

‘Letters aren’t good’: the operation of the right to request flexible working post-maternity leave in UK small and medium-sized companies

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Abstract

This article contributes to existing literature on flexible working at an organisational level by presenting the results of a qualitative study of women employees and managers in small firms who have been involved in negotiating part-time hours on return to work post-maternity leave. The study finds that the right to request flexible working has become embedded in the policies of small firms and that the overwhelming experience of women employees was positive: their requests were accepted because they were perceived as valuable and consequently their managers wanted to retain them. However employees who lacked ongoing managerial support had a less positive experience. The study also examines other aspects of the operation of the right to request such as the efficacy of written policies on flexible working and the extent to which the negotiation process was formalised.

Key words: flexible working, right to request legislation, working mothers, part-time work, SMEs

Introduction

The right to request flexible working in the UK was introduced in April 2003 (by s47 Employment Act 2002, which created Part 8A Employment Rights Act 1996) and initially was restricted to employees who had parental responsibility for a child under six years old (or under-18 if the child had a disability). Since then, the right has been expanded to include a wider circle of carers who are responsible for any child under the age of 18 and in certain cases, people aged over 18 (s12 Work and Families Act 2006). The most recent change is that the right to request has been extended to all employees and the statutory procedure for consideration of requests by employers has been repealed (ss131-133 Children and Families Act 2014). Employees who have worked continuously for their employer for a period of six months or more can ask to change their hours of work, times of work or place of work on a permanent basis. Under the UK model, employers have the ability to refuse the request based on a set of broadly drafted business-related grounds. Employees who have had a request refused cannot make another for 12 months.

This article examines the right to request in a particular context, namely women who want to request part-time work from their employers following a period of maternity leave. The article will examine cases of employee-led rather than employer-led flexible working.

Literature review

The number of women in the UK who work on a part-time basis has more than doubled over the last 40 years (Connolly & Gregory, 2007:147-48) and to date stands at just over 6 million women (ONS, 2015). Not all of these women will be working part-time due to caring for young children but it is clear that mothers in this situation have increased their engagement with the labour market. The participation rate of married or cohabiting mothers with dependent children increased from 67% in 1996 to 72% in 2013 and for single mothers, the same period saw a 17% rise in participation to 60% (ONS, 2013). Part-time work is a way for many mothers to contribute to household income whilst maintaining a caring role. In 2012, for example, 59% of mothers with dependent children worked part-time hours in workplaces where it was available to them (BIS, 2012). However the transition from full-time to part-time work can be characterised by occupational downgrading, in other words moving from an occupation with a higher to a lower average pay (Connolly & Gregory, 2008;

Manning & Petrongolo, 2008). To provide one illustration, a study for the Resolution Foundation (2012) found that 44% of respondents (all of whom worked part-time) felt that they had taken a lower skilled job when working part-time compared with working full-time. There has been much academic debate about the causes of this situation. Is it a result of women's free choice to take paid work which is compatible with their parental role (Hakim, 2000) or something which is forced on them because of various constraints e.g. the gendered division of care within households, lack of quality part-time work, the high cost of childcare (McRae, 2003)? The study does not examine the motivation of women who want part-time work, but it is clear that part-time work remains a "career-limiting" move for many women (Crompton and Lyonette 2011:247).

The right to request flexible work and other so-called family-friendly policies are regarded with scepticism by feminist writers. They argue that such policies perpetuate gendered divisions of care, with women continuing to provide the main caring role, but without challenging workplace culture where the unencumbered (male) worker is still perceived as the norm (Lewis 1997, 2001; James 2009; Lewis and Humbert 2010). Lewis (1997, 2001) argues that such policies operate at the margins of organisations, allowing employers to retain and motivate core employees, but without being available to peripheral/precarious employees. Flexible working is often perceived by employers as a perk or benefit rather than an entitlement, which exists primarily for mothers rather than fathers (Lewis 1997, 2001). Lewis and Humbert (2010) concede that women are often positive about the opportunity to work part-time or flexibly, but only because they are working within circumstances which do not leave them with any real choices about their working and caring roles. Many women who work part-time are marginalised by a workplace culture which still equates commitment with the ability to work long hours and by gendered assumptions that women do not want to develop or advance their careers at the same time as being a mother (Lewis and Humbert 2010). Others have to prove themselves before being regarded as ideal workers. In times of changing perceptions about what it means to be a 'good' father (James, 2009), these gendered assumptions also work against fathers who want to be more involved in caring for their children.

Early studies at an organisational level have questioned the extent to which companies have adopted formal policies on flexible working. In their study of UK small companies, Dex & Scheibl (2001) noted several characteristics of flexible working policies: that they tended to be incremental; that small companies were less likely to have a suite of flexible working measures; that line manager support of the request was very important; that fewer small companies had written policies but that this did not translate into a lack of availability of flexible working. The importance of line manager support is also noted by Gray & Tudball (2003) and Galea et al (2014), though these studies did not focus exclusively on employees who worked for small companies. In her study of 17 Scottish-based companies of varying size which operated in the financial services sector, Bond (2002) noted that in those companies with no trade union representation, flexible working 'policies' tended to be unwritten and informal. She also noted a lack of awareness among managers about what types of leave were available for employees. In their study of Midlands-based small service sector companies, Harris & Foster (2005) confirmed that whilst companies did permit flexible working, it was usually done on an informal and reactive basis, frequently without reference to a written policy. Companies can allow employees to work flexibly without having a written policy. Supportive supervisors can, in some cases, be more important to employees' overall well-being than the provision of formal flexible working policies (Allen, 2001; Behson, 2005). However there are some notable disadvantages of not having a written policy. For example, employees who might want to work

flexibly might not be able to access it and there is also an increased possibility of managers relying too much on their subjective judgment, which may be based on the visibility of employees rather than their productivity (Bond, 2002). A recent study found that just under half of employers in the private sector had written policies on flexible working (BIS, 2014) which suggests that written policies are becoming more commonplace. However 74% of employers who offered flexible working did not have any written procedure to help managers deal with the request (BIS, 2014). This suggests that most requests are dealt with on a case-by-case basis with managerial discretion still influential. A full written policy can provide clarity in relation to whether employees qualify, what can be asked for and on what grounds requests can be refused.

Another concept which has been identified as significant by organisational studies of flexible working in small businesses is reciprocity, namely the idea of 'give and take' between employee and employer. Galea et al (2014:1091) refer to social exchange theory ('which posits that obligations are being generated through a series of transactions between parties') in trying to explain why some employees who work flexibly demonstrate greater loyalty to their employer, often to their own detriment. Dex & Scheibl (2001) refer to employees' 'individual balance sheet' in which they can build up credit (e.g. by completing overtime, increased productivity) which can be drawn on when flexible working is requested. This suggests that the right to work flexibly is something which has been 'earned' by an employee's past record. The disadvantage of a social exchange approach from the employee's perspective is that managers may come to regard flexible working as a perk which enables them to make additional demands from employees in return.

There is much discussion in academic literature of the rationales for implementing flexible working and the benefits which flexible working provides to businesses (Gardiner & Tomlinson, 2009; Bond, 2002). Retention of valued employees is frequently cited as a key benefit to employers of allowing employees to work flexibly, (Gray & Tudball, 2003; Dex & Scheibl, 2001; Skinner, 1999). This is particularly the case in small businesses where the recruitment and training of a new employee to a skilled position might make a detrimental impact on profit margins. Tilly (1996) argued that part-time jobs were divided into retention ('good') and secondary ('bad'). Employers who want to retain staff find them 'good' part-time jobs, which are relatively secure and well paid. Skinner (1999), in her study of part-time staff at a large public sector organisation, noted that people working part-time in higher grades were firstly all women and secondly were experienced employees, had relatively long continuity of employment and the majority had also worked full-time prior to taking part-time roles. Tomlinson (2006), in her study of mothers working in the hospitality industry, argued that part-time jobs which offered flexibility could be divided into 'optimal' and 'restrictive'. Restrictively flexible jobs did offer women some choice about which shifts they worked, but were low skilled and offered little prospect of promotion. By contrast, a few women worked in optimal part-time jobs had managed to negotiate part-time hours having previously developed their careers before having children and had worked full-time. They were highly skilled employees who were perceived as valuable by their employer. The findings of these studies generally confirm that women employees who have developed their career, stayed with one employer and previously worked full-time are in a strong position to negotiate part-time work which will preserve their occupational status.

Aims of the study

At a national level, the incidence of flexible working in general and part-time hours in particular has increased in the last few years, with women almost twice as likely as men to take up part-time work (BIS, 2012). Given that the right to request legislation has become a well-established route for mothers seeking to reduce their working hours, it is apposite to examine how effective the law is in facilitating this transition. Grabham (2014:79) argues that the right to request legislation creates a space for 'specifically modulated negotiations' to occur between employers and employees. What she means is that unlike an agreement to vary a contract of employment, the right to request legislation obliges the parties to follow a particular procedure where each step of the process was prescribed and carried a time limit. The study seeks to examine in more detail how these negotiations were carried out as well as considering the bargaining power of both parties. The study also seeks to establish to what extent the right to request flexible working has become an established part of workplace policies and procedures.

To date, organisational studies have tended to focus on particular aspects of flexible working such as the business case for its introduction or the benefits of flexible working on the work-life balance of employees. The issue of how the right to request operates from the dual perspective of managers and employees has not been explored in a UK context (Donnelly et al. (2012) have considered the right to request legislation in New Zealand). Given that there is no legal right for employees to work part-time in the UK, it is important to observe how part-time work is negotiated at the meso-level between employers and employees in order to establish the efficacy of the right to request.

With regards to occupational downgrading, the research described here does not try to measure it in numerical terms. However, it makes a useful contribution because it provides several in-depth accounts of the lived experience of women making the transition between full- and part-time work and whether or not they experienced occupational downgrading.

Methodology

Management literature has characterised small and medium-sized companies (SMEs) as frequently informal in terms of employment relations with a personalised management style (Matlay, 1999; Marlow, 2002). As explained above, given that SMEs are also less likely to have written policies on flexible working, there is the potential for inconsistency and lack of transparency in decision making on this issue. Therefore it seemed apposite to focus on how SMEs handled requests for flexible working. There is some debate about how to define an SME (Atkinson, 2008), but it was decided to concentrate on companies with a workforce of less than 250 employees. Efforts were made to contact companies in sectors where employees' awareness of flexible working was found to be low e.g. manufacturing and transport (BIS, 2012). It was decided that both managers and employees would be interviewed about their experiences in order to provide a dual perspective on the right to request procedure. In order to maintain confidentiality, it was decided that we would not interview the managers of the employees who had made the requests.

A combination of purposive and convenience sampling strategies were used to recruit participants for the study (Bryman, 2012). Messages seeking employee participants were posted on relevant websites. In addition, an internet-based database which provides detailed information on public and private limited companies in the UK was used to compile a list of suitable companies which was

narrowed by locality, sector and number of employees. The companies were sent a letter informing them about the study and asking for either employee or manager participants. Data were collected by way of semi-structured qualitative interviews with the participants. The interviews lasted between 45 and 90 minutes and were recorded by the author. Ten interviews were carried out in total, six with employees and four with managers. The latter were encouraged to recall the experience of managing a particular employee who they had most recently managed through the maternity and return to work process. Details about the employees and managers are provided in Table 1.

Table 1

Employees

	Job Title	Sector
Employee A	Project/Business Coordinator	Charitable (some commercial income from consultancy)
Employee B	Assistant Accountant (in-house)	Manufacturing
Employee C	Product Owner	IT/Education
Employee D	Solicitor	Legal Services
Employee E	Development Officer	Charitable
Employee F	Media Planner/Buyer	Advertising

Managers

	Job Title	Sector
Manager W	Sales/Marketing Director	Manufacturing
Manager X	Group Managing Director	Car Sales
Manager Y	Operations Manager	Engineering
Manager Z	Associate Director	Education/training

The interview transcripts were analysed by producing a data matrix, similar to the approach suggested by Nadin & Cassell (2004). They argue (2004:272) that a matrix approach is beneficial because it makes key data accessible whilst preserving the complexity of the data. The matrix compiled for this study contained description alongside initial thematic analysis. Completing the matrix helped the author to engage in detail with the data in the transcripts. It was useful to see the responses of all the participants on a particular topic in a relatively accessible way. The author and a senior colleague then completed further analysis of the data in the matrix.

Findings & Analysis

The operation of the right to request procedure

Generally speaking, access to flexible working was part of the written policies and procedures of the companies involved in the study. Given that the right to request has been in force for over 10 years, this finding is not surprising. However the data did throw doubt on the extent to which flexible working policies provided useful and/or accurate information to employees. At least two employees said that they resorted to online resources, such as the ACAS website, to find out more about the

right. Surprisingly, one of them was Employee D, a solicitor. Employee B, who requested part-time hours in 2008, was fortunate to have a friend who worked in Human Resources at a large accountancy firm, who was able to advise her:

'I didn't really feel that the process was outlined properly and the laws were outlined properly to understand what was accepted and what you could ask for and what their response had to be...so that's why I asked [her friend]...and she sent me documentation and letter templates...so she told me all the steps really, which was very helpful, but a lot of people don't have that.'

Employees who do not have access to an informative and accessible policy on flexible working at their workplace could be left in a vulnerable position, as internet-based sources can often vary in the accuracy of the information which they provide.

Despite saying that they were aware of the right to request, managers admitted that they did not receive specialist training on the rules relating to flexible working. Many did have access to appropriate advice, although whether they utilised these resources depended on the context of their discussions with employees (see below). Manager W admitted that his training came from experiences 'on the job'. This lack of specialist training for managers - coupled with the obvious potential for confusion around legal rules - is concerning, as it could lead to employees being provided with incorrect information and/or requests being wrongfully refused.

Workplaces with a culture of part-time or flexible work could help employees who might not be aware of their legal rights. Employee C said that she wasn't aware of a formal right to request and could not remember any information from her employer on the issue. She commented: 'I know there's people who do work part-time so I think I just assumed it was an option if I asked'. Her employer was an educational software company which had a practice of flexible working for all employees.

Another aspect of the right to request which was examined was to what extent the request process was formalised. This is of particular interest as informality has been seen as a hallmark of small businesses in academic literature. There was generally an informal face-to-face discussion between employee and manager to begin the process. New working hours were agreed in principle and followed by a confirmatory formal process or if the manager did not feel able to agree at this stage, the employee was asked to submit a formal request either by email or letter. In the latter case, once the request was received, the human resources contact at the organisation was involved, and the employee received some form of written confirmation. This was in the form of a new contract or a letter confirming the amended working hours. The formalisation of the process may be explained by employers' desire to protect themselves from potential litigation. Manager W said:

'..there has to be a degree of formalisation in this process because.... it can step in to people's income, earnings, other bits and pieces. We'd obviously have to be careful in terms of legal matters that we go into, umm, so it has to be formalised at some point...'

Clearly a reduction in working hours would reduce an employee's income, as well as other contractual benefits, such as pension. An increasing level of formality was observed as the request process progressed: from an initial informal discussion and/or communication by email in order to

agree a new working pattern to, in most case, some form of written confirmation of the new changes. These findings tend to run counter to the argument that informality is the norm in small businesses.

What was the relationship between the manager and the company's HR function in this process? It was managers who negotiated the return to work (sometimes with reference to, for example, the owner of the business) rather than HR. There is even some evidence of tension in the relationship between manager and HR. Employee F commented:

'...if I'd gone to HR first, not via [her manager], that would have definitely put her back up...even though it's probably the way to do it, she definitely wouldn't have appreciated what she would have seen as me sort of going behind her back to HR to sort these things out. She always liked to be included.'

HR's role was often limited to producing the letter or the new contract which formalised an arrangement which had already been agreed by the manager and the employee. Manager X said that following a request from his employee to return three days per week:

'...rather than write and telling her what we could do, we sat down and spoke before we did anything else, what we wanted, what she wanted, what her expectations of salary were, everything, so everything was sorted out on an informal basis before we started talking formally'.

Manager Y commented that the only time that he would consult HR for advice would be when he had decided to refuse a flexible working request: '...to make sure that, from a company and a legal point of view, that we were right in doing what we were doing'. This suggests that although a company's HR officer/manager might have the relevant knowledge to advise a manager on the law, this was only used in a 'defensive' situation rather than on every occasion a request was received. Our findings would suggest that HR's role in the negotiations over the request was frequently limited to 'signing off' on the agreement reached between employee and manager. This limited role for HR does confirm the importance of managerial discretion in deciding whether to accept a flexible working request. The disadvantage of this approach is that flexible working tends to be granted (or refused) on a piecemeal basis which can lack a strategic perspective which might be provided if HR was more involved. The other danger with over-reliance on managerial discretion in the process is that requests can be considered too subjectively.

Employee and employer perspectives on the right to request

Participant employees adopted varied strategies in trying to secure part-time working hours. Some seemed reluctant to make overt use of the right to request. Employee F felt obliged to reciprocate the informal approach of her manager and was therefore reluctant to refer to the legal right in email correspondence. This shows an understandable hesitance on the employee's part to come across as too formal. Employee D wanted to reduce her hours on health grounds. Therefore strictly speaking she did not make a post-maternity leave request. She had a young daughter at the time that she requested a reduction in hours (from full-time to four days per week), so technically she could have requested flexible working as a parent. However she made her request on health grounds reinforced by a recommendation from her GP. This was because she felt that making a request

purely as a parent would characterise her (in her words) as a 'trouble maker' and even lay her open to compulsory redundancy in a law firm which was struggling financially. She was only prepared to use the right to request as a 'fall back' if the firm refused her initial request. These findings show the reluctance of some employees to make overt use of the statutory procedure, who fear coming across as too assertive or fear negative repercussions in terms of their career.

In contrast, Employee B was overt in using a formal approach to request flexible working. Her first child was born in 2007, so it must be said that her experience of requesting part-time hours is not particularly recent. She recalled that the company handbook mentioned the right to request but nothing much beyond that. So she obtained some help from a friend who was an HR manager at a large accountancy firm. Employee B then sent quite a formal letter to her manager requesting reduced hours and setting out solutions which would enable the business to accommodate her reduction in hours. She had not had a meaningful discussion with her manager about her post-maternity role and working hours either before or during her maternity leave. This factor, together with the lack of assistance from company documentation resulted in an atypically formal approach both in terms of method of communication (letter) and content i.e. referring explicitly to the law.

The attitude of managers to the right to request was also varied. Manager Z was alone in being explicit in her support of the right to request from the employee's perspective. But she also felt that having to go through a formal process also provided some protection for her employer. Her employer had quite a formal request procedure in that the employee was asked to complete a form which prompted the employee to suggest how some of their current workload could be redistributed. Manager Z said she felt 'vulnerable' in having to go through the process because in her view, 'the law always sides with the employee'. So she felt supported by having a more formal process.

Manager X expressed the opposite view. His opinion was that 'letters aren't good'. He much preferred to have face-to-face and undocumented meetings with the employee where the law was put to one side. He disliked a formal approach to decision-making:

'..[the requesting employee] writes in for something and you look at, you think, dear God, we send a letter back and suddenly a letter gets misinterpreted into something else and suddenly you're in a battle for something that needn't have been, if you'd have just sat down... if you've got someone sitting there and chatting away, having a coffee, it's very easy to find out what they want, what their expectations are and then between you, you come to this nice level field. Everyone's happy.'

An agreement was reached at the meeting and only then was the formal request made. It was clear that he wanted to retain the employee who he managed so he approached the meeting by trying to establish why the employee wanted to work flexibly and with a very solution-focused mind set. If the employee's suggested work pattern was not acceptable from the company's perspective, he would try to find a mutually acceptable solution e.g. offering to meet the extra child care costs to enable an employee to come into work earlier or stay later. He felt that formality (in the form of letters) hindered the relationship between employee and manager and often was the precursor to both sides taking a more entrenched position. That said, the company did have a formal procedure which employees had to go through. Manager X said that he would pay more attention to the law in a 'defensive' situation e.g. where he did not want the employee to return. This response does suggest

that there were other employees who may have been treated unlawfully. With this employee, however, he said that he had not researched the law because he wanted her to return post-maternity leave. The responses to the right to request from these two managers are very different and perhaps say more about the varying styles of management than they do about the law itself. But Manager X's attitude does show a preference for informality which is characteristic of owner-managers in small firms. It would be a truism to argue that managers in small businesses always view employment rights as a burden, but the comments of Manager Z shows that the reality is more nuanced. The right to request provides an opportunity for employers to adopt a formal and paper-based procedure, which some managers clearly feel is helpful in that there is a 'paper trail' documenting the decision-making process.

Was the right to request useful to employees in facilitating a successful outcome?

The right to request can be helpful to employees because it forces managers to consider the employee's request. Often making a request is sufficient because managers might feel obliged to accept the request in order to retain the employee. Manager W commented:

'...unfortunately that puts me in the position of you either lose a valued member of staff or you take it on the chin for another two months or three months in the hope that it makes them a happy member of staff and that you can retain the member of staff that's worked for you for a few years.'

The alternative may be to lose a valued member of staff (perhaps to a competitor) and face the expense of hiring and training a replacement. However that is not to say that companies always accept requests. The same manager did say that there were other women employees in the company whose requests had been refused for business reasons.

There was one instance where the right to request appeared to influence an employer to accept a request. Employee B's written request to reduce her hours from five to three days was initially refused. She felt that the formal and legal way in which she made her request might have influenced her manager: '...she [her manager] probably was more willing to consider it more because I think she realised that I'd obviously got some advice from somewhere'. Following the initial refusal, a meeting was arranged and the company offered a different working pattern to what she had suggested but accepted her request to work three days per week. Of course without talking to Employee B's manager it is difficult to assess the impact of the manner in which the request was made. It may be that because the company had a different working pattern in mind, her manager felt that she needed to refuse initially. Perhaps the company feared litigation if it refused her request. But it does appear that in this instance, the legal right was a contributory factor to a successful outcome for the employee.

Clearly the statutory right on its own is not going to ensure that a request is accepted, because an employer is not obliged to accept. The only situation in which that could happen is when a manager (and probably the manager's boss/the company owner as well) is not aware that they can refuse a request, which seems unlikely. A successful outcome from an employee's perspective appears to depend on several other factors: the most crucial are that the employee's manager is supportive of the reduction in hours and the company wants to retain the employee post-maternity leave. Of course these factors can be linked, because if the manager wants to retain the employee concerned,

clearly he or she will be broadly supportive of the request. Two employees whose experience of returning to work was less positive both had managers who were more equivocal in their support of reduced hours. Employee F returned to work for four days a week post-maternity leave. Her manager reserved the right to pick her day off (Wednesdays), which the employee accepted. But her manager was less supportive than some of the other participant managers. For example, she said that before she left on maternity leave:

‘...there were times when I think [her manager] was trying to ask me things that she possibly shouldn’t have done until later on, purely out of her trying to juggle her staff.’

When she returned, her manager sometimes complained when Employee F’s daughter was ill and she had to leave work early to pick her up from nursery. She also found that - because her colleagues were not covering her work effectively on Wednesdays - Tuesdays and Thursdays were quite stressful days. She and her manager finally had a discussion seven or eight months after her return and the latter suggested that the employee switched to Fridays as her day off. Employee F rejected this as she already had childcare in place and suggested Monday. But her manager was not happy with that suggestion so Employee F ended up agreeing to work full-time again. She admitted that to some extent she did feel obliged to accept that. It seems clear that her manager was not prepared to support Employee F to work four days per week on a long-term basis. Effective cover was not provided, nor was her manager prepared to accommodate the employee’s choice of day off. Manager W agreed to reduced hours working for an employee he managed, but he saw it as a graduated return following maternity leave rather than a permanent arrangement. Two or three months after the employee returned, she was back working full-time. The employee was an Area Sales Manager and Manager W saw it very much as a full-time role. The employee worked full-time for another six months and then left the company for a less demanding role. This serves to emphasise the importance of managerial support for part-time work to be effective in the long term.

The six employees who were interviewed in depth were fortunate because, broadly speaking, their employer wanted to retain them post-maternity leave. In that situation, the statutory right to request becomes less significant because the employees are in a strong position and managers want to be flexible. Clearly not all employees will be in this situation and so will find that companies are more likely to refuse a request outright or negotiate more strongly to protect their own interests.

Discussion & Conclusion

The right to request is increasingly used by mothers with young children to transfer to part-time hours post-maternity leave. Participant managers tended not to be explicitly supportive of the right, because they would have preferred their employees to remain full-time, however it seems to have become established as (yet) another legal right which employers have to deal with. However the fact that many managers still perceive full-time workers as the ideal lends weight to Lewis’ argument (1997, 2001) that the advent of flexible working has done little to challenge the prevailing (masculine) workplace culture. The right to request has become embedded in the policies and procedures of small companies, albeit with varying degrees of detail and therefore efficacy from an employee’s perspective. It is surprising, however, that managers do not appear to have received any specialist training on the flexible working rules or handling requests effectively. Ignorance of the law was not widespread but might cause requests to be refused arbitrarily or even unlawfully. Our study confirms results from other studies about the importance of line manager support for a request.

Intervention by HR-trained employees could deter the potential abuse of discretion by line managers, however our study suggests that HR have limited involvement in decision-making. Greater transparency in the decision-making process, ideally through a clear and detailed written policy, together with the involvement of HR personnel at an earlier stage is more likely result in a more open and equitable procedure.

The study finds that managers generally view the right to request as something which has to be tolerated in the short-term, with the advantage that valued employees will be retained in the business. As Manager Y commented:

‘...most of our people that we’ve got are long serving people, so they carry a lot of skills, they carry a lot of experience, and they’re part of an overall team...so if we were to turn people down [for flexible working], then effectively we could end up losing some of our experienced staff.’

This would suggest that there is more scope for flexible working to be a positive experience in small companies because managers and employees seemed to know each other well and managers clearly appreciate the value of their employees to the business. This echoes the comments of Dex & Scheibl (2001:428), who argued that ‘a greater degree of genuine flexibility is possible in the small-scale context’ and also emphasised the importance of relationships between manager and employee. However the danger is that flexible working is widely perceived as a perk by managers, which employees have to earn by committing extra time to the company over several years prior to pregnancy. Such a condition is not present in the legislation and adds an unwelcome gloss to it. It may mean that women who are not seen as valuable by their managers are at greater risk of having requests refused. It may also discourage women who do not perceive themselves as valuable employees from making a request in the first place. Whilst the right to request may have become an established procedure for women post-maternity leave, this may not be the case for fathers who wish to work flexibly.

The law is effective in the sense that it forces managers to have a discussion with their employees when faced with a request. Some managers feel obliged to accept given the possibility that a refusal might prompt the employee to resign. But a weakness of the regime is that much seems to depend on the strength of the employee’s bargaining position. This in turn depends on key factors such as whether the employee is perceived as valuable, their length of service and the extent of managerial support for part-time working hours. Strangely managers did not seem to regard lack of availability of colleagues to fill in for employees transferring to part-time as prohibitive. Our study confirms the comment of Employee D, who felt that assistant solicitors had to earn the right to work part-time and specifically mentioned length of service as a criterion which counted in the employee’s favour. This contradicts surveys at a national level that indicate that employees with shorter length of service are more likely to work flexibly (BIS, 2012) but confirms the results of other studies (Skinner, 1999; Tomlinson, 2006), which indicate that skilled employees who have established their careers and are seen as valuable are in a better position to negotiate part-time hours which enable them to retain their occupational status.

Overall, the employees’ experience of negotiating part-time hours was perceived as positive because they were able to return to their pre-maternity leave role and retain their (pro-rated) salary. This complements the findings of a large survey of employer attitudes towards flexible working,

which found that nearly all employers who received requests to work reduced hours were able to accommodate them and retain the employee in their existing role (BIS, 2014). This was largely because the employees were seen as valuable and their manager wanted them to continue to work for the company. However ongoing managerial support is necessary for part-time employees to work effectively. Managers who were, for example, not prepared to reduce workload allocation or put adequate cover in place for the days where employees were not working, did not have such positive experience.

There were some methodological challenges in undertaking the study. The study cannot claim to be representative of the experiences of women returning to work part-time at SMEs generally, however it does have the merit of capturing the experiences of both employees and managers in detail. All the employee participants returned to the same employer post-maternity leave. Manning & Petrongolo (2008:F40) argue that one way to protect women employees who transfer to part-time hours from incurring a pay penalty is to have recently worked full-time and not to change employer post-maternity leave. The study deliberately wanted to track the experiences of employees who had worked full-time pre-maternity leave and returned to the same employer in order to investigate the transition from full-time to part-time work. Any future work in this area should consider mothers (and fathers) who have made unsuccessful requests, as this is likely to capture a wider range of employee experiences.

Another challenge was the problem of gaining access to employees and particularly managers. Two of the six employee interviews were arranged through contacting the company first. Small companies are notoriously difficult to gain access to (Scase, 1995). This means that the sample will be skewed as companies which, for example, did not have written policies in place or have refused flexible working requests in the past were unlikely to agree to participate in the study.

The fact that most of the participant employees successfully negotiated a reduction in their working hours should not mask the valid criticisms which have been made of the right to request and other 'family-friendly' policies from a gender equality perspective. Another issue is whether these employees will be able to return to full-time work in the future (should they wish to). If not, then this will perpetuate gender divisions in the workplace. Recommending changes to the current law on the right to request without supporting measures to address the other constraints which mothers face on returning to work post-maternity leave is futile. However one change which could usefully be made would be to allow Employment Tribunals to review the grounds on which employers have refused requests. This would facilitate some investigation of the business case which must form the basis of an employer's refusal (s80G Employment Rights Act 1996). The introduction of shared parental leave (by s117 Children and Families Act 2014 which created s.75E Employment Rights Act 1996) and the expansion of the right to request to all employees have the potential to further change workplace culture by encouraging fathers to take time out of work and/or change their working patterns to become more involved in caring for their children. However unless more fathers take these opportunities, gendered assumptions and workplace culture built around the full-time worker as ideal are likely to persist.

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Bibliography

Allen, T. (2001). Family supportive work environments: the role of organisational perceptions. *Journal of Vocational Behaviour*, 58, 414-435

Atkinson, C. (2008). An exploration of small firm psychological contracts. *Work Employment & Society*, 22, 447-465

Behson, S. (2005). The relative contribution of formal and informal organisational work-family support. *Journal of Vocational Behaviour* 66, 487–500

Bond, S. (2002). *Family-Friendly Working? Putting policy into practice* York: Joseph Rowntree Foundation

Bryman, A. (2012). *Social Research Methods* (4th ed), Oxford: OUP

Connolly, S. and Gregory, M. (2007). Women and Work since 1970. In N. Crafts, I. Gazeley and A. Newell (Eds), *Work and Pay in Twentieth-Century Britain*. Oxford: OUP

Connolly, S. and Gregory, M. (2008). Moving Down: Women's Part-Time Work and Occupational Change in Britain 1991-2001. *The Economic Journal*, 118(526), F52-F76

Crompton, R. and Lyonette, C. (2011). Women's career success and work-life adaptations in the accountancy and medical professions in Britain. *Gender, Work and Organization*, 18, 231-254

Department for Business, Innovation and Skills. (2012). *Fourth Work-Life Balance Employee Survey*, Employment Relations Research Series No. 122. London: BIS

Department for Business, Innovation and Skills. (2014). *Fourth Work-Life Balance Employer Survey 2013*, Employment Relations Research Series No. 184. London: BIS

Dex, S. and Scheibl, F. (2001). Flexible and Family-Friendly Working Arrangements in UK-based SMEs: Business Cases. *British Journal of Industrial Relations*, 39, 411-431

Donnelly, N., Proctor-Thomson, S. and Plimmer, G. (2012). The Role of 'Voice' in Matters of 'Choice': Flexible Work Outcomes for Women in the New Zealand Public Services. *Journal of Industrial Relations*, 54, 182-203

Gray, M. and Tudball, J. (2003). Family-Friendly Work Practices: Differences within and between workplaces. *Journal of Industrial Relations*, 45, 269-291

Galea, C., Houkes, I. and de Rijk, A. (2014). An insider's point of view: how a system of flexible working hours helps employees to strike a proper balance between work and personal life. *International Journal of Human Resource Management*, 25, 1090-1111

- Gardiner, J. and Tomlinson, J. (2009). Organisational Approaches to Flexible Working. *Equal Opportunities International*, 28, 671-686
- Grabham, E. (2014). Legal Form and Temporal Rationalities in UK Work-Life Balance Law. *Australian Feminist Studies*, 29 (79), 67-84
- Hakim, C. (2000). *Work-lifestyle choices in the 21st century*. Oxford: OUP
- Harris, L. and Foster, C. (2005). *Work practices in service sector companies*, (Employment Relations Research Series No. 47). London: DTI
- James, G. (2009). Mothers and fathers as parents and workers: family-friendly employment policies in an era of shifting identities. *Journal of Social Welfare and Family Law*, 31, 271-283
- Lewis, S. (1997). 'Family-friendly' employment policies: a route to changing organisational culture or playing around at the margins? *Gender, Work and Organisation*, 4, 13-23
- Lewis, S. (2001). Restructuring workplace cultures: the ultimate work-family challenge. *Women in Management Review*, 16, 21-29
- Lewis, S. and Humbert, A.L. (2010). 'Work-life balance', flexible working policies and the gendered organization. *Equality, Diversity and Inclusion*, 29, 239-254
- Manning, A. and Petrongolo, B. (2008). The Part-Time Pay Penalty for Women in Britain. *The Economic Journal*, 118 (526), F28-F51
- Marlow, S. (2002). Regulating Labour Management in Small Firms. *Human Resource Management Journal*, 12, 25-43
- Matlay, H. (1999). Employee Relations in Small Firms: A micro-business perspective. *Employee Relations*, 21, 285-295
- McRae, S. (2003). Choice and constraints in mothers' employment careers. *British Journal of Sociology*, 54, 585-592
- Nadin, S. and Cassell, C., (2004). Using Data Matrices. In C. Cassell and G. Symon, (Eds.), *Essential Guide to Qualitative Methods in Organisational Research*. London: Sage
- Office for National Statistics. (2013). *Women and the Labour Market*. London: ONS
- Office for National Statistics. (2015). *UK Labour Market, Statistical Bulletin – June 2015*. London: ONS
- Resolution Foundation. (2012). *The price of motherhood: women and part-time work*. London: Resolution Foundation
- Scase, R. (1995). Employment relations in small firms. In P. Edwards (Ed.) *Industrial Relations: Theory and Practice in Britain*. Oxford: Blackwell
- Skinner, D. (1999). The Reality of Equal Opportunities: the expectations and experiences of part-time staff and their managers. *Personnel Review*, 28, 425-438

Tilly, C. (1996). *Half a job: Bad and Good Part-Time Jobs in a Changing Labour Market*. Philadelphia, PA: Temple University Press

Tomlinson, J. (2006). Routes to Part-Time Management in UK Service Sector Organizations: Implications for Women's Skills, Flexibility and Progression. *Gender, Work and Organization*, 13, 585-605