



## Introduction of Section 35 - Homeworking and agile/hybrid working (England)

The NHS Staff Council, on behalf of NHS trade unions and employers, has jointly agreed to implement a framework agreement for homeworking and agile/hybrid working.

The framework agreement provides the underpinning principles to support with the implementation of new and ongoing home and agile/hybrid working arrangements. This will be incorporated into the NHS TCS handbook as a new section, effective 2<sup>nd</sup> October 2023, and should be applied in conjunction with all other parts of the NHS terms and conditions, including Section 33 – Balancing work and personal life (England, Wales and NI).

The framework agreement supports The NHS People Promise, and its commitment to make the NHS a good, modern employer of choice and to improve staff experience over the long term. The framework agreement also builds on the recently published long term workforce plan and recognises the differing needs of the NHS workforce.

Finally, to support local joint employer- union partnerships prepare for the changes, the NHS Staff council Executive has agreed to jointly develop guidance in the following areas:

- Regularising homeworking or hybrid arrangements that may have developed on an ad hoc basis during or following the pandemic
- Development of local policies
- Support for employers and employees regarding implementation
- Health, safety and well-being considerations
- Equalities including reasonable adjustments, equality assessments and monitoring.

Wherever possible best practice and good case study examples will be developed and shared to support the guidance.

A copy of the framework can be viewed in the attached Annex A.



**Sara Gorton, Staff Side co-chair**



**Oonagh Monkhouse, Employer Side  
co-chair**

**July 2023**



## ANNEX A – Section 35 of the TCS Handbook

### General

#### Introduction

35.1 Recruiting and retaining a diverse workforce with appropriate skills is fundamental to the ability of the NHS to support the evolving healthcare needs of the population. In this context it is essential that the NHS adopts and promotes flexible working arrangements that help employees in a manner which best suits their personal needs and preferences. In this context it is essential that the NHS adopts and promotes flexible working arrangements that help employees to support;

- the re-organisation of work (service delivery change) by employing organisations,
- the employer requires the employee to work from home or agile/hybrid; or
- the employee requests to work from home or agile/hybrid.

35.2 By providing working arrangements which are adaptable and flexible both to employees and employers we will ensure that the NHS continues to have the workforce it needs to deliver excellent patient care now and in the future.

35.3 The following national principles have been established to support employing organisations develop, monitor and review their local policies in partnership with their trade unions. The provisions in this framework are intended to be applied in conjunction with all other parts of the NHS terms and conditions.

35.4 The HMRC defines a homeworker narrowly as someone who cannot perform their substantive duties anywhere other than their home. This definition is used by HMRC to determine eligibility for tax relief provisions. Employers are able to use a wider definition, including for the purposes of allowances and reimbursement of costs, but should ensure that staff are aware of whether or not any payments will be treated as taxable earnings.

35.5 The definitions used in this framework and for reflection in local policies are as follows:

**Contractual Homeworker:** an individual who performs the majority duties from their home. They may travel to a work base or attend events on an ad-hoc basis. Their home is designated as their contractual base.

**Agile/Hybrid worker:** an individual who performs their duties across more than one location which may include their home address. They may be required to attend events or travel to other bases or locations on a more regular or ad hoc basis. Their designated contractual base will be at one of the employer's sites.

NB for the purposes of this framework the terms agile and hybrid are interchangeable.

#### Scope

35.6 Local agile/hybrid and homeworking policies should signpost and link to flexible working and reasonable adjustment policies and procedures and vice versa so that employees are clear about how they can make and get support with requests.



35.7 Requests for agile/hybrid and homeworking may be combined with requests for other forms of flexibility for example on working hours or may be stand-alone.

35.8 Agile/hybrid or Homeworking may also be agreed as a reasonable adjustment for a disabled worker, as part of a wider consideration of how to reduce barriers experienced in the workplace.

35.9 Homeworking may be an organisational requirement for all or part of a role.

35.10 This framework agreement is not intended to apply to any agile/hybrid and home-working arrangements outside the United Kingdom.

## Principles

35.11 The following principles should apply whether agile/hybrid or homeworking is being considered as a s.33 flexible working request initiated by an employee; as a reasonable adjustment; or as a new or changed employment model initiated by the employer. It is recognised that not all roles will be suitable for homeworking. It is also recognised that not all employees will either want, or be able to, work from home.

35.12 Local agile/hybrid and homeworking policies should be developed or updated in line with the provisions in this section through a process of consultation with staff and agreement with trade unions through local partnerships.

35.13 All policies, procedures, behaviour standards and organisational values should apply equally to all employees regardless of their agile/hybrid or homeworking status.

35.14 Employees who work all or some of their time at home should all be treated fairly and equitably; and supported to work safely and effectively in their teams. Employees in posts which are deemed not suitable for agile/hybrid or homeworking should also be treated fairly and equitably and should be encouraged to discuss and consider other forms of flexible working that may meet their needs.

35.15 Local partnerships should design their policies to maximise the potential benefits and address any potential challenges of agile/hybrid and/or homeworking.

Potential benefits include:

- Improved work/life balance
- Improved health and wellbeing
- Enabling of reasonable adjustments
- Increased productivity
- Reduced travel – cost and environmental benefits
- Improving opportunities to increase inclusivity
- Ability to recruit from a wider geographical pool.

Potential challenges include:

- Mental health and isolation impacts
- Impact to physical health



- Work intensification
- Loss of team networking and peer support
- Access to training and development
- Health and safety risks
- Impact on career Implications due to lack of 'visibility'.

35.16 Policies should encompass provisions for a range of agile/hybrid and homeworking situations, including:

- Occasional or temporary ad hoc homeworking – agreed informally as and when with the line manager.
- Agile/Hybrid working where part of the contractual hours are undertaken at home.
- Contractual homeworking where the work base is home.

35.17 Policies should be communicated to all employees and reference to the option of agile/hybrid and/or homeworking should be included in recruitment and selection material where relevant.

35.18 Local agile/hybrid and homeworking policies should set out clear, consistent and objective criteria for considering whether and how a role could be successfully carried out at home and in what proportion for agile/hybrid working.

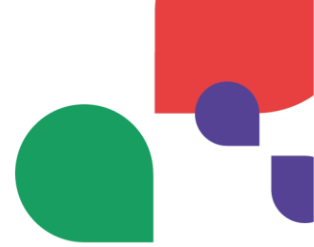
35.19 Employers and local unions should work together to agree procedures for assessing existing and new posts against the criteria to ensure consistency and fairness in decision-making.

## Procedure

35.20 All NHS employees covered by this section/annex and who are employed by an organisation listed in [Annex 1](#) have the contractual right to request flexible working as set out in s 33 of the Handbook.

35.21 Such requests may include requests to work from home for all or some of the employee's contractual hours or to make changes to existing home or agile/hybrids arrangements and should be considered in line with the processes set out in s33 of the Terms and Conditions and in the organisation's flexible working policy.

35.22 Employers seeking to change the designated work base of posts or create new posts/roles which are designated homeworking or for particular agile/hybrid working arrangements should follow their usual management of change processes including consultation with recognised trade unions, where appropriate. In some cases, a change of work base will be a potential redundancy situation requiring relevant consultation processes and efforts to find suitable alternative employment.



## Contractual considerations

### Work base

35.23 All employees, regardless of work pattern or number of work locations, should have one designated contractual work base either home, or an office/site.

35.24 The designated contractual work base may have different implications for travel costs, high cost area supplements (HCAS), subsistence and on tax arrangements that will need to be clear. Employees designated as ‘contractual homeworkers’ will require the fact that their home is their work base to be clearly reflected in their contract. For existing employees this will require a process of contractual change whether that comes about as a result of an individual request or because an employer moves to designating certain posts as contractual homeworking.

35.25 Employees designated as ‘agile/hybrid workers’ will in most instances retain an employer site as the designated work base with terms and conditions reflecting this. Formal contractual variation may not therefore be required except in instances where both parties agree that the hours to be worked at home should be captured as a contractual term.

35.26 Local policies for agile/hybrid and homeworking should set out clear principles and processes for agreeing and processing contractual variation/change. These should be in line with wider policies and procedures, including:

- Processes to create new posts or redesignate existing posts as ‘homeworking’ need to follow normal joint consultative and partnership provisions, as appropriate.
- Employees should have access to advice and support via their Trade Union representatives and via HR Departments.

35.27 For any process that is likely to involve a change to the employee’s work base the employee should be provided with adequate and clear information on how this will affect their terms and conditions – see sections below.

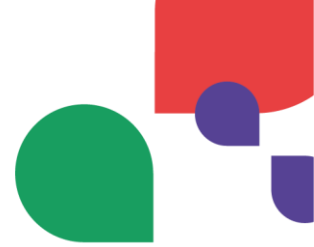
35.28 Regardless of homeworking status, all employees should have a clear understanding, set out at the commencement of contractual homeworking or agile/hybrid working, about when and under what circumstances they can be required to attend sites or locations other than their work base to meet operational needs.

35.29 The principle of reasonable notice should be applied, and employees should have the opportunity to raise and discuss any concerns or difficulties they may have around attending.

### Hours

35.30 For agile/hybrid arrangements, policies should encourage consideration of options for:

- More formalised arrangements where employees can request to have fixed homeworking days /hours agreed which can only be varied on request with notice by the employer.
- Hours/days when work will be undertaken from home to be agreed flexibly and informally between employees and managers.
- Rostered shift patterns which clearly identify homeworking and site working shifts in advance.



35.31 Where the employer *requires* part of the contracted hours to be fulfilled from home, the details of this should be clearly specified.

## Terms and conditions implications

### High cost area supplements (HCAS)

35.32 The contractually designated work base will determine eligibility for HCAS in line with Annexes 8-9 of the national terms and conditions. Where the employee is a contractual homeworker allocation to HCAS zones will be based on the postcode of the home address.

### Reimbursement of travel costs

35.33 Section 17.15 of the terms and conditions sets out that mileage will be reimbursed for miles “in excess of the home to agreed work base return journey”. For employees who are designated as ‘contractual homeworkers’ this means any required business mileage from home to another location will be reimbursed as the home and the work base are one and the same (so Table 8 does not apply). For agile/hybrid workers s17.15 means reimbursement for miles in excess of home to their designated contractual work base. Employers should ensure that contractual homeworkers are informed about whether or not reimbursement payments qualify for tax relief under HMRC provisions.

35.34 Section 18.11-13 make provision for meal allowances where employees are absent from home and more than 5 miles from their base. Where the base is the home, this may apply in cases where the employee is required to attend the employer’s site or other sites (unless free meals are provided, or the employee does not have to spend more money than they would have at home).

### Unsocial hours

35.35 Section 2.1 provides that “where staff are required to work to cover services in the evening, at night, over weekends and on general public holidays, the NHS Staff Council has agreed that they should receive unsocial hours (USH) payments.”

35.36 This provision applies to employees working from home where their work is *required* to be done during hours which attract unsocial hours payments. If there is no *requirement* for the employee’s work to be done during a period attracting unsocial hours period – and it is the employee’s choice to work during those hours then this should be clearly identified at the start of any changes to working arrangements.

## Support for agile/hybrid and homeworking costs

35.37 Local policies should set out what support will be made available in respect of -

- Set-up costs for enabling work to be done from home.
- Ongoing expenses associated with working from home.

35.38 Support for set-up costs and responsibilities may differ depending on the type of homeworking (e.g. contractual homeworking or agile/hybrid and employer led, or employee led request) and considering specific needs, for example reasonable adjustments.



35.39 Provisions for ongoing financial support with the costs of homeworking should take account of whether or not employees have the option to work from an employer site all or only some of the time.

35.40 Where payment of homeworking allowances is factored into local policies to support the employee with set-up costs and on-going expenses, the local policy should clarify:

- Eligibility criteria
- Amount payable
- Mechanism for review and any criteria for uprating

35.41 Where a homeworking allowance is provided this should take into account the range of additional costs experienced by homeworkers having regard to the amount that can be provided tax-free under HMRC provisions.

35.42 Employers should ensure they provide all equipment, expenses and allowances in the most tax-efficient way possible, supporting employees to understand and benefit from all relevant tax relief.

## **IT and technical support**

35.43 Employers will need to consider IT requirements and support to include in policies. It is important to outline what will be provided by employers and what the employee is expected to provide themselves. This may include:

- Considering IT equipment needs and what will be provided e.g. laptop and mobile phone and any additional equipment as identified in the DSE assessment
- Clearly outlining employee requirements to ensure they have required reliable broadband access at home
- Ensuring remote workers have access to adequate guidance and advice to support workspace risk assessments
- Ensuring remote workers have and are aware of access to IT support, and are, signposted to other relevant local policies related to IT support.

## **Business continuity arrangements and critical events**

35.44 Employers will need to ensure that relevant and suitable measures are put in place and clearly communicated to staff, to factor in any planned or unplanned business critical events and any requirements to temporarily change working arrangements/location in these circumstances should be clearly outlined in local policies. This will include circumstances where the planned or unplanned event occurs only at the employee's home and interrupts the employee's ability to carry out their duties at home e.g. internet outage.



## Health, safety and wellbeing

35.45 Employers will need to consider the health and safety implications of agile/hybrid and homeworking. This includes:

- Regular assessments of the risks of the physical work environment and interaction with any lone-working issues.
- Consideration of safety and suitability of display screen equipment and workstation set up.
- Assessment of the risks to mental health from work related stress including Isolation and workload.
- Reporting and monitoring arrangements.
- Supervision and support mechanisms.
- Consultation with staff and health and safety representatives on arrangements to support the health, safety and wellbeing of home/agile/hybrid workers.

## Governance, confidentiality, data protection

35.46 All employees must comply with The General Data Protection Regulation (GDPR) as it applies in the UK, informed by the Data Protection Act 2018. Policies should set out clear principles and processes. Specifically, remote workers are under a duty to observe security and confidentiality practices in relation to equipment and data in line with GDPR, Data Protection legislation, and local Policies & Procedures. Employers need to ensure provisions are in place for the secure storage, use and disposal of confidential information from the home base.

## Line management, support & performance

35.47 Local policies will need to consider the areas of management responsibility in relation to agile/hybrid and homeworking including:

- Ensuring any requests for flexible working are considered on a fair and equitable basis.
- Ensuring all employees are fully aware of their responsibilities and are clear on any agreed requirements to attend the workplace as needed.
- Ensuring employee health and wellbeing is monitored and reviewed on a regular basis considering relevant health and safety laws as outlined above.
- Ensuring employee has access to the relevant IT and office equipment required to undertake their duties.
- Ensuring regular contact and opportunities for check ins and collaboration with other team members.
- Managing Performance and ensure processes are in place for reviewing progress and offering support.
- Ensuring opportunities for development and progression are available in the same manner for both remote and non-remote workers.





## Equalities

35.48 Employers will need to consider the implications of agile/hybrid and homeworking on equalities. This will include:

- Considerations in relation to reasonable adjustments under the Equality Act 2010 and what is required in each work setting an employee works in (home and employer site).
- Consideration of duties related to pregnancy and maternity.
- Considerations of the impact on an ageing workforce.
- Equality impact assessment and monitoring.
- Policies should include a commitment to ensuring employees who work from home do not suffer any disadvantage or less favourable treatment.