# Home and hybrid working

Following the widespread experience of employees working from home during the Covid-19 pandemic, some employers are starting to implement remote working arrangements on a longer-term basis. This Inbrief provides guidance on how to approach the introduction of home and hybrid working and the legal and practical issues to consider.

## General questions

Many employers have been taking the opportunity to reconsider their working arrangements. Reflecting on their experience of remote working during the pandemic, they are looking at "hybrid" arrangements that combine office-based and remote work. Office-based workers are also increasingly expecting remote working to be an option.

In this Inbrief, "hybrid working" refers to arrangements in which employees split their time between a workplace such as an office and working remotely - for example, at home or at a local co-working space. Employees can also work fully from home, where they are rarely if ever required to come to the workplace. It is more common for employers to introduce hybrid rather than fully homeworking, but the same principles apply to those working permanently from home.

Acas has published guidance on working from home and hybrid working which can be accessed here.

Whether this type of working is practicable and, if so, how it will work will depend on the context - the nature of the organisation, the role and the individual's personal circumstances. Some jobs can be carried out remotely. Others, particularly those based on direct "in-person" presence (e.g., waiter, security guard, dentist) would be inappropriate for home or hybrid working.

Whether an individual can work remotely in an effective way is likely to depend on the nature of their home, the space and facilities available to them, childcare and other caring responsibilities, and the nature of their relations with other occupiers. To facilitate remote working and avoid over-dependence on individuals'

personal arrangements, some employers have set up local hubs from which several employees might work.

Before setting up home or hybrid working arrangements, you should give careful thought to what you are trying to achieve and why:

- Are you actively encouraging this type of working or just agreeing to it if staff push for it?
- How flexible should the arrangements be?
- How will you maintain team culture and cohesion?
- What arrangements will you make for supervision, particularly with inexperienced junior staff?

You should, of course, also consider what your employees want. Some may value the extra time that working from home gives them. Others may prefer to be in an office because they live in a small bedsit, or it enables them to meet colleagues and make friends.

The advantages of successfully introducing hybrid working may include increased productivity and job satisfaction, attracting and retaining a more diverse workforce, greater loyalty, lower turnover and improved working relationships. In the longer term, you may be able to reduce your premises costs.

It may be helpful to consider the following:

- What work really needs to be carried out in the workplace and what can be done elsewhere.
- To what extent improved technology may help, identifying any specific requirements.
- How teams will communicate and work together.
- Any core times when employees need to be available.
- How often a team should meet in person.

- Whether customers or other stakeholders expect particular tasks to be carried out at specific times.
- How to introduce new recruits to the organisation.

## Introducing home or hybrid working

What is the best approach if you are proposing to introduce home or hybrid working? In theory, employees might be encouraged to make a statutory request to work flexibly, and many employers may have a policy on such formal requests. But the statutory scheme is not designed for changes initiated by an employer and is also quite formulaic and restrictive.

If you want an open discussion about home and hybrid working arrangements, both to understand the numbers that might be interested and the type of arrangements that employees would value, it is better to take a more open approach. For example:

- Produce a paper on possible hybrid working arrangements with proposals for how they might work.
- Circulate it to staff and any representatives for comments and organise team discussions.
- In light of comments and discussions, develop a policy.
- Ask for specific proposals by individuals on their working arrangements, then consider and seek to agree these.

Be aware that a discussion may become a more formal request for reasonable adjustments by someone with a disability, or a statutory request to work flexibly due to caring responsibilities or for other reasons. In either case, you should clarify the request with the employee and deal with it under your usual policies.

These may be requests for permanent homeworking as well as for hybrid working.

## Contractual and policy arrangements

You may need to review your employment contracts and make appropriate changes to reflect the new working arrangements.

As well as outlining the scheme for home or hybrid working, you should consider whether you need to require an employee to attend the office for specific purposes. This might include, for example, requiring employees to attend the office for training, appraisals, or disciplinary issues, together with how expenses for travel to and from the office should be met. The usefulness of such a right in practice may depend on where the individual is living and how much notice you are able to give of a change to normal arrangements.

If an employee moves home, this may mean higher travel expense claims or a practical barrier to attending work at the office, so you could consider placing limits on how far an employee can move from a particular location.

You should also develop a home or hybrid working policy that sits alongside the contract. This might set out the organisation's commitment to encouraging this type of working, how such arrangements will operate and the expectations of employees and managers. The policy is likely to be non-contractual, meaning you can make changes without employees' agreement.

Unless you are confident you have identified "the way" for your organisation to deal with remote working, it would be sensible to build in a trial period and review - both the arrangements as a whole and any individual's personal working situation. Contracts should include both a trial period and a level of flexibility, with a specific (contractual) right to unpick arrangements if they do not work out as expected. You may want to retain the flexibility to alter the arrangement temporarily and/or make agreement to homeworking conditional on certain conditions being met (such as satisfactory performance being maintained).

You may need to modify other policies such as IT, homeworking, sickness, disciplinary and grievance, benefits, expenses and data protection to reflect the fact that employees may be working remotely. There are, for example, likely to be specific requirements related to IT and data security (see below).

Many employers are receiving requests from employees to work from "home" overseas for an extended period, or to split their working time between the UK and an overseas location. Employers need to consider a variety of issues (including tax, social security, immigration and employment implications) before agreeing to any such request. You can find out more on these issues in our Inbrief on remote working overseas.

## Management and supervision

Consider how staff working remotely will be managed and supervised. It will be important to ensure effective engagement and to arrange regular one-to-one meetings to discuss what the individual is doing and their performance. In the early days of remote working during the pandemic, it was not unusual for managers to express concern that employees might not work properly at home. Although experience has suggested that employees at home are likely to work as effectively as they would in an office (and perhaps more so), such concerns may linger.

Managers may need to focus less on what employees are actually doing (are they sitting at their desk, when did they get back from lunch?) than on the outcomes of what they do and the results. This may depend on the specific tasks employees are performing and the evidence available as to what they have been doing. A different approach to management and assessment is likely to be required and there may be a need for manager training. You should also consider whether appraisal objectives need to be modified to fit with home or hybrid working.

## Inclusion and fairness

It is important to treat all staff fairly and equally when introducing home or hybrid working.

Although one would expect hybrid working arrangements to promote diversity, rules and practices that limit hybrid working may amount to unlawful indirect discrimination unless they are for a good business reason and are proportionate. Making changes to arrangements, such as requiring more office-based work, may risk allegations of discrimination by employees who face difficulties. Long term homeworkers are in practice more likely to be women with caring responsibilities, raising the risk of indirect sex discrimination claims. Disabled employees may also complain about disability discrimination if they are disadvantaged by limits on homeworking.

Everyone should be given the same access to work, support and opportunities for training and promotion. For example, you will need to ensure that the career advancement of those who work on a hybrid basis does not suffer, perhaps because they have less personal contact with significant managers. This is often referred to as proximity bias. Meetings should be scheduled so that all staff can take part in conversations and activities. Again, treating individuals less favourably as a result of their working location (even unconsciously) could also raise discrimination risks

You should also consider whether new joiners can work on a hybrid basis, or whether they need to be in the office for a period to facilitate training and supervision. Although such rules may give rise to age discrimination issues (i.e., if new joiners are likely to be younger), employers may be able to justify them as a proportionate means of achieving a legitimate business aim.

In general terms, the best line to take is to be flexible and open to different approaches, ensuring there are sound business reasons for any restrictions imposed.

## Legal and practical issues

### Equipment

If remote working is to be a success, it is important that employees have the equipment they need to perform their role. Although specific requirements will depend on the job, most employees will need suitable IT equipment and devices, an ergonomic chair and desk, and effective lighting. They may also require a shredder to ensure confidentiality.

Employers may wish to produce a list of recommended equipment for homeworking and should consider either providing equipment themselves or meeting the costs of employees setting up a "home office". Under health and safety legislation, employers are required to provide or pay for certain equipment required by the regulations including, for example, display screens and chairs. You should also ensure that your IT department is able to provide remote support for any issues that arise.

Disabled employees may be entitled to auxiliary aids as a reasonable adjustment. If such an aid is reasonably needed, you should make sure it is provided to the individual when working from home at your organisation's expense.

It is generally more tax efficient for employers to provide home office equipment to their employees rather than reimbursing employees' costs. The provision of home office equipment by an employer is generally exempt from tax and National Insurance contributions (NICs) provided certain conditions are satisfied, whereas sums paid to reimburse employees who have purchased their own equipment are subject to income tax and NICs.

However, save for mobile phones, it is important to show that the employee is not making significant private use of office equipment.

Provisions regarding private use of office equipment should be included in policies setting out the circumstances in which private use is permitted and warning employees about potential disciplinary consequences if the policy is not followed.

### Property and insurance

Employers are required to have employers' liability insurance. You should tell your insurers that you have employees working from home. You may also want to check that your business insurance covers your property when in employees' homes (for example, laptops and other equipment provided to support homeworking).

If employees have home insurance or a mortgage, they should be advised to tell their insurer or lender that they are working from home in case it affects their cover.

### Expenses

Although an employer has no legal obligation to reimburse expenses incurred by an employee working from home, it is not uncommon to meet actual expenses or to contribute a specific sum on account of expenses. Employees working at home may incur additional expenses on items such as heating and lighting, metered water, business phone calls and perhaps increased insurance premiums. You should consider your approach to this and review your expenses policy, taking account of the tax consequences.

Payments by employers to reimburse employees for reasonable additional household expenses incurred while working under homeworking arrangements are exempt from income tax and NICs provided the employee works at home regularly by agreement. HMRC will accept a payment of £6 per week without requiring supporting evidence and may approve a greater amount if there is supporting evidence of the cost.

If the employer does not reimburse an employee's additional household expenses, the employee may be able to claim tax relief for those expenses. In practice, aside from concessions introduced for tax years 2020-21 and 2021-22 in response to the pandemic, the rules are strict and it is unusual for employees to receive such tax relief.

### Health and Safety

Employers have duties relating to the health and safety of employees which apply even if they are working from their own home. In particular, there is a duty to provide a working environment that is, "so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work".

You must conduct a risk assessment of all work activities including those of home and hybrid workers with a view to identifying hazards and assessing the degree of risk. You must also take measures to remove any hazards or, where this is not reasonably practicable, to minimise the associated risks. While the Health and Safety Executive (HSE) took a relatively relaxed approach to this during the pandemic, it is likely to expect stricter compliance as arrangements become more prevalent and longer-term.

The HSE has published updated homeworking guidance which applies both to those working from home long term or as part of hybrid working arrangements.

In the context of home and hybrid working, you need to give special consideration to stress and mental health. Some employees may find the conflation of work and home life leads to an increased risk of stress. You should encourage clear boundaries and the taking of adequate rest breaks. Contact between those working at home and their colleagues is likely to be less frequent which may make supervision of work more challenging for managers, especially in relation to new starters or junior employees. It may also make it harder for managers and colleagues to recognise someone who is struggling.

Addressing this may require more proactive steps than in a face-to-face environment. The government has published guidance for employers on how to address loneliness. This suggests setting up a comprehensive wellbeing programme, promoting personal and work-related networks and training managers in having difficult and emotional conversations. The guidance also advises the creation of space, time and opportunities for connection.

Other issues to consider are:

- Equipment supplied by employers must be suitable, in good working order and inspected regularly. There must be suitable and sufficient lighting.
- Employers have various specific duties in relation to computers and display screen equipment (DSE) including laptops, tablets and touch screens. These include ensuring that workstations meet specific requirements in the Health and

Safety (Display Screen Equipment) Regulations on equipment and the environment. These also include provisions on breaks, changes in activity and eye tests, together with provision of information and training. The HSE has produced a DSE workstation checklist.

▶ There are duties to ensure that electrical equipment (such as a laptop or scanner) is safe and to supply appropriate first-aid provisions. In practice, homeworking is likely to be low risk and a simple first-aid kit should be sufficient. Accidents and injuries when working at home should be reported to the employer.

Measures to minimise the impact of these risks might include:

▶ Checking that each employee feels the work they are being asked to do at home can be done safely.
▶ Providing guidance and information to employees to help them review their working environment.
▶ Putting in place mechanisms to enable employees to raise any specific health and safety concerns.
▶ Ensuring adequate supervision of junior or less experienced staff members, including new joiners.
▶ Establishing clear expectations on both sides in relation to communications, working hours, availability and so on.
▶ Ensuring employees have avenues to report mental wellbeing issues and scheduling regular check-ins with home workers.

### Data privacy and security

Employees' normal duties to protect employer and client confidential information still apply when employees are working from home. Information security and confidentiality are more difficult to manage where employees

are hosting meetings at home with others in earshot, or without the usual office systems in place for securing devices and documents.

As an employer, you have a duty under data protection legislation to use appropriate technical and organisational measures to ensure security of personal data and to protect it from unauthorised processing and loss. This applies to personal data in an individual's home. You should carry out a data privacy impact assessment of the implications of employees working from home or otherwise remotely.

Measures that you might decide to take include:

▶ Ensuring that only the employee has access to personal data on the device and that other members of the household do not have access. In practice, the best approach is for the employer to provide the device.
▶ Encrypting the device so that if it is stolen, for example, no-one can access the data.
▶ Centrally controlled updates to software, security, password changes and the capacity to wipe the device remotely.
▶ Ensuring that when the device is moved from the office to home or vice versa, it is secure. The best protection will probably be encryption.
▶ Setting out employees' responsibilities in your homeworking policy (or other relevant policies).
▶ Rules on retention of personal data and their secure deletion or destruction. You should consider providing a shredder for paper-based records.
▶ Guidance and training on responsibilities.

The Information Commissioner's Office has produced guidance on data protection and working from home.

### Monitoring

Some employers will want to monitor employees when they are working from home. The reasons for this can vary, including to monitor productivity and/or quality of output, as well as to enable effective supervision.

Monitoring can also be used to establish what hours an employee is working, including in cases where employers are concerned that employees are failing to "switch off". This is important, as employers still need to comply with their working time obligations when employees are homeworking. For this reason, some employers have adopted "lone worker apps" which allow employees to check in and out at the beginning and end of their working day.

From a legal perspective, it is possible for employers to monitor employees, but the level of monitoring needs to be proportionate and reasonable. Inappropriate and disproportionate monitoring could lead to claims involving the employees' right to respect for private life under Article 8 of the European Convention on Human Rights (incorporated into UK law by the Human Rights Act 1998).

Employees also have data protection rights and can potentially claim that excessive monitoring amounts to a breach of the duty of mutual trust and confidence implied into all employment contracts – this may give qualifying employees a claim for unfair constructive dismissal. In relation to data protection, the Information Commissioner's Office's employment practices code contains good practice guidance for employers in this area.

Monitoring can have a negative impact on employee morale, mental health and employee relations. Therefore, you should weigh the perceived benefits of monitoring against the potential impact on productivity and ensure that you implement any monitoring measures as sensitively as possible.

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