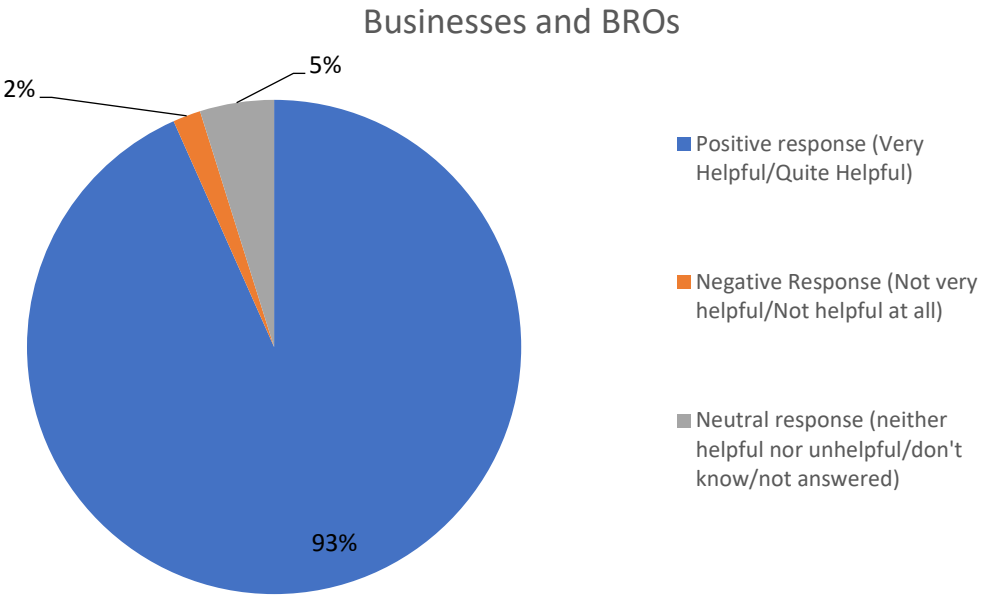




Q6a. How helpful would the following information be if it was held (and viewable) on a central database, for instance the Gender Pay Gap Reporting (GPG) Portal(?): Whether flexible working may be available from the start.

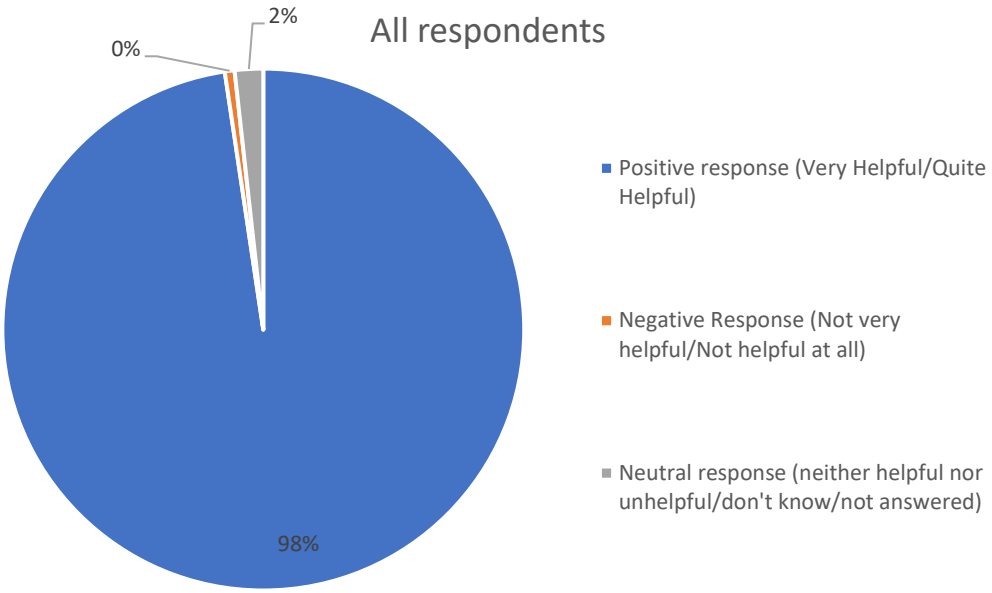
Most respondents felt that identifying whether employees could work flexibly from day one of a job would be useful.

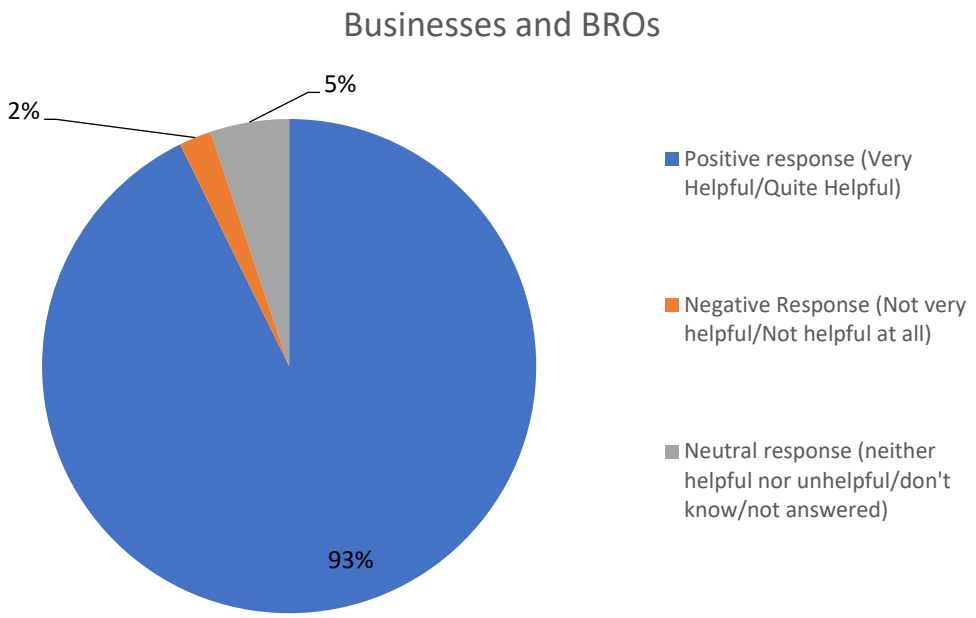




Q6b. How helpful would the following information be if it was held (and viewable) on a central database, for instance the GPG Reporting Portal(?): Approach to place, hours and times of work.

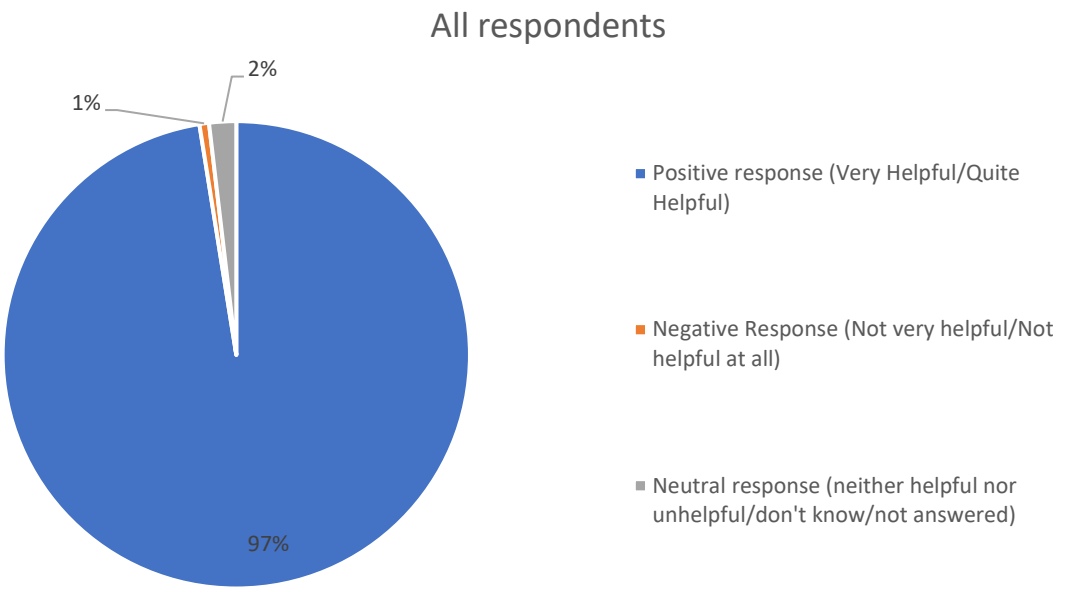
Respondents had similar views to publishing the approach to place, hours, and times of work on the GPG tool, with the majority feeling this would be helpful.

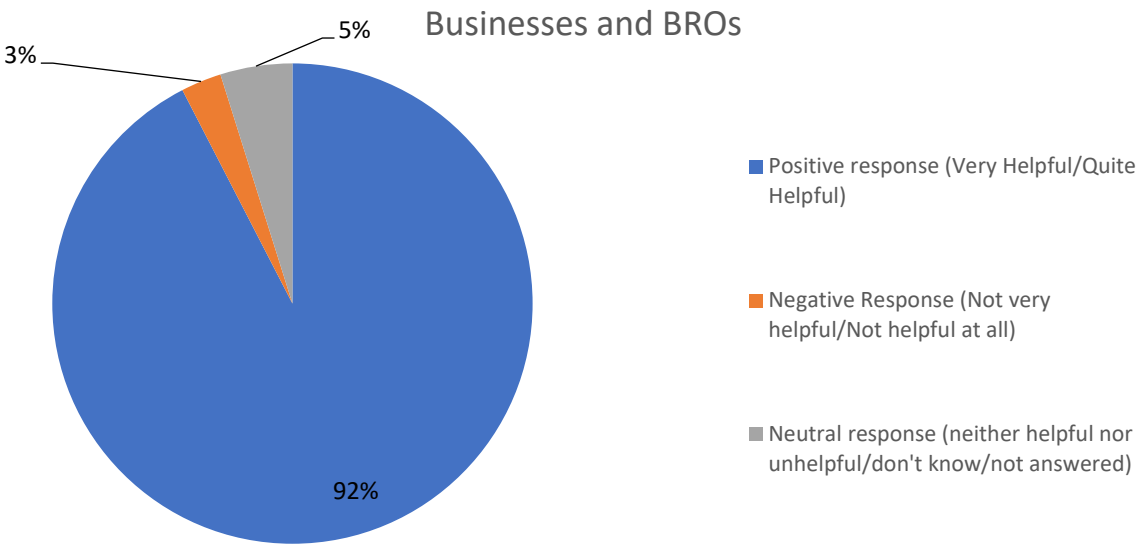




Q6c. How helpful would the following information be if it was held (and viewable) on a central database, for instance the GPG Reporting Portal(?): Approach to informal working (such as late starts to accommodate health and other appointments).

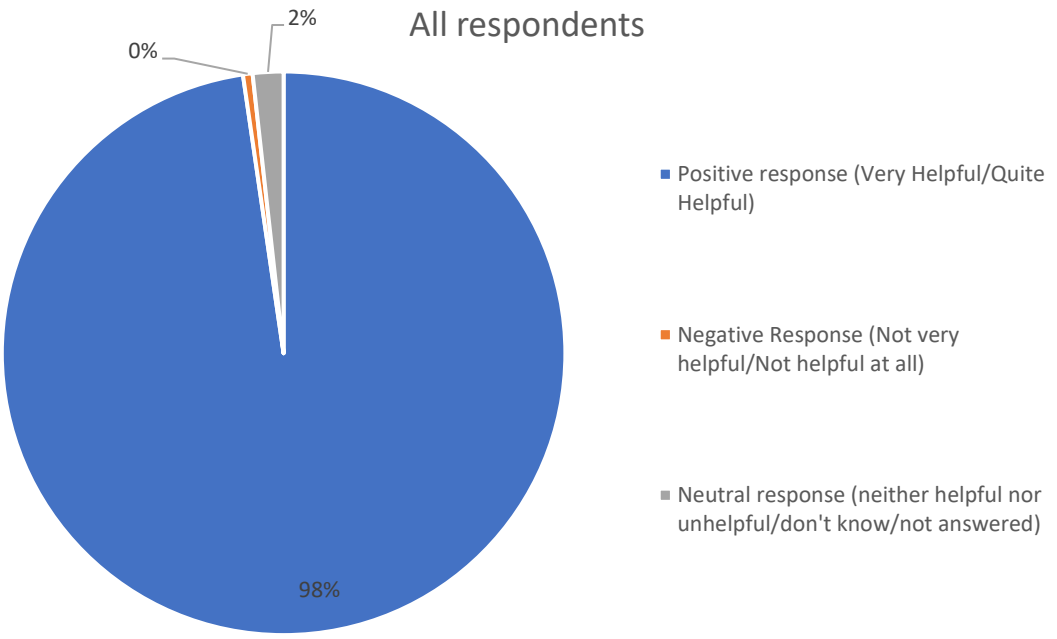
Respondents had similar views to publishing the approach to informal working on the GPG tool, with the majority feeling this would be helpful.

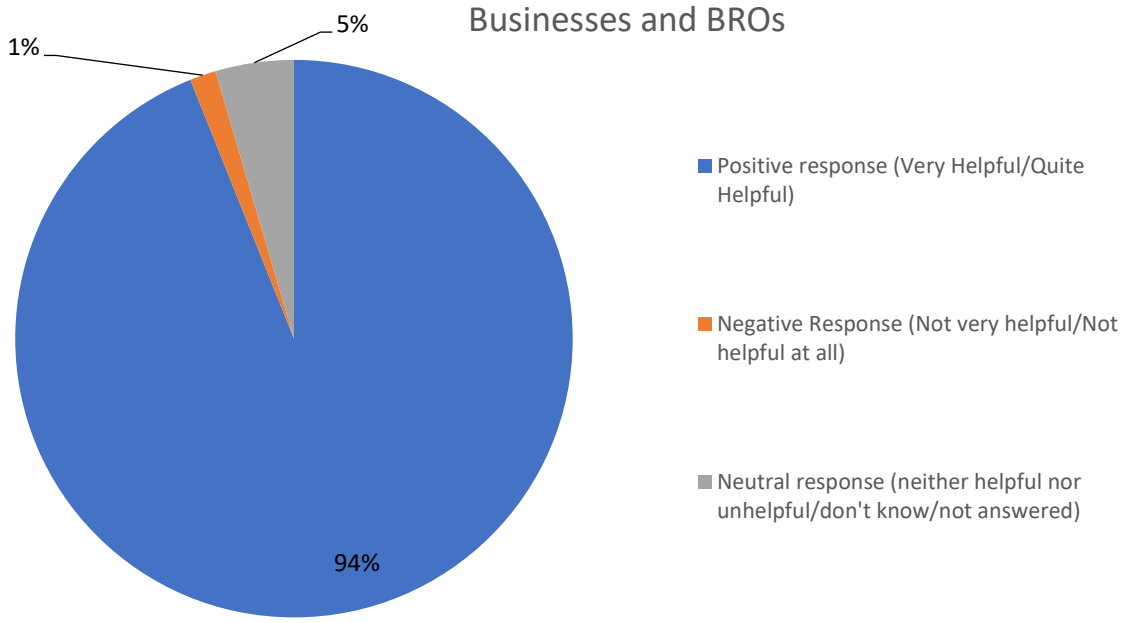




Q6d. How helpful would the following information be if it was held (and viewable) on a central database, for instance the GPG Reporting Portal(?): Enhancements to different types of family-related leave and pay; Maternity Leave and Pay, Paternity Leave and Pay, Adoption Leave and Pay, Shared Parental Leave and Pay, parental leave taken in respect to older children, or any other contractual enhancements to family-related leave and pay

Respondents were again in favour of family related leave and pay policies being published on a central database, such as the GPG tool.



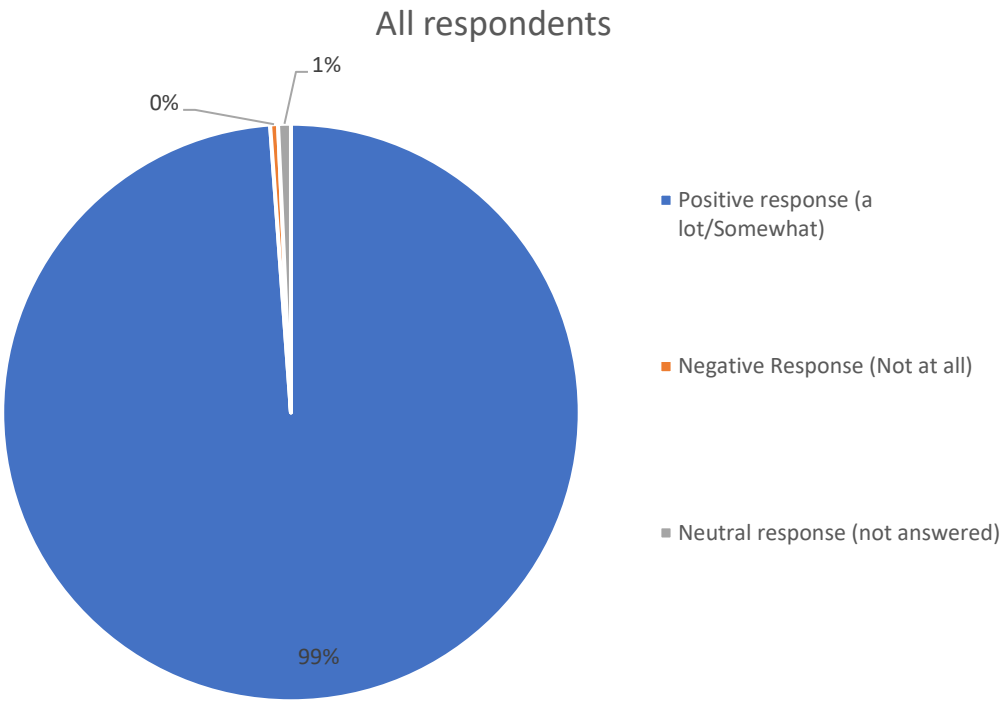


Q7. To what extent do you believe that a job applicant's decision on whether to apply for a job would depend on the publication of the information above?

An overwhelming majority of all respondent types agreed that publication of:

d. whether flexible working as available from day one;
e. approach to time, place and hours;
f. approach to informal flexible working;
g. and family friendly policies

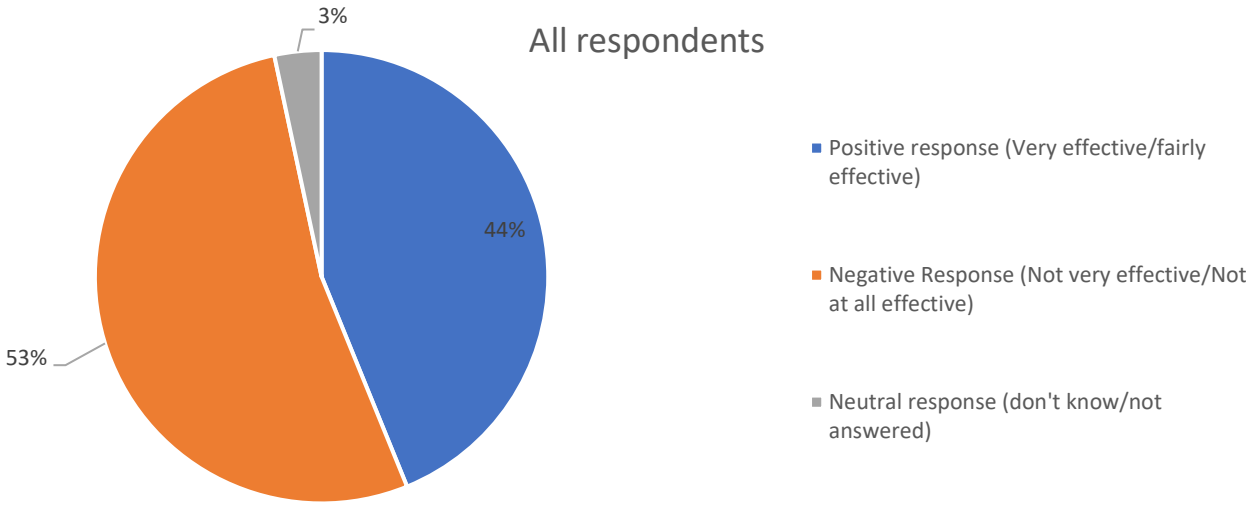
would influence a job applicant's decision to apply.

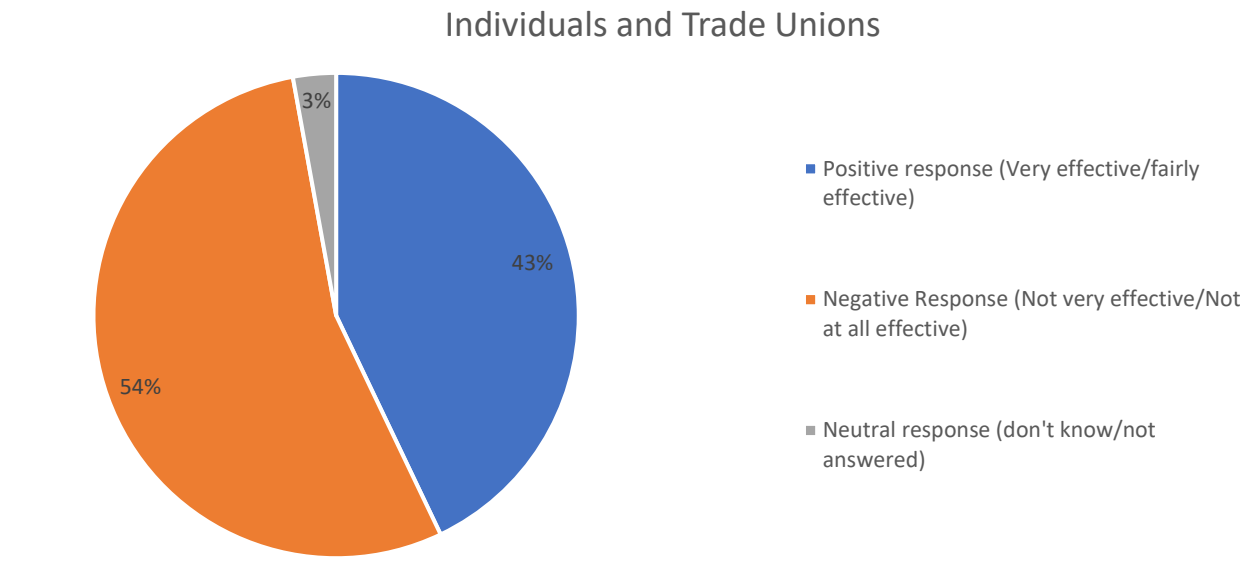


Section 2: A requirement to report or a voluntary approach?

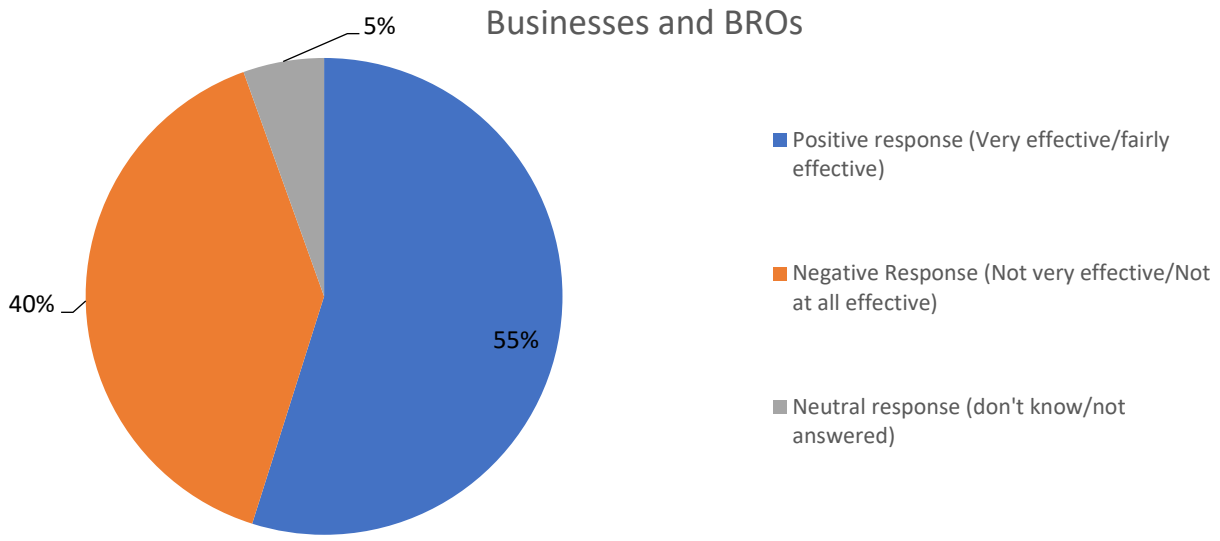
Q.8 How effective do you believe a voluntary approach to encourage greater transparency about an organisation's approach to flexible working and family-related leave and pay (e.g. through the GPG Portal) might be in providing information about employers' policies?

This question received mixed responses from all groups with business more in favour of a voluntary approach and individuals wanting mandatory enforcement. For those who gave reasons, the majority felt that the voluntary approach would not be effective in creating change. Others felt that a requirement could encourage competitors to compete to have the best policies. Among those in favour, some felt the voluntary approach could be effective as a starting point with a mandatory approach being adopted later.



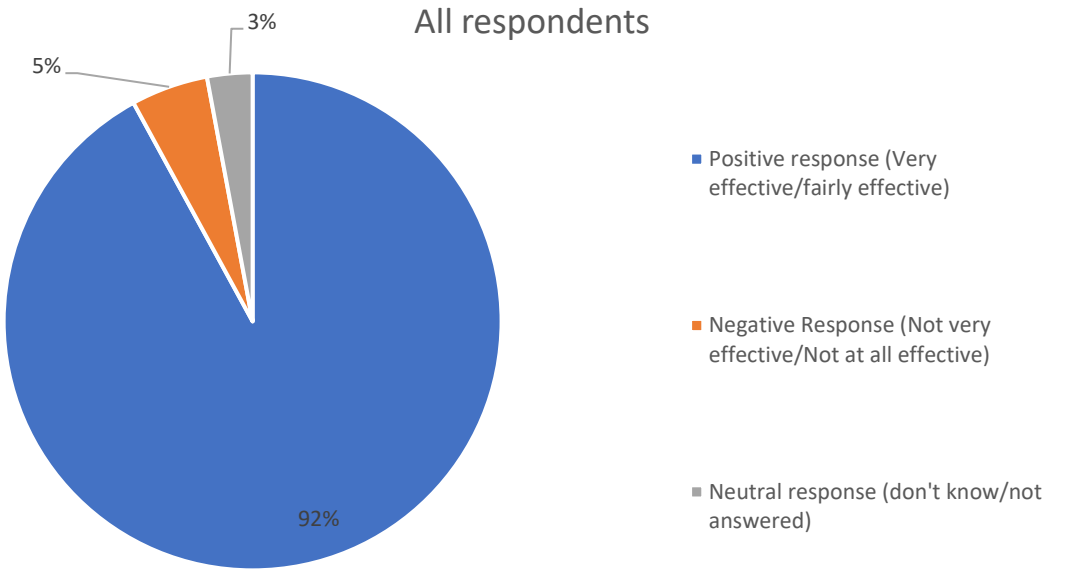


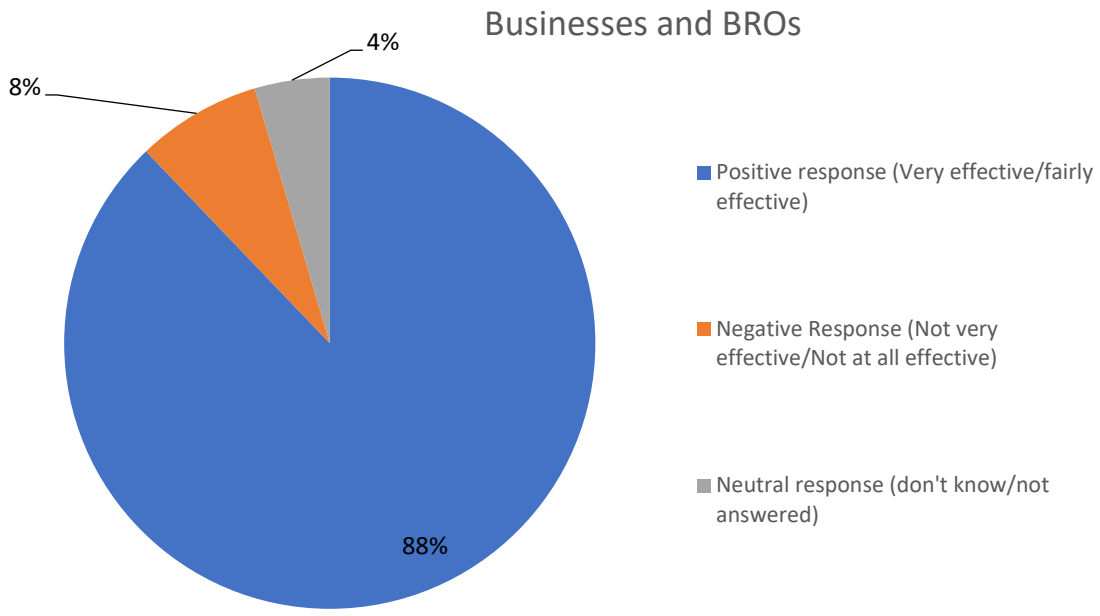
Making flexible working the default unless employers have good reasons not to



Q.9a How effective do you believe creating a facility on the GPG Reporting portal on GOV.UK to record details about an organisation's policies on flexible working and family related leave and pay would be – to provide a central point of information for employees or perspective employees?

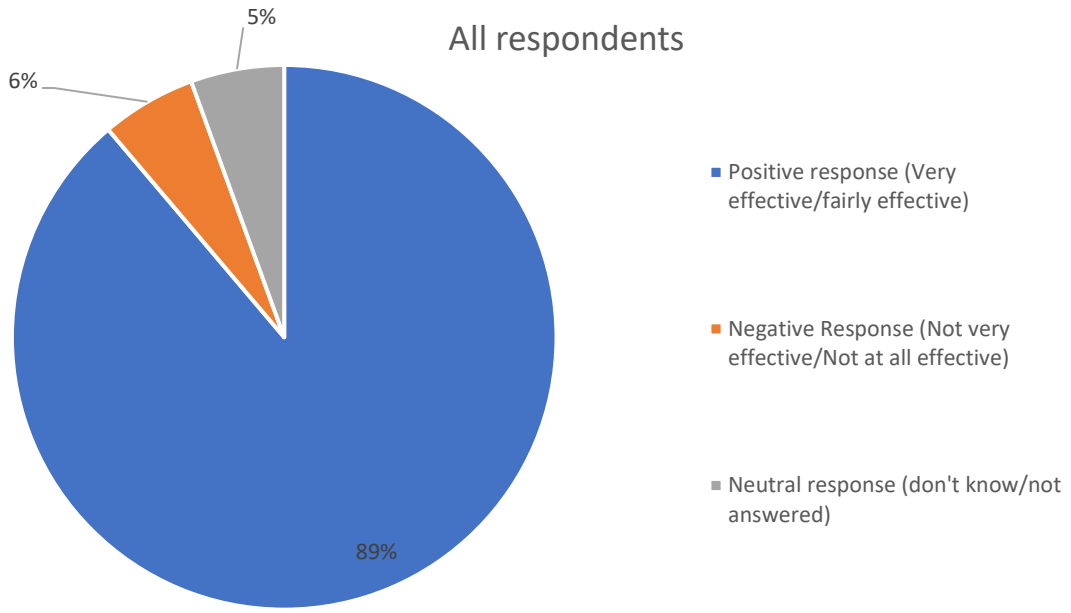
Overall respondents were in favour of reporting through the GPG reporting tool, suggesting that this will make the information easier to find and compare. Some concerns were raised that using the GPG tool could gender these policies when they are required by both men and women. Others felt the tool would need to be promoted as people do not know it exists.





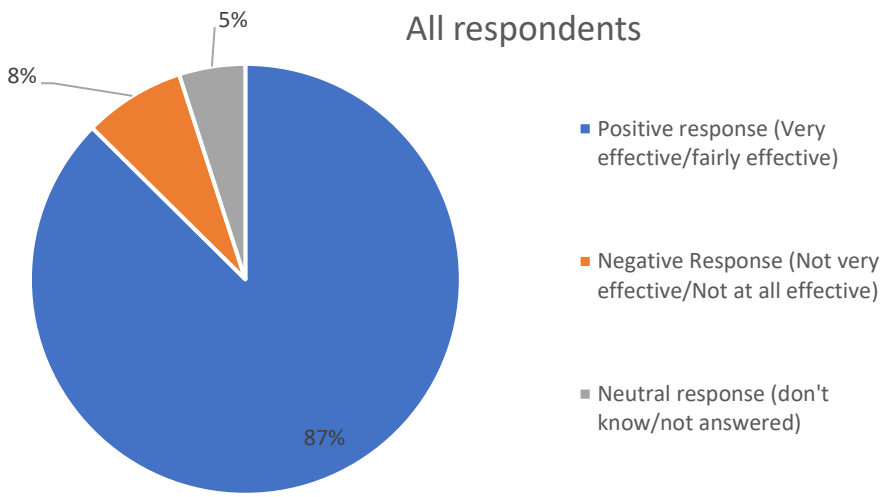
Q.9b How effective do you believe creating a facility on the GPG Reporting portal on GOV.UK to record details about an organisation's policies on flexible working and family related leave and pay would be – to let employers record the information as part of the annual cycle of GPG Reporting

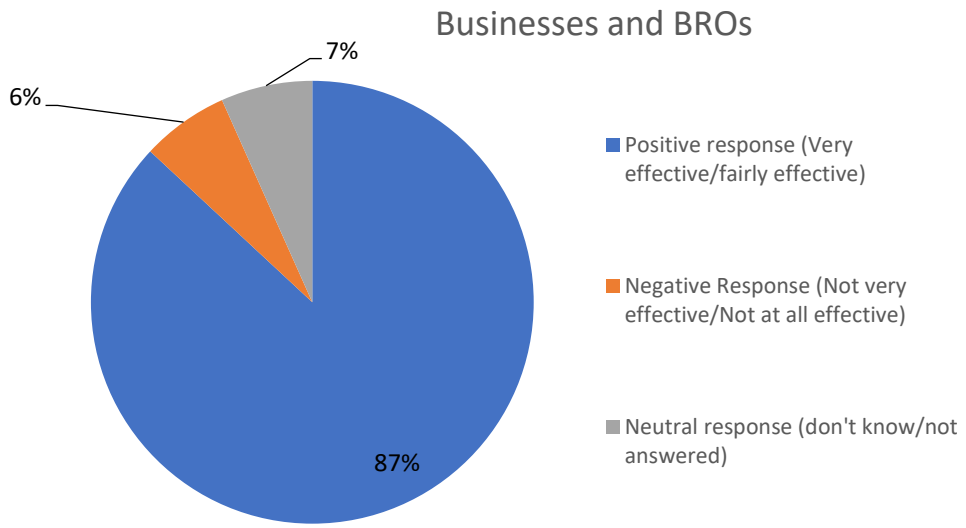
Overall respondents were in favour of reporting through the GPG reporting tool, suggesting that having a central point of reference will be useful for making employer comparisons, simplifying the reporting cycle and easing the employer burden of any new reporting requirements. As with the previous question, some concerns were raised that using the GPG tool could gender these policies when they are required by both men and women. Others felt the focus should be on encouraging employers to develop their policies first and to publish on their own websites, before considering introducing a reporting requirement as part of GPG reporting.



Q.10 How effective do you believe it might be to encourage employers to set out how they are using greater transparency about their employment policies as part of their GPG action plans?

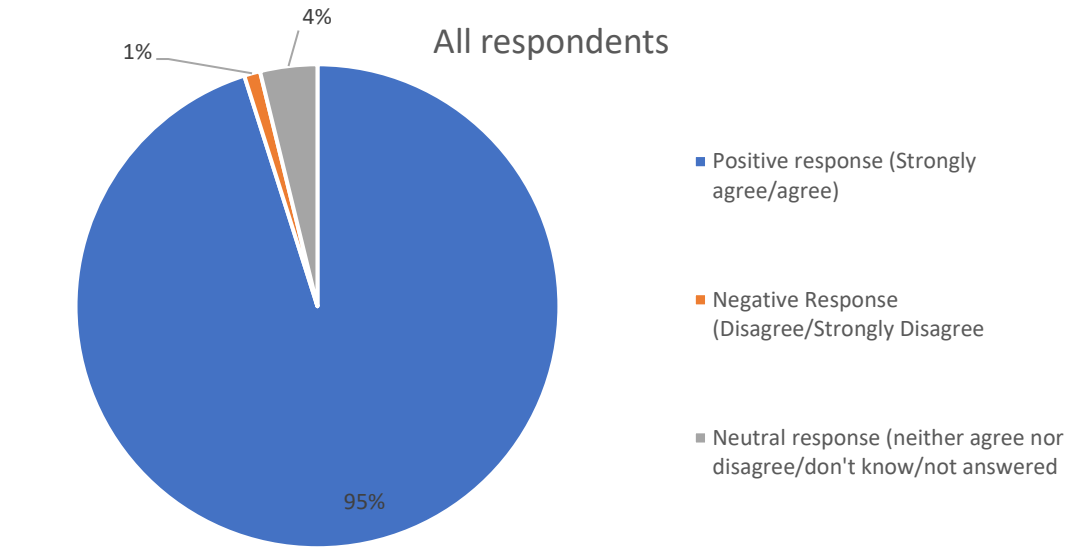
Overall respondents thought that it would be effective to encourage employers to set out how they are using greater transparency about their employment policies as part of their GPG action plans. The general feeling was that measures to encourage greater transparency of information relating to employment policies would be welcomed. There were some questions around who this approach most benefited, i.e. job applicants or central government data analysts. There was also some discussion of whether a voluntary or mandatory to encouraging employers was more appropriate. Business representative respondents generally preferred a voluntary approach in recognition that not everyone is coming from the same starting point and employers are best placed to know which of their policies should be in the public domain, while several trade union responses expressed that encouraging employers to do this on a voluntary basis would not go far enough and mandating employers would be necessary to achieve this outcome.

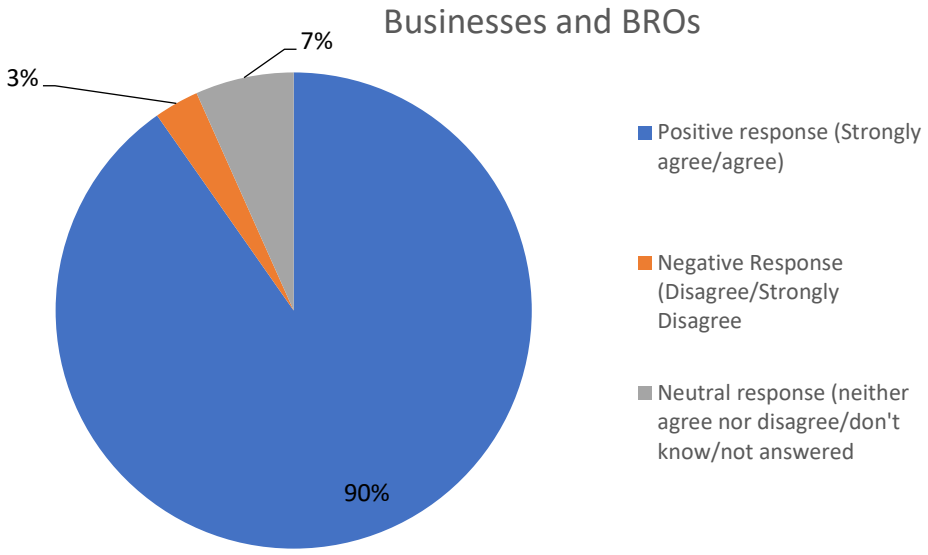




Q11. Do you agree that it would make sense to enforce a reporting requirement of this kind in the same way as GPG reporting (i.e. a requirement to provide this information as part of the GPG reporting process)?

Overall respondents agreed that it would make sense to enforce a reporting requirement in the same way as GPG reporting, citing that this will help to level the playing field in terms of what employers both offer to applicants and make publicly available. Some respondents (10%) added that forcing employers to think through their employment policies would bring about positive change, while others (4%) highlighted the importance of accountability. There was some disagreement about whether enforcing via the GPG reporting process would conflate the separate issues of flexible working and the gender pay gap (4%), while others expressed that flexible working is about promoting equality and the two are aligned (10%).

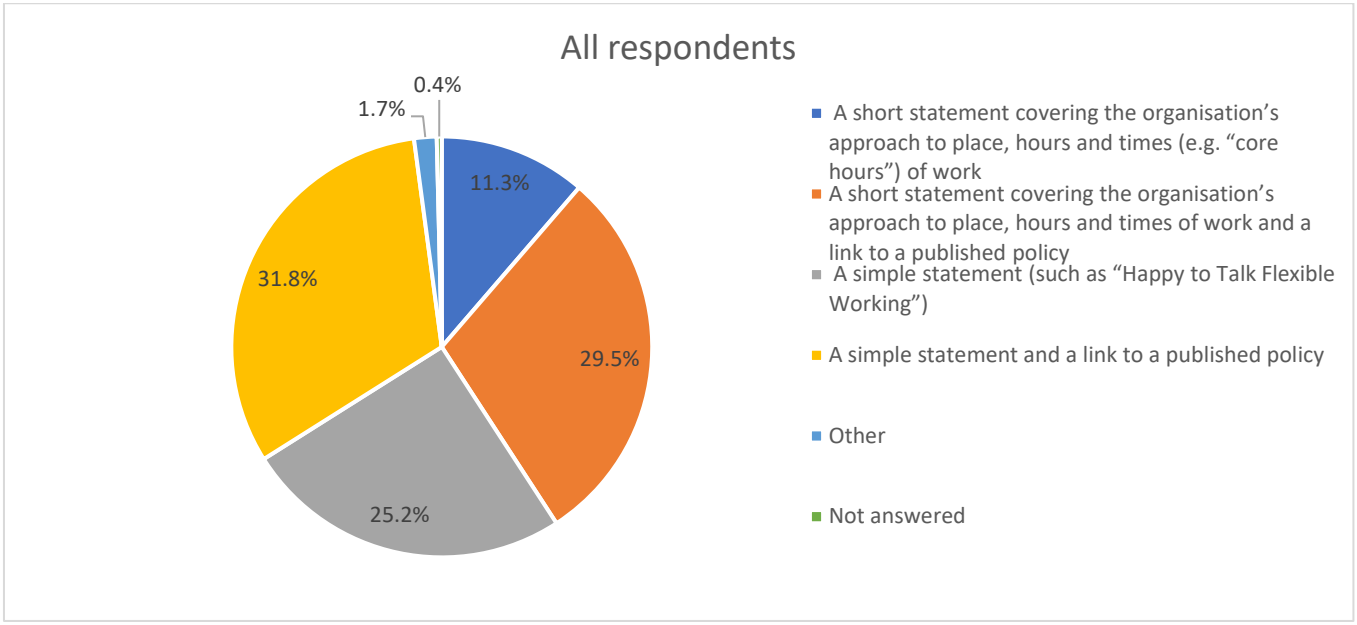


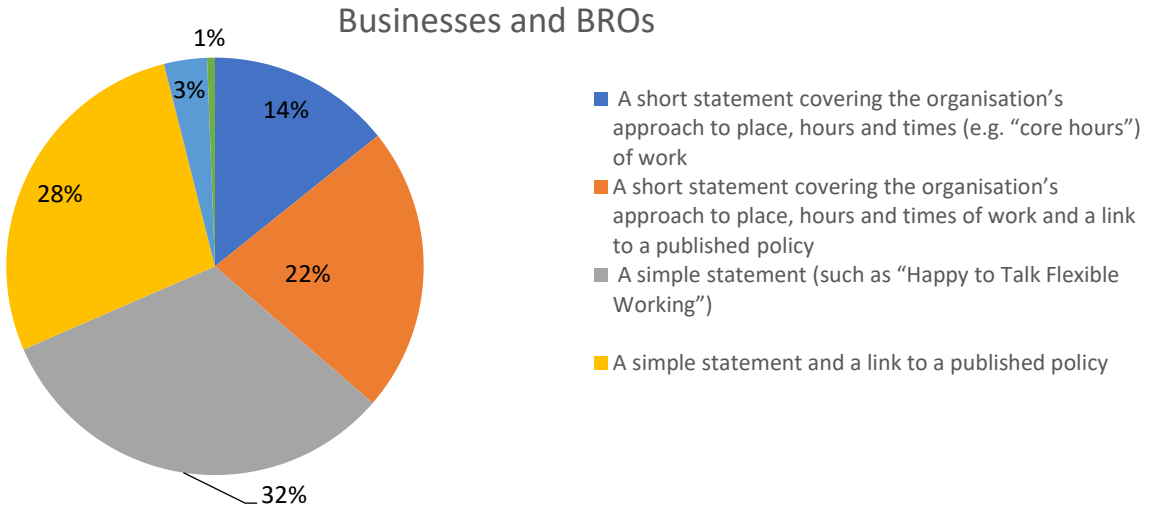


Section 3: A requirement to say whether jobs may be open to flexible working in an advert

Q12. Thinking about the balance between what is practical to provide in a short job advert and what is useful to a candidate, which of the following is the best option (please select one)?

Respondents were split in answering this question. Overall, respondents were marginally in favour of a 'simple statement and a link to a published policy' (32%), closely followed by a 'short statement covering the organisation's approach to place, hours and times of work and a link to a published policy' (30%). The third most popular choice was 'a simple statement (such as "happy to talk flexible working")' (25%). However, this was the preferred option among businesses – reasons given included that businesses need the flexibility to be able to adapt their policies to specific workplace scenarios and points in time and that a 'one-size-fits-all' approach was not appropriate. It was felt that language was important to encourage applicants and employers to be confident in discussing the availability of flexible working.





Q13a. If a requirement was introduced to state in job adverts whether flexible working may be available or not: who might the enforcement power sit with?

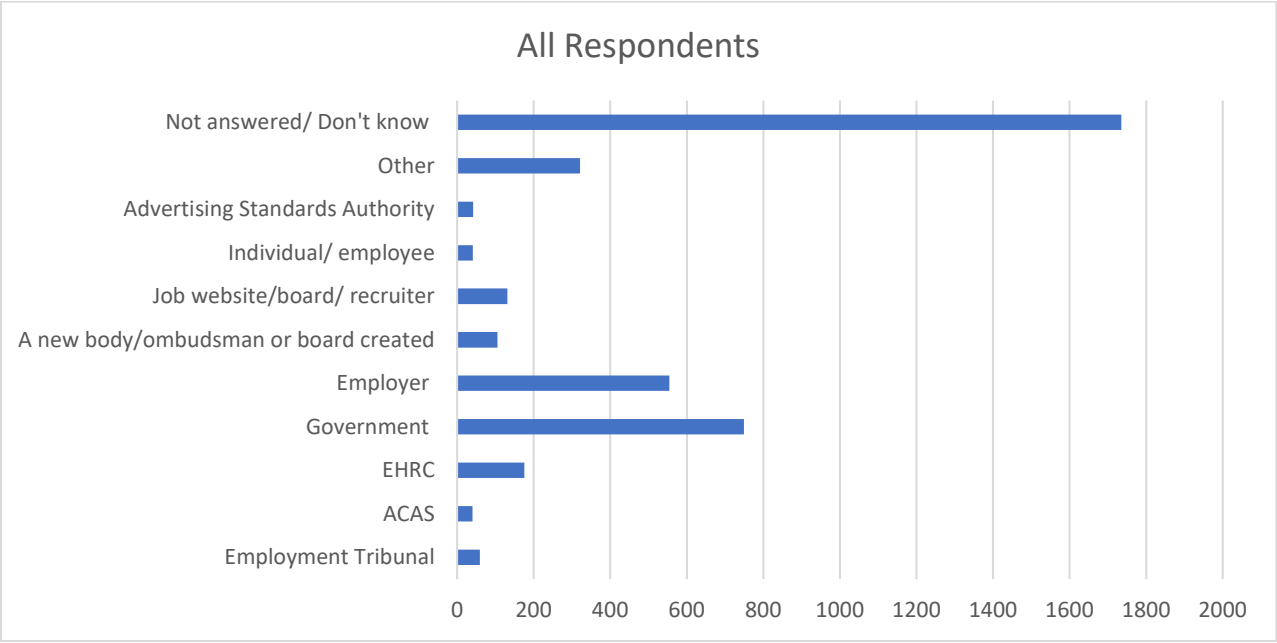
This was an open-ended question and so produced a wide range of responses. 44% of respondents either did not answer or did not know who might enforce a requirement to state in job adverts whether flexible working is available. This reflects the practical difficulties and issues associated with enforcing such a requirement. There was no significant variance between the answers of businesses and individuals. Of those who did provide an answer:

h. 34% thought that enforcement power should sit with a Government Department, Body or Agency. Within this, there was reference to using employment legislation and existing routes for enforcing legislation and employment rights.

i. 25% thought that it would be for employers to enforce through their HR and recruitment practices. While individual employers would not be able to possess the independent enforcement power necessary to hold themselves to account, this demonstrates how, ultimately, this proposal would rely on employer-led implementation through their job advertisements.

j. 8% thought that enforcement power should sit with the Equality and Human Rights Commission (EHRC), with some respondents suggesting it could be done in the same way that GPG Reporting is enforced.

k. 2% thought that this power could sit with Acas and that cases could be ultimately be dealt with via recourse to Employment Tribunal (3%) on grounds of unfair treatment.



Q13b. If a requirement was introduced to state in job adverts whether flexible working may be available or not: what should be the process for reporting a breach?

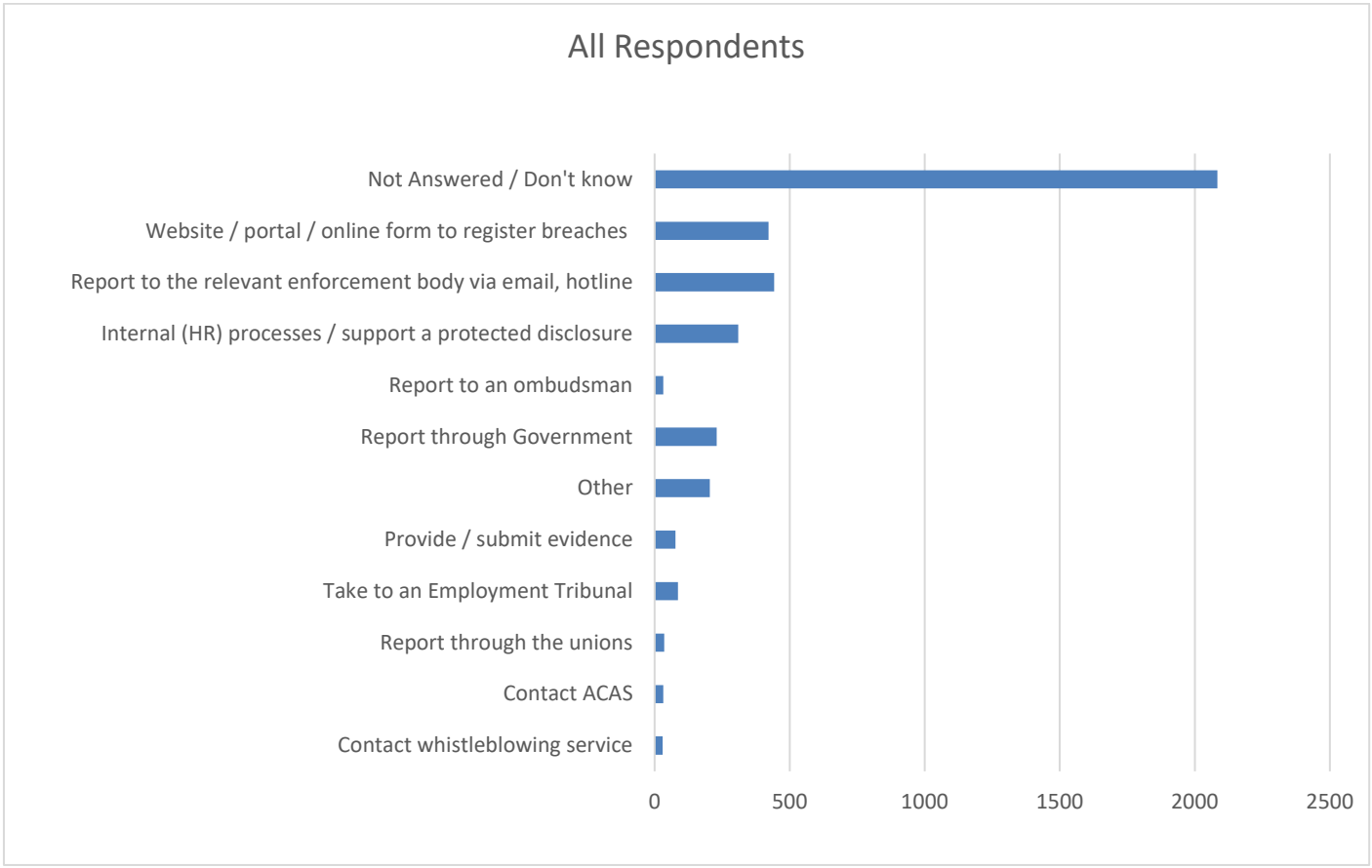
This was an open-ended question. Over half (52%) of respondents either did not answer or did not know what the process for reporting a breach should be. There was no significant variance between the answers of businesses and individuals however practical several concerns were raised, including how to define what falls under flexible working, what constitutes a job advert and how it might be proved that a breach has occurred. Of those who did provide an answer:

l. 23% thought that the reporting process should be direct to the relevant enforcement body, with a further 12% stating that the reporting should be done through Government.

m. 22% thought that there should be an online reporting process to facilitate registering breaches.

n. 16% thought that the reporting process should be done, at least initially, through companies' internal (HR) processes – and that anyone reporting a breach should be supported with making a protected disclosure.

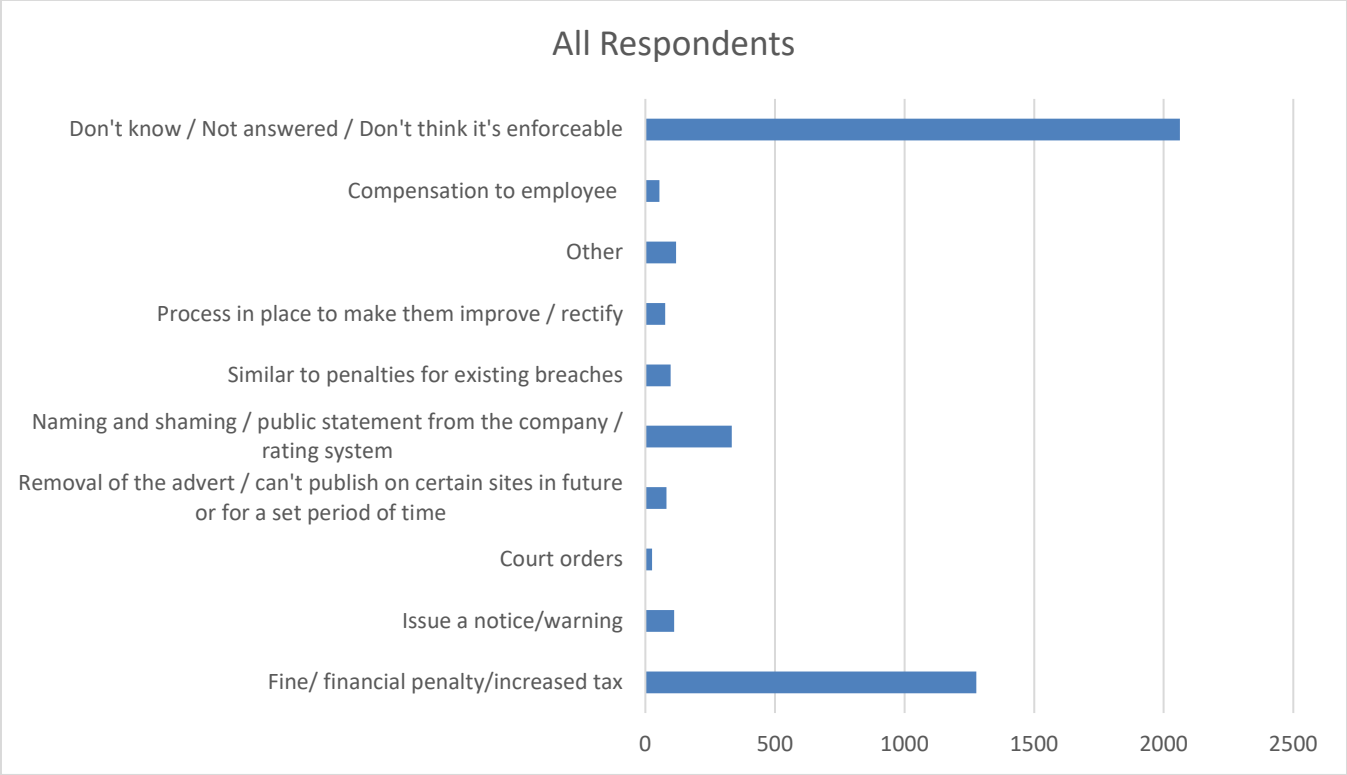
o. There was general agreement that any process should be quick, simple and easy.



Q13c. If a requirement was introduced to state in job adverts whether flexible working may be available or not: what should be the penalty for a breach?

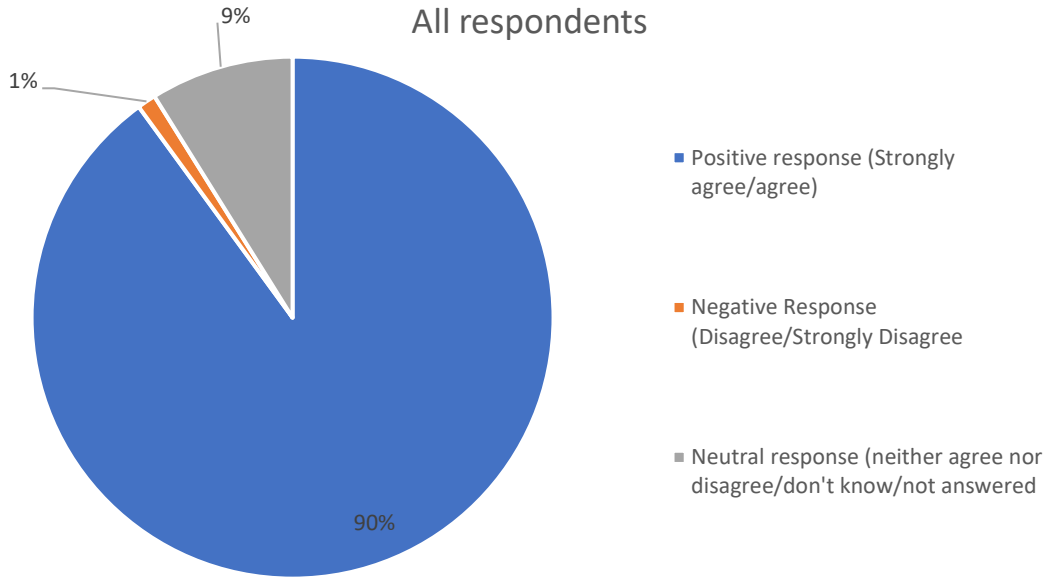
This was an open-ended question. Just under half (46%) of respondents either did not answer, did not know what the penalty should be or did not think that a penalty would be enforceable.

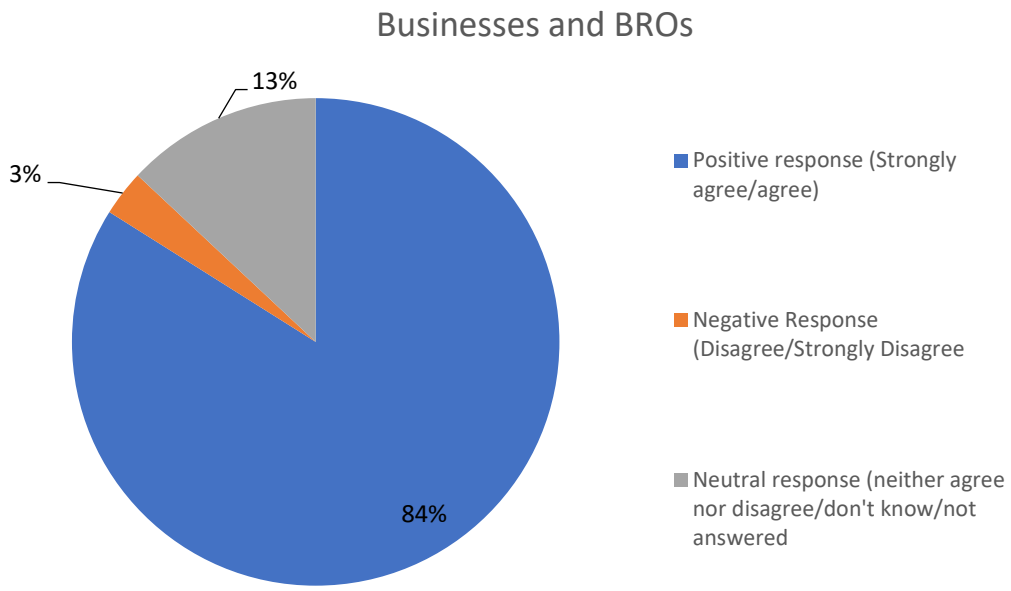
Among those who provided a response, the top two answers for penalties were financial penalties (52%) and public identification and/or ranking to identify those employers who do not comply with the requirement (14%).



Q14. If a requirement to provide a link to your flexible working policy on the GPG reporting portal was introduced, do you agree that it would be helpful also to ask employers to record whether they had advertised jobs as open to flexible working

Overall respondents agreed that it would be helpful to ask employers to record whether they had advertised jobs as open to flexible working alongside a requirement to provide a link to their flexible working policies. Some respondents stated greater transparency and the utility of including this information as reasons for doing this.





This consultation is available from: www.gov.uk/beis

If you need a version of this document in a more accessible format, please email enquiries@beis.gov.uk. Please tell us what format you need. It will help us if you say what assistive technology you use.