FLEXIBLE WORKING

Until April 2003 there were no set rules as to how a teacher should make an application for flexible working or how a principal or Board of Governors were to deal with it. The application could be made formally or informally. It could be oral or in writing. There was no prescribed time period for a response to be given by the employer and there were no statutory restrictions on an employer's right to refuse.

Employers were governed by a Circular from the NI Teachers Negotiating Committee No. TNC 1998/1 on job shares. The guidance given in it was that a refusal to grant a request for job sharing may be regarded as discriminatory unless there are clear and justifiable reasons for the decision which the employer can demonstrate to be valid. What constituted a justifiable reason varied from case to case and there were no hard and fast rules and no specific timetables or processes prescribed for dealing with an application.

The situation was changed in April 2003 when the Employment (NI) Order 2002 came into force.

This introduces statutory rules and timetables which employees and employers must now follow when dealing with an application for flexible working. The legislation gives certain employees the right to apply for a flexible working pattern. This can include:-

1. A change to the number of hours the employee is required to work.

2. A change to the time of starting/finishing work.

3. Working from home.

4. Job sharing.

The employees covered by the new legislation are 1. An employee (male or female) with a child under 6 or a disabled child under 18 for whose upbringing they are responsible, and who has worked for the employer continuously for 26 weeks, and has not made another application to work flexibly within the past 12 months. The TNC Guidance suggested that an application for a job share must be made by 1st January in any year in order to start 1st September. Furthermore, employees were required to be employed for at least a year before any such application. The new law allows an application to be made at any time and employees only need be employed for 6 months before the first application can be made.

Employees with older children can still ask for flexible working in the way they did before April 2003. The new law simply means that those with children under 6 have enhanced rights in that they can compel their employer to follow a specified procedure within a fixed timetable and the employer has a legal duty to consider the application and can refuse it only on restricted grounds.

In order to fit within the statutory framework an application for flexible working must :-

1. Be in writing (forms are available from UTU). 2. State that the application is being made under the statutory right to request a flexible working pattern. 3. Confirm that the applicant has responsibility for the upbringing of a child under 6 (or 18 if disabled.) 4. Explain the effect of the change (if any) on the employer and how it may be dealt with. 5. Specify the working pattern applied for and the date it is proposed the change should become effective. 6. State whether a previous application has been made and if so when.

The employer must carefully consider the employees request. It may only refuse the request on the following grounds;
The burden of additional costs, detrimental effect on ability to meet customer demand (educational requirements of children), inability to reorganise work among existing staff, inability to recruit additional staff, detrimental impact on quality, detrimental impact on performance, insufficiency of work during the period the employee proposes to work and planned structural changes.

Once a change is made it is permanent and employees have no right to revert back to the previous work pattern. If an application is made and rejected an employee cannot make a further application under the procedure for 12 months.

If an application is rejected and the employee feels aggrieved they have many options open to them and the UTU will provide advice on the most appropriate course of action which may include a complaint to an industrial tribunal

Logistical difficulties, administrative inconvenience, cost and parental opposition have all been held to be invalid grounds for refusing a job share. Even where an employer does have reasonable grounds for refusal, he has an obligation to consider the impact of refusal on the employee and the disadvantage to her if the application is refused. He then has to decide in light of the impact of rejection on the employee, whether the application should still be refused.

Although some of the guidance in the TNC Circular is now out of date it remains quite helpful in dealing with practical arrangements within schools to accommodate job sharing such as finding job share partners, how to deal with allocation of posts of responsibility etc. as this is not dealt with in the Employment Order (which covers with all types of employment situations not just the education sector.)
In addition to the flexible working legislation there is another statute recently introduced which makes it illegal to treat part time employees less favourably than full time employees. Employers will have to be careful not to penalise those in job sharing or part time posts by refusing to consider them for promotions/posts of responsibility etc because of their flexible working arrangements.

Finally Parental Leave legislation recently introduced entitles an employee to take unpaid leave to deal with an emergency involving children and also planned unpaid leave of up to thirteen weeks in total during the first 5 years of a child's life. This is over and above the entitlement to work flexibly.