

Flexible Working Arrangements Examples

1. In many ways, the Bar is ideally suited to flexible working arrangements. Many members of the Bar have combined practice at the Bar with other work or calls upon their time. Some have used the time to act in or write plays. Others have fulfilled judicial or academic appointments. Yet others have written history books or novels. There should be no barrier to combining a successful career at the Bar with childcare or other domestic responsibilities.
2. The Bar has a long history of job-sharing. The traditional practices of “devilling”, “sitting in” and “holding briefs” may be diminishing, but the practice of working in teams on litigation is increasing. The return of briefs within Chambers so that one member of the Bar will cover a hearing for another who is unable to be available on the day has been a traditional benefit of the Chambers set up. Although many counsel like to consider themselves always available to clients, the truth is that they are not. When in court for one client, or advising another in conference, they are not available to other clients. To a client without access to counsel, it matters not whether counsel is in court, giving a lecture or collecting children from school.
3. Many barristers have carried on successful practices working extensively from home whilst attached to sets of Chambers. Telephone patching systems, video conferencing and e-mail have made such arrangements easier. The facilities or arrangements any particular set of Chambers puts in place will need to reflect the nature of the membership and the work undertaken. For some, it may be possible to stipulate that they will only work in Chambers or go to court on particular days of the week. For others, it may be more appropriate to stipulate that they will not be available in Chambers or to go to court during particular months or periods. Many practitioners stipulate that, save in exceptional circumstances, they will not be available in Chambers or to go to court during the school holidays. To that extent, they are returning to the tradition of the legal vacation periods. Another example of an arrangement that has worked well involves a barrister who stipulates that he will be available in Chambers or to go to court only every other week, with the alternate week being spent undertaking paperwork at home. This enables him to be available

to take children to and collect them after school during the alternate week.

4. What is generally not possible at the Bar is for a practitioner to earn in, say, 9 months, under a flexible working arrangement what they would have earned in 11 months by working full time but taking a month's holiday. Rental arrangements will need to reflect this direct economic effect, but equally so will arrangements such as desk space availability and any capital benefit obtained from mortgage repayments on property acquired by a set of Chambers. Whatever arrangements are agreed, a chambers flexible working policy or an agreement with an individual member of chambers should clearly define the two period of notice that must be given before returning to full time practice together with the basis for calculations of chamber's expenses, clerk fees etc.
5. Some Chambers have successfully introduced schemes to subsidise low income periods following a return to work after parental leave, or due to flexible working, in return for an above standard contribution at a later period once full income has been restored. Such arrangements need to be clearly agreed and understood.
6. A policy of fixed rent without any qualification is potentially indirectly discriminatory against women because it is likely to impact more harshly on a greater number of women than men. Accordingly, in order to avoid the risk of a sex discrimination claim with unlimited compensation, Chambers should either avoid fixed rent arrangements or only adopt them in circumstances where they can objectively justify the arrangement.
7. Even arrangements where tenants are charged either a variable rent based on income, a mixed rent based on a flat fee plus a variable element, or a variable fee but subject to a minimum contribution need to be given careful consideration to avoid them inadvertently presenting a disincentive to return to the Bar.
8. In one example a chambers operated a system that allowed 2-3 years away from chambers and exempted the member of chambers from paying any flat fee during their maternity/ paternity leave. The variable amount of their rent then diminished as the age debt reduced. At the end of that period however, and as soon as they returned to chambers, the full fixed rate fee became payable. The wholly inadvertent effect of this system was that it positively

discouraged return to practice. This was because whilst away from chambers, and once aged debt had been exhausted, nothing was due to chambers. Immediately upon return however, just when little if any income was coming in, and child care costs kicked in, significant sums were payable by way of the fixed charge.

9. A solution was found by adopting a revised system in which :-

- parents (including those adopting or acquiring residence orders for children) are entitled to take up to 5 years off per child/ remain away from chambers until their youngest child is 5 (or 18 for disabled children) – whichever is later. The longer period allows people to return when they are ready rather than lose them by making them reach a decision when they are not ready to return to the Bar.
- on a return to chambers the parent can opt either to pay standard rent, i.e., a mixture of flat rate fee and percentage fee, or return simply on the basis of a higher percentage fee. The objective was to seek to ensure that broadly at the end of 18 months the revenue to chambers was the same as would have been levied under the standard rent, but that it was levied without causing undue hardship to the maternity/ paternity returner.
- if the parent opts to return on the higher percentage fee they must stay on it for a minimum of 18 months, and must give a full 6 month's notice of their option to revert to the standard basis. The requirement for notice helped prevent anyone "fiddling" the system to cater for the timing of a particularly large cheque.
- if a parent takes a second period of maternity/paternity leave they continue to pay the percentage fee during that period of absence.