

Amending and Extending the Right to Request Flexible Working to Parents of Older Children

Consultation on implementing the recommendations of Imelda Walsh's Independent Review

Carers UK response

November 2008

1. About Carers UK

- 1.1 Carers UK represents the views and interests of the six million carers in the UK who care for their frail, disabled or ill family member, friend or partner. Carers give so much to society yet as a consequence of caring they experience ill health, poverty and discrimination. Carers UK seeks to end this injustice and will continue to campaign until the true value of carers' contribution to society is recognised and carers receive the practical, financial and emotional support they need.
- 1.2 Carers UK is an organisation of carers, for carers, with a reach of around 1,500 organisations, including many run by carers, who are in touch with around 950,000 carers between them. Including Carers Week our reach extends to around 4,000 groups and 2.5 million carers.
- 1.3 Carers UK runs an information and advice service and we answer around 16,000 queries from carers and professionals every year. We also provide training to over 2,600 professionals each year. Our website is viewed by nearly 300,000 unique visitors and nearly 1000 carers are members of our website forum.
- 1.4 Carers UK has offices in England, Wales, Scotland and Northern Ireland. This response reflects the views of the organisation, UK-wide.
- 1.5 From 2001 until 2007, Carers UK was the lead partner in a European Social Fund EQUAL programme, Action for Carers and Employment (ACE National) which worked to support the inclusion of carers in employment and training. It was a highly innovative partnership which led to the creation of **Employers for Carers**, an interest group of major employers, employers' organisations and Government agencies. Employers for Carers, chaired by BT and supported by Carers UK, has worked successfully over recent years to promote to employers and policy makers the business benefits of supporting carers in the workplace.
- 1.6 Although the funding for ACE National has now ended, partners are committed to continuing their working relationship to take the carers and employment agenda to a wider membership forum. Employers for Carers will therefore be launching as a

membership forum on 27 January 2009 with the support of Carers UK which will also be acting as its secretariat. Its purpose will be to promote awareness of carers in the workplace and offer employers practical support to develop and benchmark good practice. It will also be launching a wide range of innovative resources for members and a dedicated interactive website. Employers for Carers has also made a **specific commitment to work with Government** to deliver the pledges promised in the Prime Minister's National Strategy for Carers.

2. Introduction and summary

2.1 Carers UK welcomes the opportunity to respond to this consultation as it is of critical importance to our members and other carers across the UK. Ensuring better support for those carers who are able to combine caring with paid work is one of our key objectives, since remaining in work has huge benefits for carers' income, confidence and social inclusion. Many carers want to work and we have carried out extensive research on the barriers to work and the support that would make a real difference. These include: the right to, and support to access, flexible working; tackling discrimination and harassment in the workplace; providing access to employment and training; removing disincentives from the benefits system; and assistance with finding and paying for appropriate care services which will enable them to work.

2.2 From the analysis we have done of the 2001 Census we know that the numbers are significant; around 1 in 7 working people is a carer. Around 3 million of the 4.5 million working age carers in the UK are in paid work, leaving around 1.5 million who are relying solely on benefits. Around half of these working carers work full-time and the peak age for caring is 45-64, when many employees will have gained valuable skills and be employed in senior positions. However, one in five carers gives up work to care¹ and Carers UK research found that they had lost out on an average of £11,000 each year as a result of giving up work, reducing their hours or taking a more junior position².

2.3 As the population ages, the issue of balancing work with the role of caring is increasingly urgent; employers, large and small, need to recognise the business case for supporting employees who have caring responsibilities. We have responded to the consultation paper with this perspective in mind. Key points from our response are summarised below:

- We welcome in principle the proposed extension of the right to request to parents of older children. However, we believe that there are other important issues to be considered alongside this proposal.
- These include the case for extending the right to all employees, the question of extending it to day one of employment and points to be considered in the forthcoming review of the definition of 'carer'.
- Following the ruling in the Coleman vs Attridge Law case it must now be a priority for Government to ensure that carers are not treated unfairly in the workplace, including those who wish to exercise their right to request flexible working.
- Government should assist businesses to implement flexible working arrangements by disseminating good practice and leading by example.

¹ Equal Opportunities Commission survey, 2004

² Out of pocket: a survey of carers' lost earnings, Carers UK, 2007

- There must be 'join up' between work to implement the National Carers Strategy (including the awareness raising campaign on flexible working and proposed good practice guide for employers) and work to implement flexible working arrangements overall.
- We have concerns about completely removing the obligation for employers to send formal confirmation when approving a request. We believe that there should be some form of written confirmation but that the format of this could be flexible.

3. Extending the right to request to parents of older children – general comments on the consultation paper

3.1 Carers UK notes that the Government has accepted the recommendations of Imelda Walsh's Independent Review 'in full' and that this consultation is on 'issues relating to the implementation of these changes'. We warmly welcomed the extension of the right to request flexible working to carers in April 2007 and believe that this has been a significant step. We also welcome in principle the proposed extension of this right to parents of older children. However we do believe that there are other important issues to be considered alongside this proposed extension and we outline our comments on these below.

3.2 Firstly, as the Department will be aware, under the National Carers Strategy published in June 2008 the Government has committed to **review the definition of 'carer'** in the Flexible Working Regulations. Carers UK has warmly welcomed this review which will consider the 20% of carers who currently miss out because they are not a close relation of the person they care for, or because they do not live with them. Evidence suggests that most employers are open to requests from people not currently eligible under the law as 'carers' such as those who care, for example, for an elderly neighbour. We do not therefore anticipate such an extension being problematic. However, it would be an important step in promoting flexible working for the growing number of people who will have caring responsibilities at some point during their lives. We worked closely with the Department's predecessor, DTI, on the extension of the right to request to carers throughout the process of developing the legislation, regulations and guidance and promoting this to employers and carers. We would also welcome the opportunity to work with BERR on the definition review as needed.

3.3 As referred to above, we welcome in principle the proposed extension of the right to request to parents of older children. We also consider, however, that if the right is to be extended further (and in what would be quite a substantial way) there is now a strong case for it to be **extended to all employees** rather than to parents only. We believe this for two main reasons - both because it is desirable (and is something that good practice employers are already doing) and because it would also make most sense in terms of practical application in the workplace.

3.4 Firstly, we believe it is desirable because it would help create a culture in the workplace where flexibility is the norm, thereby reducing the stigma around requesting flexible working. While surveys are indeed revealing that the majority of requests are being accepted by employers, what is harder to gauge is the number of cases where employees have felt unable to make a request. We receive regular calls to our helpline, Carersline, from carers who are facing harassment and discrimination

at work. We know that 1 in 5 carers do leave work to care and it is likely that – in addition to those whose requests are refused – there are a number of carers who did not feel that they could ask.

3.5 We do, of course, recognise that flexible working will not be possible for all employees who request it. However we believe that at least having a policy of making the right to request applicable to all would help to reduce the tensions which can sometimes develop between parents and non-parents / carers and non-carers. These tensions can cause problems in the workplace, for example harassment and negative attitudes from work colleagues are often reported to us by carers. Employers may also sometimes be reluctant to offer flexibility to eligible employees because of fear of resentment from their colleagues.

3.6 The latest CBI Employment Trends Survey 2008 has revealed that 47% of employers are going beyond the law and offering flexible working to all employees. From our experience, too, it appears that as a general point of good employment practice many employers have begun to accept that requests for flexible working will be considered on their merits without the employee having to fall within one of the categories specified in the legislation. Employers tell us that, among their reasons for offering the right to all employees, they consider that it can help to counter negative attitudes within the workplace and promote a more positive culture. The policy is seen to be fair with decisions about allowing flexible working being based solely on the grounds about whether it is possible operationally. While there may be some concerns about the possible implications of large numbers of employees requesting to work flexibly, in practice the majority of such requests are likely to come from employees who already have the right anyway. The employer also still has the right to refuse the request if there are reasonable business grounds for doing so.

3.7 On an additional point, as far as carers are concerned, we also believe that it would be desirable to extend the right to request to **day one of employment** rather than retaining the current six months service period. This would be a specific help to those carers seeking to return to work who, again, often call our helpline because they are having difficulty getting back to work while they have caring responsibilities. For these carers the six month qualifying rule can present a significant obstacle at the critical point of transition back into employment. We recognise that for practical reasons, however, it may be difficult to extend the right to carers only and that consideration may therefore need to be given to extending it to all employees. In this case the benefit would be that there would be a simplified process both for carers and employers as it would take away the need to have procedures for cut-off times for length of service.

3.8 However the right to request flexible working is extended, we believe that it is vital that there is **'joined up' promotion of flexible working** from Government including between BERR and DWP. This should include promotion of flexible working by Jobcentre Plus and efforts to highlight the benefits of employing carers. Many discussions took place on these topics in the Employment Task Force for the National Carers Strategy and it is important that this policy is taken forward.

3.9 The consultation paper refers to the European Court of Justice (ECJ) judgement of 17 July 2008 in the case of **Coleman vs Attridge Law** where it was ruled that

member states are required to prohibit discrimination and harassment towards employees who are associated with someone with a disability (in this case the parent of a disabled child). The ECJ's confirmation that the European Employment Framework Directive does provide protection from 'associative discrimination' means that employers will have to ensure that employees who are associated with (i.e. including carers of) disabled people are not treated differently to their colleagues.

3.10 Carers UK welcomes the recognition of the consultation paper that this ruling has implications for UK family friendly policy such as the right to request flexible working. We believe that the judgement should strengthen the position of employees such as carers in requesting flexible working. Currently direct discrimination and harassment appear to be major barriers to carers' full participation in the workplace as they do not have direct protection under discrimination law and nor, of course, is there a 'right to' flexible working. It must now be a priority following Coleman to ensure that protection from unequal treatment is extended to carers. While this does not mean an automatic right to flexibility, it does mean that carers who request the right to flexible working should not be treated any less favourably than other employees.

3.11 In our response to the Government's Discrimination Law Review (September 2007) and to the National Carers Strategy (June 2008) we called for the Government to extend protection to carers in anti-discrimination legislation both in the areas of employment and goods, facilities and services. We also called for this protection to be extended in the proposed single equality duty which would give the public sector further responsibilities to promote equality between those with caring responsibilities and those without, as already exists in Northern Ireland. In order to ensure that all employees with caring responsibilities are able to exercise their rights we believe that it is essential that there is such legal underpinning. Good practice employers have already recognised the importance of retaining their carer employees but anti-discrimination protection would help ensure that this practice was adopted more widely. The Coleman ruling gives even more urgency to these arguments.

4. Information and improved guidance (Section A of the consultation paper)

Question 1: Having regard to the existing guidance and templates available on the Business Link website and to any particular characteristics of parents of children aged 16 and under, what more do you think that Government can do to assist businesses, particularly small businesses, in implementing flexible working arrangements?

4.1 One of the general issues identified in the consultation paper is that of the need for improved information and guidance for employers. We believe that one very important way of assisting businesses in implementing flexible working arrangements is through the **dissemination of good practice** through appropriate channels. From our experience of working with Employers for Carers, employers are most receptive when they hear the messages from other employers. We therefore believe that it is important to engage with appropriate business and industry forums such as the CBI, British Chambers of Commerce, Federation of Small Businesses, Employers for Carers and others in order to communicate most effectively with employers.

- 4.2 It is also important that Government itself should **lead by example**, particularly in terms of promoting senior level managers who have flexible working arrangements, and publicising this practice.
- 4.3 Carers UK welcomes the fact that that BERR and GEO will be launching a campaign (this year) to increase awareness of the right to request among both employees and employers. As the Department will be aware, the National Carers Strategy also includes a commitment to 'an **awareness raising campaign** to ensure that carers, the people they support and employers are aware of the right to request flexible working and the benefits it can bring'. Carers UK has welcomed this commitment as something we have long been calling for. We would welcome the opportunity to work with BERR and GEO on the campaign, both in terms of reaching carers and targeting employers via the Employers for Carers forum.
- 4.4 We have already mentioned (in Section 1) that Employers for Carers has made a specific commitment to work with Government to deliver the pledges promised in the **National Strategy for Carers**. To this end, the former Minister for Carers, Ivan Lewis MP, together with officials from BERR, DWP and DH, met representatives of Employers for Carers' Leadership Group in August to discuss future action plans. The meeting agreed that a Memorandum be drawn up between Government and Employers for Carers to look at what each side can contribute and expect as outcomes. We will be working with Leadership Group members and relevant Government officials to take this forward over the coming weeks. Besides the awareness raising campaign, other relevant areas of work pledged in the Strategy are a proposed **good practice guide** for employers on the benefits of employing carers. It is important that work in these areas - i.e. implementation of the National Carers Strategy and of the flexible working legislation - is 'joined up' and we would welcome the opportunity to work with the Department on both these fronts.
- 4.5 In the light of the Coleman case, we believe that **Government information and guidance** needs to be clear that carers must not be discriminated against if they request to work flexibly. Attention needs to be given not only to the employer's response to the request for flexible working but also to the broader issue of ensuring that there is an open and non-discriminatory culture within the workplace so that employees do not feel inhibited to exercise their right to request flexible working. It should also be recognised that most carers want to remain in, or return to, work. Many carers would love to remain in or return to employment but this is not possible because of the level and complexity of their caring responsibilities and/or because of the lack of alternative care services available. It is important in the light of Coleman that they are not discriminated against because of their caring role.
- 4.6 Government information and guidance should at all times express the 'spirit' as well as the 'letter' of the law. It should emphasise the need to achieve culture change in the workplace and give employers and employees ideas about how they might go beyond the law or use informal mechanisms to design more flexible outcomes. Where possible guidance should include case studies as these are a powerful and relevant way of getting messages across to employers.

- 4.7 In terms of assisting **small businesses**, we believe that the Government should be producing tailored information and guidance. Again, the focus should be on disseminating good practice, including case studies, through relevant forums such as the Federation of Small Businesses and via the media, internet and other appropriate channels.
- 4.8 In the consultation on the National Carers Strategy we argued for a dedicated service to help SME employers to provide carers who work in this sector with guidance and support and help the SME to identify options for flexible working and review their business impact. As we have mentioned above, it is important to give employers and employees ideas about how they might use informal mechanisms to design more flexible outcomes. This is particularly relevant to small businesses which will not usually have the resources or support structures found in larger size organisations. Again, we would welcome the opportunity to develop proposals further with the Department and with the involvement of Employers for Carers.

5. Deregulatory measures (Section B of the consultation paper)

Question 2: Would you agree that it is sensible to remove the obligation for employers to send a formal letter whenever they approve an employee's request to change their working pattern? Please outline your reasons why you think this.

Question 3: Please consider the partial Impact Assessment (attached at Annex D): we would welcome any comments on its analysis of costs and benefits, a key element of which is the analysis that the deregulatory measure would lead to a 65% reduction of the administrative burden associated with this particular information obligation.

- 5.1 We understand the reasons for the consultation paper suggesting the removal of this obligation for employers but we do have concerns about what would happen if an understanding was subsequently disputed between the employer and employee. Where arrangements are relatively informal misunderstandings can easily arise over what was discussed. For example, people can come away from meetings or conversations with different impressions about what was said and agreed. An employee could be in a relatively vulnerable position if they genuinely thought that an agreement had been made but the employer denies this at a later stage.
- 5.2 We therefore have concerns about completely removing the obligation for employers to send written confirmation when approving a request. We appreciate that a lot of requests are dealt with relatively informally and that this need not necessarily be via a formal letter. However it is important that the communication is clear in order to avoid any possible future misunderstandings. We therefore believe that there should be some form of written confirmation but that, as long as it is clear, the format of this could be flexible, for example, either by letter or email.

For further information, contact:

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