



Independent workplace compliance



White Paper

A question of hybrid/flexible/remote working

June 2024



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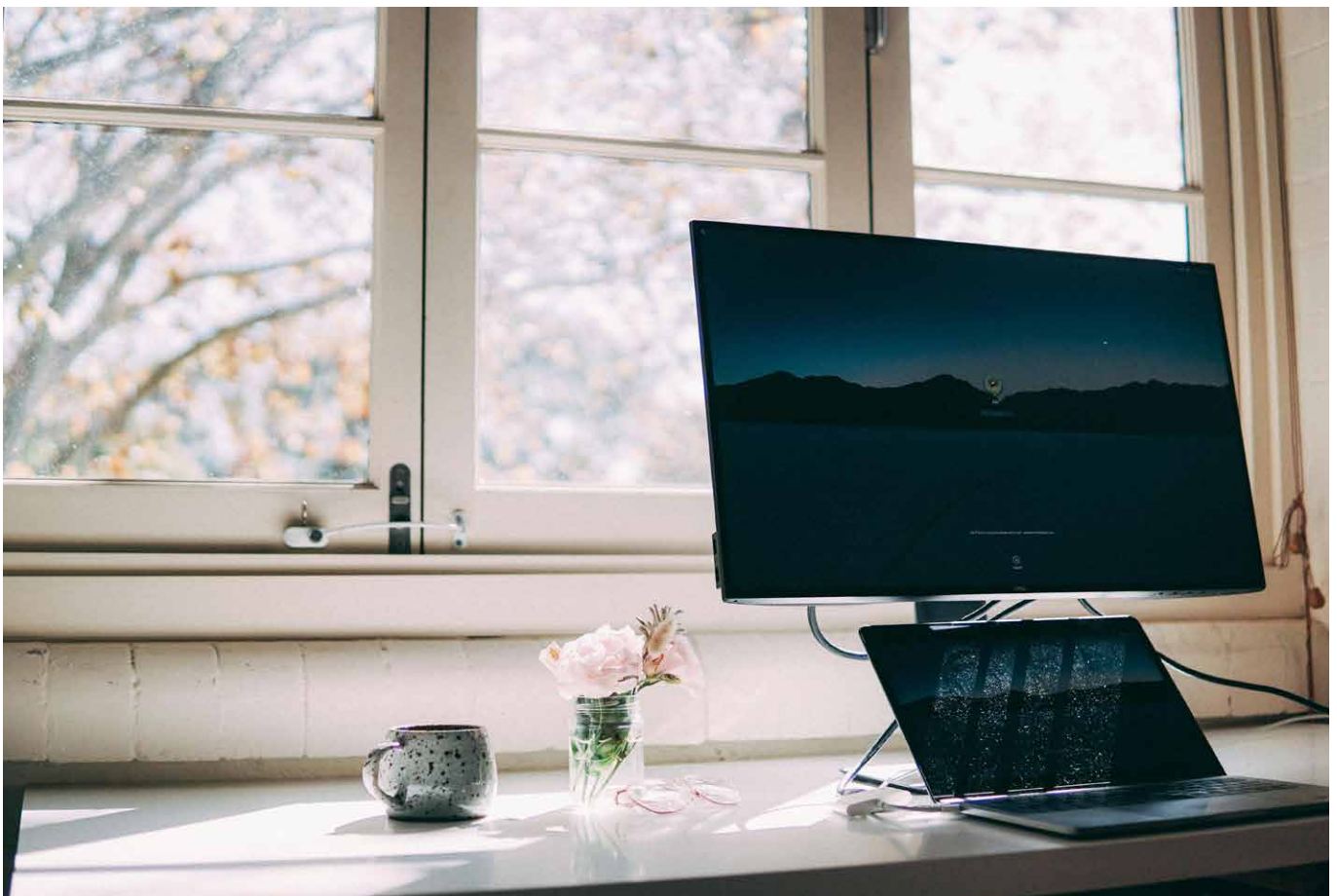
Questions around hybrid/flexible/remote working requirements are being asked by many different people currently, and for a variety of reasons. This is not surprising considering the rapid increase in this workstyle, the law surrounding it, and the impact it can have.

Additionally, because the topic covers a range of business teams and alternatives in how people can adopt flexible/hybrid/remote working, its longer-term management that needs careful consideration.

So, this month we are looking at some of the issues, opportunities and the thinking around the subject, and answer some of the questions we are being asked.

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1. Background

Despite having been in existence for some time, (many of us have been hybrid workers for years!), flexible/hybrid/remote working has become a significant topic of discussion, both through, and since the COVID-19 pandemic.

As a means for initially continuing work during the restrictions, since this time, it has seemed to become as much about work-life balance for employees and for employer's staff retention and attraction.

In 2022, a UK Parliament briefing, "The impact of remote and hybrid working on workers and organisations", identified some of the trends developing in organisations, these included:

- "Before the pandemic, remote and hybrid working had been increasing gradually. Between January and December 2019, around 1 in 10 (12%) of the of the UK workforce had worked at least one day from home in the previous week and around 1 in 20 (5%) reported working mainly from home.
- This increased substantially during the pandemic, to a peak of around half of workers (49%) in Great Britain (GB) working at least one day from home in June 2020; 11% of the workforce worked at least one day from home and 38% worked from home exclusively.
- As pandemic restrictions have been lifted, these numbers have gradually decreased again, but remain higher than pre-pandemic numbers. In September 2022, around 1 in 5 (22%) of the GB workforce had worked at least one day from home in the previous week and around 1 in 8 (13%) worked from home exclusively."

The report also acknowledged that there was a variation in the overall trend in flexible working "particularly remote and hybrid working", and this was seen across "sector, industry, occupation, role and qualifications, earnings, employment type, region, age, gender, ethnicity, disability and caring responsibilities."

There were significant differences between different industries too, with the report indicating, "people working in information and communication, professional, technical, and administrative industries are more likely to work at home compared to those in skilled trades and service occupations."



Post pandemic research identified that, “more than 80% of employees who worked from home because of the pandemic prefer a hybrid working model”, while for organisations it was more mixed with “between a quarter to around two-thirds of employers in 2021, reporting that they intend to introduce or expand hybrid working to some degree.”

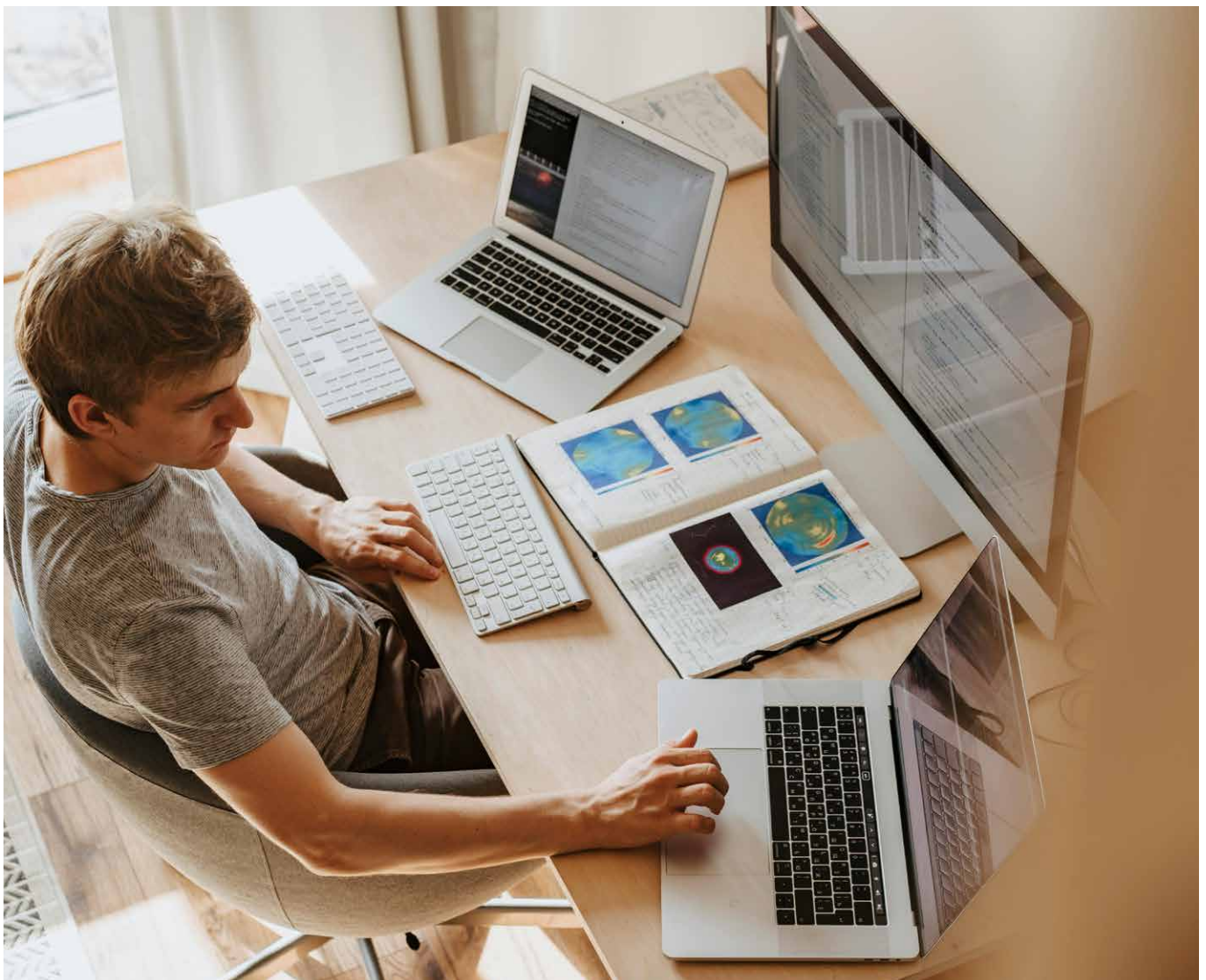
This year, a report by Forbes Advisor “UK Remote and Hybrid Working Statistics 2024” reported that, “Between 22nd May and 2nd June 2024, working arrangements among UK workers were as follows (ONS):

- Only worked from home: 14% (compares to 38% in June 2020)
- Travelled to work and worked from home: 26%” (In 2022, (25%) of UK employees worked from home at least some of the time).”

There are also multiple reports indicating that employers are increasingly wanting employees to return to the office on a more regular basis, with communications coming out of the US predicting rewards being offered for those that do (better work, promotions and salary rises).

[The impact of remote and hybrid working on workers and organisations - POST \(parliament.uk\)](#)

[Top Remote Working Statistics and Trends in 2024 – Forbes Advisor UK](#)



2. What does the law say about flexible working?

Originally, through the Employment Rights Act 1996 (as amended), employees had a right to request a change to their terms and conditions in relation to their hours, times, or place of work. The request could be made after 26 weeks of continuous employment.

Since 6th April 2024, The Flexible Working (Amendment) Regulations 2023, a flexible working request is a statutory right from the first day of employment for all employees (for requests made on or after this date).

GOV.UK highlights "all employees have the legal right to request flexible working. Employees can request a change to:

- The number of hours they work;
- When they start or finish work;
- The days they work; and
- Where they work."

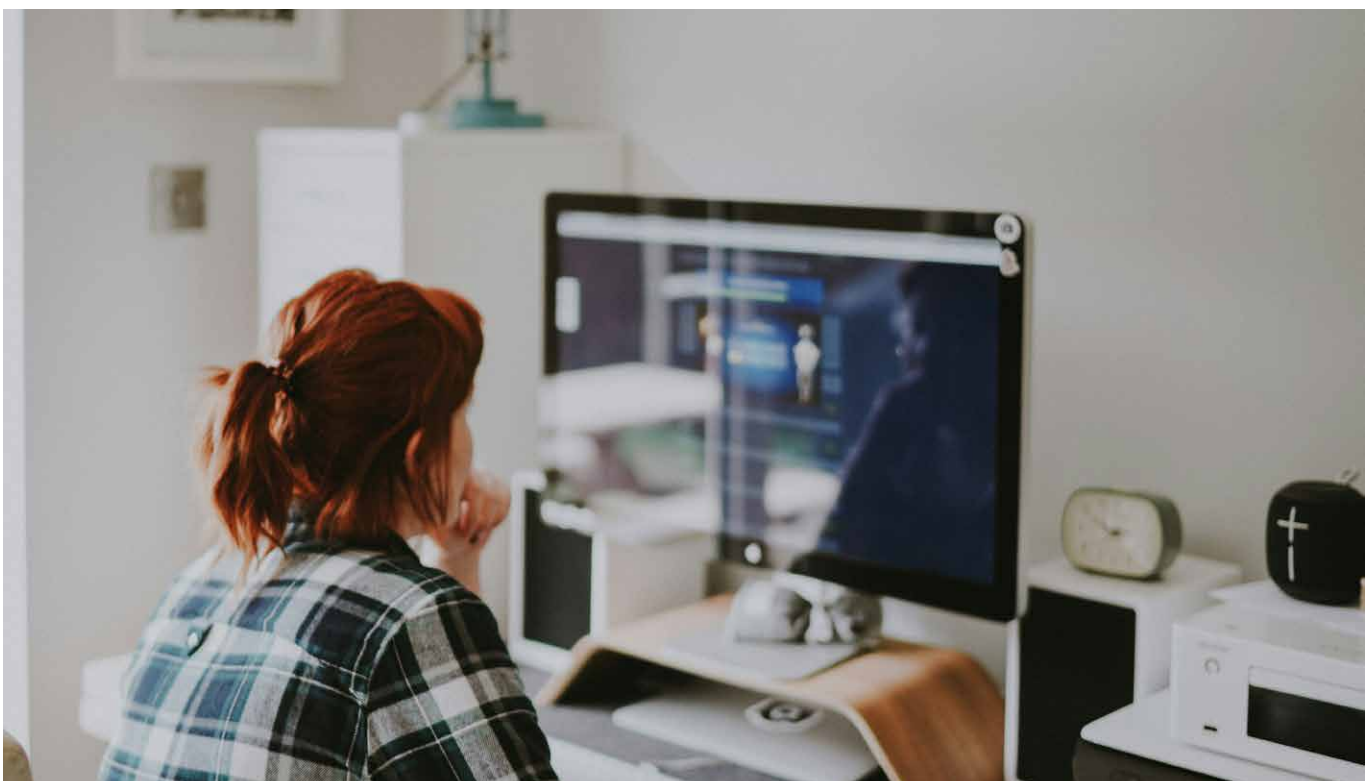
Employers must give due consideration to any requests and deal with them in a 'reasonable manner'. GOV.UK gives examples of reasonable manner which include:

- Assessing the advantages and disadvantages of the application;
- Discussing possible alternatives to the request; and
- Offering an appeal process.

Employers can refuse applications, if it is for "good business reasons", however, if the request is not handled in a reasonable manner, it can potentially result in an employment tribunal.

[Flexible working: Overview - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

[What flexible working is - Statutory flexible working requests - Acas](#)



3. What options for flexible/hybrid/remote working are there?

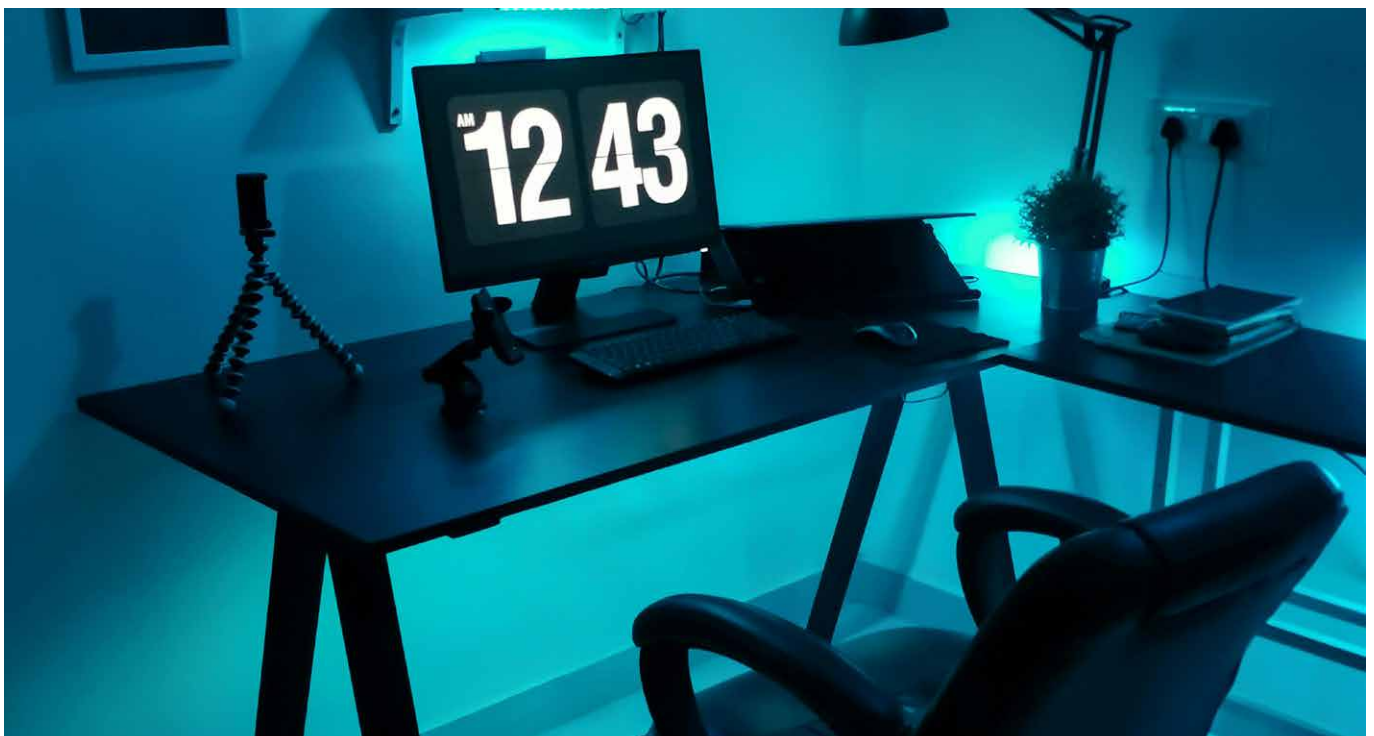
There are many styles of flexible working that are being used to accommodate the needs of employer and employee. ACAS, GOV.UK and CIPD (to name but three), have examples and further information on this. These include:

- **Annualised hours** – You work an agreed set of hours over the year, but these can be done flexibly;
- **Compressed hours** – Working full time hours but over a shortened period (usually means longer working days);
- **Flexitime** – You choose your start and finish times, which may vary;
- **Homeworking** – Where your home is your place of work;
- **Hybrid working** – Combines “in the office” (usual employers workplace) and working remotely;
- **Job sharing** – Usually two people sharing the hours for one job role;
- **Part-time working** – Working less than full time;
- **Remote working** – Where you work from anywhere, including home, away from your employers workplace;
- **Team-based rostering** – A group of employees agree a system that works for them all to cover the allotted work hours; and
- **Term-time working** – Staff only work during term time.

The type of workstyle adopted will be governed by not just the needs of the employer and employee, but also the work being performed.

[Flexible working | Acas](#)

[Flexible working: Types of flexible working - GOV.UK \(www.gov.uk\)](#)



4. Recent case law

At the end of last year an employment tribunal found against a manager's request to work entirely from home. Employment Judge Richter in hearing the case of *Miss Wilson v Financial Conduct Authority* said:

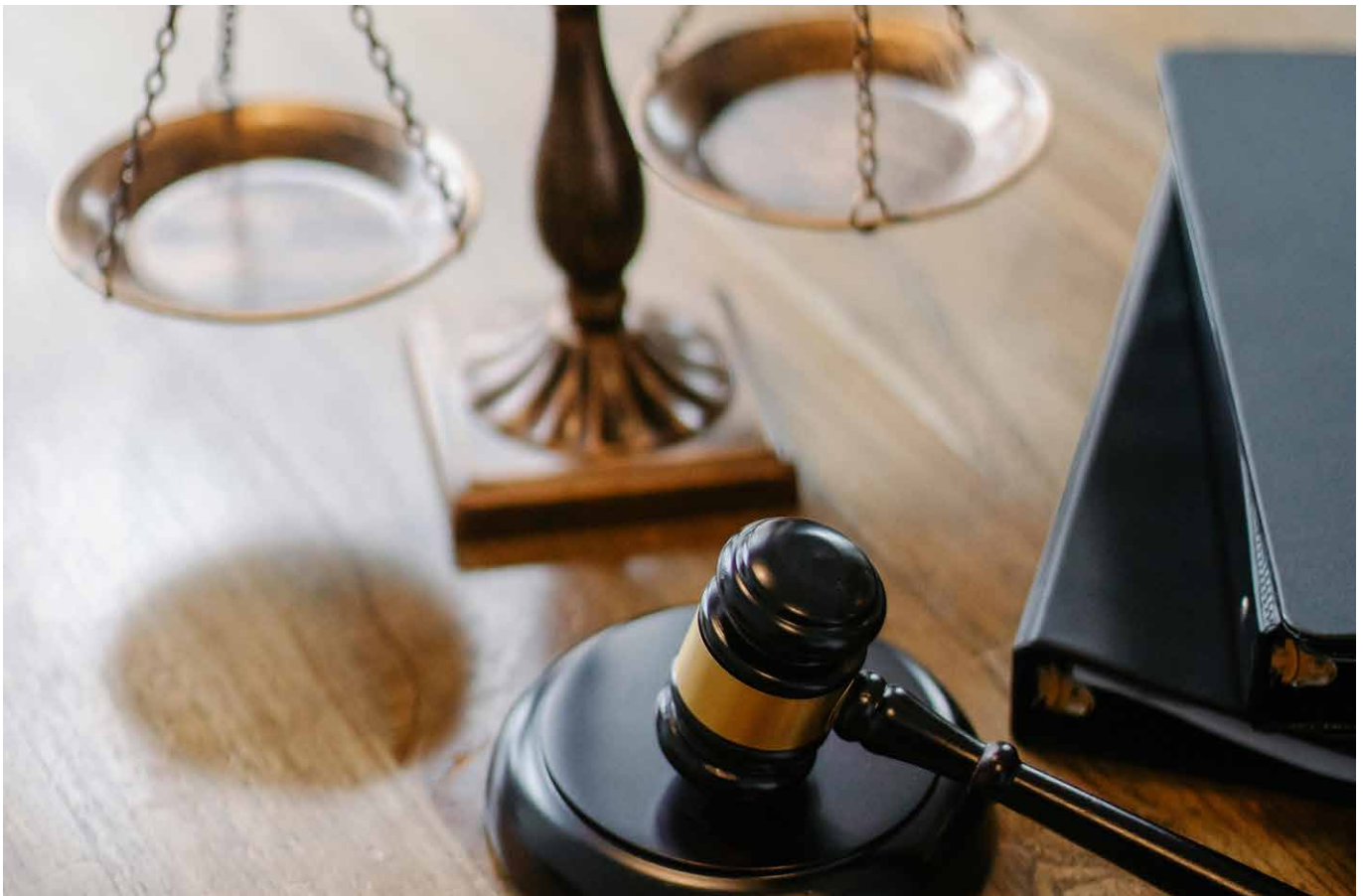
"Importantly in my judgment at the moment there is no right to require an employer to permit that an employee works exclusively remotely but as is engaged in this case, there is a right that an employer considers such a request in accordance with the statutory scheme."

"Again, I readily acknowledge Miss Wilson's excellent references and performance reviews and it is clear that she is performing well in her work, but ultimately, she is not working in the way envisaged by the Respondent. As such these factors do seem to me to highlight areas where the Claimant's work would not to the quality or performance that her employers would wish if the application was granted."

The case doesn't set a precedent however, more it is a reminder that there is a process, and all applications need to be judged on their merits. With different organisations having different needs and employees fulfilling a host of different roles, being clear on the expectations of where and how these roles can be performed to the benefit of employer and employee is vital.

It is also true that employers and employees can agree flexible working arrangements informally (without the need for a formal request), although it would still be advisable for both parties to have a process to agree how this would be managed.

[Miss Wilson v Financial Conduct Authority: 2302739/2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/cases/miss-wilson-v-financial-conduct-authority-2302739/2023)



5. How is our health and safety affected by flexible/hybrid/remote working arrangements?

It must be remembered that employees as well as employers have a duty to protect the health and safety of themselves and other when at work, wherever that may be. While many of the general policies and procedures should not be affected by where people are working, there are additional points to consider.

Whether working at home or remotely, activities should be suitably risk assessed. Particularly with home working the Health and Safety Executive (HSE) advises, "it is important to keep a balanced and proportionate approach for home workers. In most cases you do not need to visit them to ensure their health and safety, but you should make sure they have a healthy and safe environment to work in." There may be circumstances where you may decide to visit and employees home where specific risks exist where they may need an additional assessment.

Some of the more specific points to consider include:

Electrical equipment - For home or remote work, the employer remains responsible for any electrical equipment employees use for work. Employees should be encouraged to check leads and sockets for damage before use and employers maybe consider increasing the frequency of, for example, portable appliance testing if the equipment is being more frequently moved and used.

Accident/injury/emergency – Emergency contact details and arrangements should be agreed for home and remote workers. Most accidents at home, unless they occur because of the work activity being done or the equipment the employer provided to carry out that work, would not be reportable.

Lone working – People potentially working in isolation on a regular basis need to be recognised and suitable procedures put in place. Regular contact is important not just for physical safety but from a mental health and stress perspective too.

DSE - Employees who regularly use display screen equipment (DSE) as a significant part of their normal work (daily, for continuous periods of an hour or more) would be classed as 'DSE users', and therefore captured by the DSE Regulations, whether at home, remote or office based. Where these workers are remote or at home, while they will need an appropriate DSE assessment, HSE advice is, "in most cases you do not need to visit them to carry out the assessment, unless you decide there is a need to do so. Your workers may complete a self-assessment provided they have been given suitable training, for example by explaining how to use an ergonomic checklist or self-assessment tool."

HSE also advises, "make sure those working at home can achieve a comfortable, sustainable posture. They may not need office furniture or equipment at home to achieve this. But you should check if their own equipment is suitable." Different organisations have responded to this advice in different ways and much of which is dependent on the individual and what activities are being performed.

General work environment - As a further reminder to employees working from home should also be made aware of:

- The need to keep their workplace/work area tidy and free of obstructions;
- The importance of adequate lighting for all the tasks they perform;
- That protections such as fire alarms are in good working order; and
- The need to structure their working day to allow for regular breaks/change of activities.

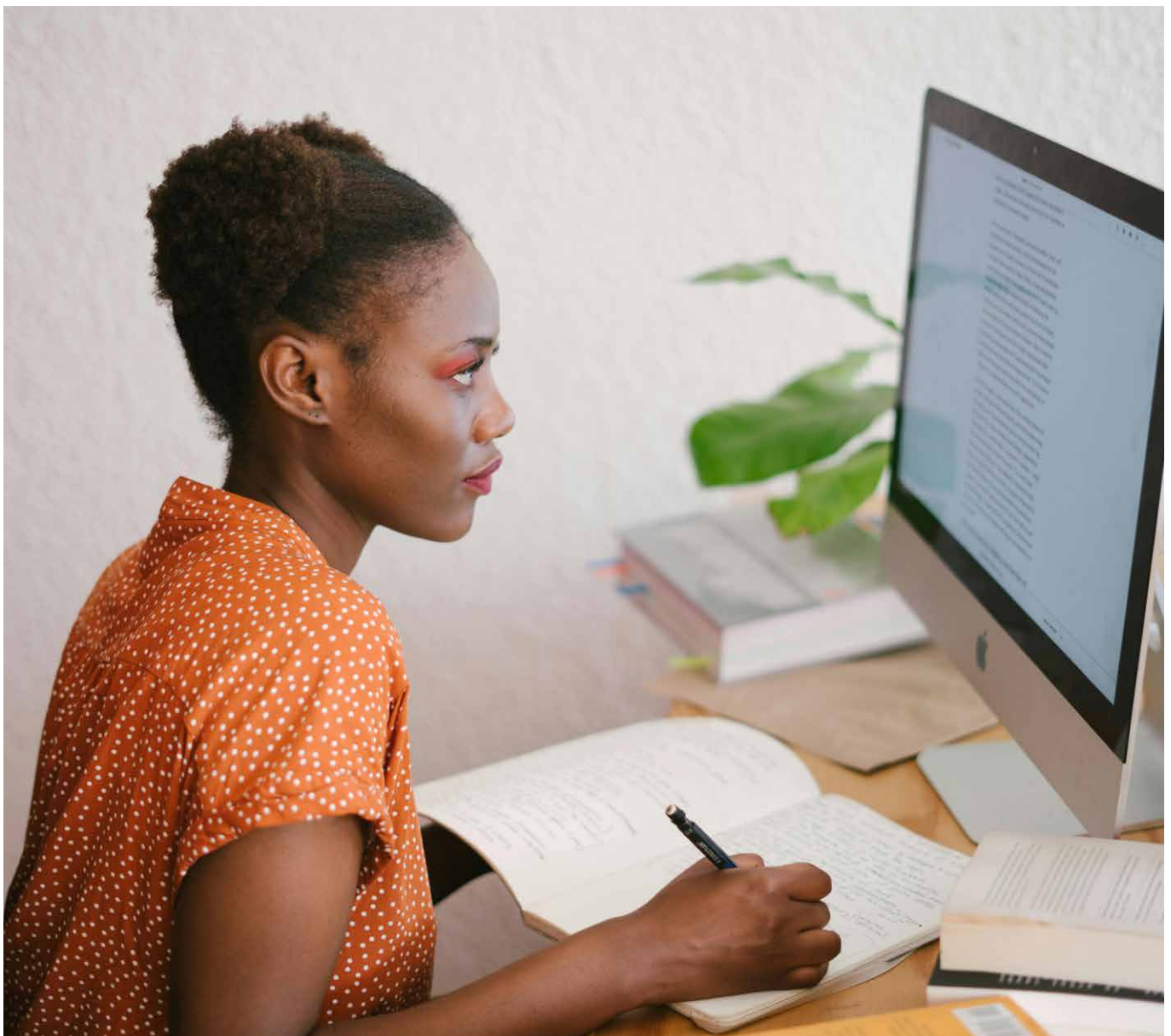
There is a range of information and resources available from the HSE covering these topics, such as:

[Managing home workers' health and safety - Overview - HSE](#)

[Working with display screen equipment at home- MSD - HSE](#)

[First aid in work - What do you need to do? - Overview - HSE](#)

[Home working – your health and safety responsibilities \(hse.gov.uk\)](#)



6. Other considerations

- **Clear communication channels and guidelines are essential** - With a workforce less physically connected, how do organisations maintain equality and inclusivity, as well as not disadvantaging employees, or lose visibility of them?

And as a consequence of this, how do managers effectively monitor and manage remote employees, not just in terms of work activities but welfare and wellbeing?

- **Insurances** – Does the insurance your company has in place, particularly employer’s liability insurance, provide cover to reflect the level of home and remote work, or do your employees need to make sure their own insurance covers them for working at home?
- **Data security** – Has adequate provision been made to recognise that personal data and confidential information may be being distributed, used, and stored in a variety of locations where control is not as strong or robust as the office. How is this managed?
- **Cyber security** – Allied to the point above, with devices potentially away from the office for extended periods of time, what process do you have in place to make sure any necessary protection/updates/patches/etc. have been installed?
- **Equipment** - Employers have a duty to ensure employees have the appropriate equipment to carry out any work they do from home. How this has been delivered by organisations has varied, with some providing everything, and others a minimum. ACAS advise:

“You should regularly review how equipment and technology is working, and agree with your staff and their representatives:

- What’s needed to do the job – for example, a reliable and secure internet connection, or a suitable desk and chair;
 - Who will provide or pay for equipment and repairs; and
 - What technical support and training is needed - for example, to set up any new equipment or technology.”
- **Liability** – The recent case law mentioned above deals with the specifics of a hybrid work request. But you also need to be mindful of the potential for other types of liability now and in the future. For example, in 2022/23, 473,000 workers were suffering with work-related musculoskeletal disorder (new or long-standing) (HSE figures), and many of these related to DSE and manual handling. If these aspects are not properly managed, for those working remote or flexibly as well as those ‘in the office’, they could lead to enforcement or claims.

7. In summary

Through the pandemic, flexible working was the primary means of navigating the issues around organisations continuing to operate, and it benefited both employer and employee. Since the pandemic, many organisations continued to invest in allowing staff to work more flexibly, and it has been recognised that such practices can help and support, better work/life balance, health, and wellbeing, and create opportunities for offering more people access to employment.

It does not come without challenges however, identifying cohorts able to successfully adopt styles of flexibility, varies across sectors and levels of employment, providing them with the means and tools to work, can similarly vary, and how they are supported, are just some of the areas that organisations need to better understand.

As we come to a time where pressure on employees to return to the office seems to be increasing, how we manage this transition is going to be key. Already anecdotal evidence indicates staff retention, recruitment and satisfaction are being affected by the type of flexibility in working style organisations are offering.

Judge Richter sums it up well in a further part of his tribunal findings when he said,

“This is a case which raises a key issue in the modern workplace, and which will no doubt be the subject of continued litigation. The availability of good quality technology to link people together has had a wide-ranging impact on the traditional structures of business operation. The need for staff to provide a physical presence at an office location is a debate which many companies are now engaged in and which the solutions arrived at will no doubt differ considerably from employer to employer, there will not be one solution which will work for all companies or even for all roles within a company. There is at the heart of many of these considerations a ‘qualitive debate’ as to whether face to face or virtual contact is better. Ultimately it may be the case that each situation requires its own consideration.”



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