Hybrid working guidance

What is hybrid working?

Lots of people are using the term 'hybrid', 'blended' or 'agile' working. They're the phrases of the moment. In reality they cover a multitude of working approaches allowing staff to choose where, when and how they perform their work activities.

It is separate and distinct from flexible working, which is a more formal arrangement either to change work location or working hours (e.g. go part time or work compressed hours) which requires a change to your contract. However, some employers are merging the two, and seeking to impose a type of 'hybrid working' on their staff, requiring them to work at home or from the office on a certain number or on certain days.

The British Computer Society (BCS) offers a good description of what hybrid or agile working should be:

> 'Agile working is a way of working in which an organisation empowers its people to work where, when and how they choose – with maximum flexibility and minimum constraints – to optimise their performance and to do their best work.'

UCU's position

The BCS definition offers a good starting point for branches and employers, but such an approach requires considerable changes to workplace culture, working practices and workplace infrastructure. The Covid-19 pandemic has started this process of change, and UCU members need to seize this opportunity for real change.

However much some members will embrace the opportunity to work at home, others won't. Branches need to be aware that there are many reasons why for some they will need the office to continue to be their base for work, including:

- home being an unsafe space because of domestic violence for example
- noise or space make the home environment unsuitable for concentrating on work
- improving mental and physical health by working in an office.

This list is by no means exhaustive, but branches must be alert to hearing a variety of views on hybrid working.

It is also important to remember that personal circumstances change over time. What works for someone at one stage of their life, may not work for them at another. Maximising the flexibility available to staff allows people to make the changes they need easily in order to produce their best work.

Not only can hybrid working improve people's working lives, it can have other positive impacts too. As we negotiate the ongoing pandemic, a reduction in numbers of people on site can reduce the risks to the health of staff. There are also the positive environmental impacts of the reduction in commuting, and thus pollution, which branches have been encouraged to tackle with Green New Deal claims: **www.ucu.org.uk/green-new-deal**

UCU believes that it is the need to balance these differing views that should encourage branches to engage their members and to seek an agreement, or seek to amended an inappropriate agreement, on hybrid working.

How should branches approach this issue?

We know that some branches will be negotiating hybrid working policies at the moment; others will be trialing hybrid working with a view to a policy being developed; and of course, some branches will have had a policy imposed on them or one in place following discussions. This guidance should help all of these branches to either assess a current or future policy. Where a current policy falls short of the needs of UCU members, there is nothing stopping you seeking a review of that policy, and we urge you to do this.

It is crucial that branches understand what the members want and need from a hybrid working policy. To assist branch officers to identify these issues, we have developed a model branch survey which can be used to engage with members on this issue. You can contact the Bargaining & Negotiations Team to access this survey: **BargainingandNegotiations@ucu.org.uk**

The information you gather from surveying members (or all staff if you prefer) can help you identify where there are gaps in your information and which sections of the workforce haven't provided their input. You should consider whether you have heard from:

- all schools/departments
- black and ethnic minority members
- disabled members
- a spread across the pay grades and job roles
- those on insecure contracts
- academic-related/professional services staff (if they are part of your bargaining unit)
- those with caring responsibilities
- members with insecure home environments.

The more people who input into this policy, the better the policy can reflect the needs of staff and the greater the sense of ownership they will have over it. By identifying those you haven't reached, this should help you focus your consultation efforts as the process continues.

It would be useful to identify what policies already exist that may be impacted by the change to hybrid working such as workload agreements/models; equality or inclusion policies; staff inductions; mandatory training; IT; monitoring of staff; data sharing; parking charges, etc. You will need to ensure that these policies are reviewed following the development of a new hybrid working policy.

There is some useful guidance which has already been developed:

- ACAS hybrid working guidance: **www.acas.org.uk/hybrid-working**
- Personnel Today 'Writing a hybrid working policy: a guide for HR': **www.personneltoday.com/hr/hybrid-working-policy-hr-guide/**
- LRD booklet 'Negotiating the new homeworking landscape – a guide for union reps': you will need to contact your regional office to gain access to this booklet.

It would be worth reading these and sharing them with your employer in order to further the conversations you have on this.

Once your branch has done its research you can either submit your claim to the employer to start/reopen discussions on a hybrid working policy, or use the information you have gained to respond to proposals from the employer.

What should a hybrid working policy cover?

Core principles

It is important that any policy makes it clear what the expectations of all parties are to the agreement, and who is covered by it.

Your employer will still expect that the jobs that need doing get done; that managers are able to manage people and that the same rules, procedures, conduct and performance are achieved wherever someone is working.

Similarly employees should still expect that all the contractual obligations the employer has to them are upheld, especially that their health, safety and welfare are ensured, and that they aren't expected to be 'on call' just because they have communications technology in their home.

> **Branches should ensure that any policy lays out the expectations and legal obligations of all parties.**

What does hybrid working mean?

A good policy will make clear what is meant by hybrid working, and does not just assume that everyone knows.

It would be useful in this section to differentiate between hybrid working and flexible working, since the right to request flexible working is a legal right and involves a change to contract, where as a hybrid working arrangement would usually be less formal and ironically more flexible.

You can find out more about flexible working here and your employer may already have a policy on this: **www.acas.org.uk/making-a-flexible-working-request**

Hybrid working doesn't require that you either work at home or in the office, it should allow for you to work in any location that enables you to do your job. You will need to clarify normal places of work, and what this will mean for claiming mileage or travel time for work travel.

The employer may wish to specify at this point in the agreement the core hours staff will be expected to work and the minimum number of days/specific days a worker is required to be on site, which may be different for different groups of workers. It should be noted that core hours may be different for different workers because of prior flexible working agreements or reasonable adjustments, which would take precedence over the hybrid working policy. They may also wish to specify roles which because of the nature of the information being processed would require someone to work in a private space, e.g. someone administrating student or staff personal data.

> **Branches should ensure there is a clearly spelled out, shared understanding of what is meant by hybrid working in the policy. Any expectations about normal places of work and when people should be 'on site' should be clarified so that staff can ensure their compliance with the policy and appropriate claims can be made for travel expenses and on any time in-lieu accrued. The policy should make it clear that the hybrid working policy doesn't overturn existing flexible working arrangements or reasonable adjustments.**

Is a role suitable for hybrid working?

There may be some disagreement between the unions and the employer about which jobs require on-site working and which don't, and this will need to be spelled out in a hybrid working policy.

Since this is about a hybrid model, i.e., sometimes being in the workplace and sometimes not, then it might be more appropriate to spell out the duties which can be conducted

remotely, and those that can't. Many face-to-face roles will have duties that don't require someone to be on campus for them to be completed, so there shouldn't just be a blanket ban on those roles being eligible for hybrid working.

Where disputes occur about which roles can work in a hybrid manner, then establishing a trial period for hybrid working could be a way of resolving this. Such a trial period should last for an agreed minimum period of time, with clear criteria for assessing its success, which is considered by a panel with both an HR and union representative on it.

Although we wouldn't want length of service to be used as a basis for determining whether someone can do hybrid working, since this could lead to age discrimination, an employer may wish to require new starters to be present on campus for a certain period at the beginning of their employment, or for a certain number of hours/days over their probationary period. The branch's focus in such discussions should be about ensuring that staff get a proper induction, and feel appropriately supported when they first start in a role. Hopefully the model branch survey and ongoing consultation with staff will help to inform the branch's position on this.

A worker's home environment must be suitable for homeworking. It must be free from other than low level interruptions and distractions. Whilst recognising that there may be some carer responsibilities associated with working from home (such as transporting a child to/from school), staff should not be significantly distracted while they are working, for example by looking after a child or dependent relative. A suitable home environment also includes having a suitable working area, and a sufficiently strong internet connection. Employees should also ensure that telephone and video calls are taken in a room away from other people so that discussions remain confidential.

Whilst a good policy should be about facilitating hybrid working, it should also ensure that staff who want to work on campus can. Whatever the individual reason, the employer should be ensuring that this is facilitated, and that those staff have an appropriate working space.

Branches should seek to agree with the employer the types of duties that can be performed remotely and those that can't, rather than focussing on roles, so we maximise the opportunities for everyone to work in a hybrid way. Where it is clear that disputes will arise about specific roles, the branch should seek to negotiate a policy on trial periods, with minimum timeframes; clear criteria and union involvement in assessing their success. A policy should lay out the expectations the employer has for a good home working environment. The policy should allow for the fact that not everyone will want to work in a hybrid way, and the branch should ensure that it does not force them to do so. It is also important for branches to ensure that new staff are properly supported

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during their induction and probationary periods, and this part of the policy should make clear the expectations of both parties in this regard.

Health, safety and welfare

Irrelevant of where you work, your employer has a duty under the Health and Safety at Work Act 1974 to ensure your health, safety and welfare. This obligation doesn't cease because of the flexible and changeable nature of hybrid working:
www.hse.gov.uk/simple-health-safety/law/health-safety-law.htm

Working at home can present both mental and physical health and safety problems. Sedentary home working, in an environment that hasn't properly been assessed can lead to musculo-skeletal disorders (e.g. RSI and work-related upper limb disorder), as can hot-desking on campus or in an internet café. Isolation can also lead to mental health problems. And of course, not everyone will feel safe and secure in the home working environment.

Under the Management of Health and Safety and Work Regulations 1999 employers have to carry out 'suitable and sufficient' risk assessments to identify and control the risks, wherever they work: **www.hse.gov.uk/managing/legal.htm**

An employer with five or more employees must have a written health and safety policy which is accessible to all staff.

Employers also have duties under the Safety Representatives and Safety Committee Regulations 1977 and should consult safety reps about health and safety issues including risk assessments: **www.hse.gov.uk/involvement/whattoconsult.htm**

Under the Health and Safety (Display Screen Equipment) Regulations 1992 employers have to conduct DSE assessments which include considering the whole workstation, equipment, furniture and work conditions; what work is being done and whether any reasonable adjustments are needed: **www.hse.gov.uk/msd/dse/**

The employer has a responsibility to ensure any work equipment is suitable for use and safe to use so there should be an initial inspection of the equipment and then periodically to maintain it in a safe condition. Anyone using the equipment must be trained in its safe use. Any electrical equipment must comply with the Electricity at Work Regulations 1989 and be maintained in good working order and replaced if necessary:
www.hse.gov.uk/pubns/priced/hsr25.pdf

There should also be a reporting policy in place to report any breakdowns or concerns on equipment.

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Employers should put procedures in place for those home or lone working for long periods of time. There is a need to ensure that those home working who need support for a situation that is affecting their ability to work, know who to contact for appropriate support. That support should be confidential in case the matter involves physical or mental abuse, and should allow for reasonable adjustments to be put in place to support and protect the affected individuals. The employer should also ensure that regular contact is maintained with workers throughout the working day, based on a method between the worker and their line manager, so people aren't left feeling isolated or forgotten. The contact shouldn't be intrusive and make the worker feel that they aren't trusted to do their work. Should concerns be raised by an individual either about themselves or another worker, additional support should be provided via expert independent services.

All work activity should be risk assessed. This could be done by using the HSE Management Standards to identify work related stress factors and controls needed to remove them: **www.hse.gov.uk/stress/standards/**

If reasonable adjustments are needed then this should be recorded in a disability passport and periodically reviewed.

It is important that even if workers are choosing to mainly work from somewhere other than the office, there are safe and secure premises available for staff to meet other staff or third parties, and that this doesn't happen at an individual's home. Such meetings outside the home or workplace should be logged to ensure safety during the meeting and the return home/to the office reported. Individuals should not be required to use personal phones, social media accounts, personal emails or provide home addresses or information for work purposes.

> **Branches should ensure that procedures are put in place to conduct and review risk assessments for hybrid working. The policy should ensure that anyone working in a hybrid way has a proper DSE assessment of their workspace and is properly trained to use the equipment provided. Branches should ensure that the policy establishes proper processes for reviewing all provided equipment and supporting and keeping in contact with colleagues working remotely. A good policy will also make it clear the means by which communications for work purposes should take place and how staff meeting with others will be logged to ensure their well-being.**

Equality

With any new way of working, an employer must ensure that it doesn't disadvantage anyone with a protected characteristic as listed in the Equality Act 2010. In order to avoid discrimination, employers should conduct an Equality Impact Assessment (EIA), considering all the different ways specific groups of workers might be impacted by the policy.

UCU has produced guidance on conducting an EIA which can be found here: **www.ucu.org.uk/media/4883/UCU-Equality-Duty-Toolkit/pdf/ucu_equalitydutytoolkit_update_sep15.pdf**

> **Branches should ensure that an Equality Impact Assessment is conducted by the employer before the hybrid working policy is finalised. Branches are encouraged to question any areas of the EIA that the branch believes to have insufficiently considered the equality impacts.**

Reasonable adjustments for staff with a disability will also intersect with hybrid working. Some staff with disabilities will require extra equipment to help them undertake their roles, but using this alone as a reason for denying someone the ability to work offsite when others without a disability are allowed to is likely to be a breach of the Equality Act.

Staff who already have flexible working arrangements in place, perhaps because of caring responsibilities or a disability, should have these prior agreements respected irrelevant of any new hybrid working policy. So, for example, a requirement for staff working remotely to be available in core hours, wouldn't automatically apply to someone who has a flexible working agreement. Such flexible working agreements involve contractual changes, and enforcing contractual changes to implement a hybrid working policy could amount to discrimination.

> **Branches should ensure the policy makes it clear that the hybrid working policy doesn't overturn existing flexible working arrangements or reasonable adjustments. The policy should also make it clear that the provision of equipment for someone with a disability is not an acceptable reason for preventing someone from working remotely.**

Provision and maintenance of equipment

An employer should provide the equipment required to safely work from home/remotely. These may include stationery, a laptop/desktop computer, chair, secure filing cabinet, shredder, and a dedicated phone line/mobile phone or covering the extra costs incurred on

a current line. It is also important to clarify how much, if at all, any of this equipment can be used for personal/family use.

As well as providing the equipment, the employer needs to ensure it is maintained properly and fixed within a reasonable timescale, which could be specified in the policy. It is important to remember that not everyone will be able come onto site to sort technical issues/allow for maintenance, so this should also be addressed in the policy.

Employers may tell branches that they are not obliged to provide this equipment when people are working under hybrid arrangements. In which case, branches should ask their employer how they intend to comply with the General Data Protection Regulations (GDPR) and the Data Protection Act 2018? Under this legislation employers are required to clarify what data they hold about an individual (staff or student) and for what purposes. If that data is being accessed or processed on work equipment and systems then it is easier for them to manage this, and ensure that there is compliance with the college/university's own policy.

If people are using their own laptops/landlines/mobile phones then that personal data is potentially on their personal devices and is no longer being managed by the college/university. Apart from the safeguarding issues that this presents, it also creates the potential for data to be misused (even accidentally), destroyed, lost, altered, unauthorised disclosure to a third party or unauthorised access to the data. All of these amount to a personal data breach that could lead to a complaint to the Information Commissioner's Office with the potential consequences of that.

Added to this, employers are normally vicariously liable for the wrongful acts of their employees if the acts are carried out in the course of their employment and within the scope of their employment duties. The safest way to avoid this is to ensure that all work is done on the employer's equipment and systems.

If your employer is being really difficult about the provision of the necessary equipment for hybrid working, the branch should ask the employer to conduct a Data Protection Impact Assessment for this 'high risk' activity: **https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/accountability-and-governance/data-protection-impact-assessments/**

> **Branches should seek to ensure a hybrid working policy includes the provision and maintenance of the necessary equipment in order to do their jobs safely.**

Artificial Intelligence and surveillance software

UCU is aware that some employers, particularly in colleges, have been remotely monitoring their workers whilst they have been working from home. This is not an approach UCU supports because it is unnecessarily intrusive and implies a lack of trust and confidence.

Monitoring staff throws up a number of legal issues for employers, since this could mean the holding of personal data and their need to comply with the Data Protection Act 2018.

The employer must cite one or more lawful purpose for the holding of such personal data and say how that data will be processed. Branches should challenge an employer where the lawful purpose for holding data does not appear to be appropriate. The Information Commissioner's Office website details the lawful purposes for the retention of personal data: **https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/**

An organisation must conduct a Data Protection Impact Assessment (DPIA) for processing that is likely to result in a high risk to individuals. Since monitoring software used when staff are remote working could present an intrusion to their private lives, then UCU believes this presents a high risk and would require an employer to conduct a DPIA. More information can be found on DPIA's here: **https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/accountability-and-governance/data-protection-impact-assessments/**

Artificial intelligence (AI) and automated decision making (which is crucial to remote monitoring software) present a risk to staff and as such there should be a clear agreement between the branch and the employer about how such technology can be ethically used. UCU is in the process of drawing up guidance on ethical AI, and branches should contact their regional offices for support on drawing up such an agreement if their employer is willing to do so. The TUC has produced a manifesto on Dignity at Work and the AI revolution which branches can read here: **www.tuc.org.uk/sites/default/files/2021-03/The_AI_Revolution_20121_Manifesto_AW.pdf**

And a reps guide which can be found here: **When_AI_Is_The_Boss_2021_Reps_Guide_AW_Accessible.pdf (tuc.org.uk)**

> **Branches should ensure that a hybrid working policy makes it clear that workers will not be monitored through surveillance software, with human contact being the means by which their work is monitored and their well-being ensured.**

Right to disconnect

The Working Time Regulations 1998 require an employer to ensure that their workers don't work in excess of the legal maximums (48 hours per week) and have sufficient rest breaks during and between work hours: **www.acas.org.uk/working-hours**

Employers should also ensure that workers don't exceed their contractual working hours. These obligations apply wherever you are working.

Staff should be clear about the hours they are expected to work and this should be reviewed regularly to ensure they are able to cope with the workload in the times available. There should be clear times when staff can turn off computers, phones and other devices to ensure a complete break from work activities.

It would be good to use these negotiations with your employer to look at technological solutions to help staff to disconnect. Simple solutions such as delaying the delivery of emails would allow staff to work flexible hours but doesn't load pressure on others to respond outside of their normal working times. More extreme solutions have been explored by employers in other sectors, such as Daimler's decision to allow employees to opt to have emails deleted whilst they are on leave: **www.ft.com/content/abe36902-22d9-11e4-8dae-00144feabdc0**

Employers could also stop workers from accessing systems outside of agreed hours. Consultation with members about the kind of solutions they would like to see to help them to disconnect will be a crucial part of informing this conversation.

> **Branches should ensure the policy makes it clear that workers aren't required or expected to work outside of their agreed/contractual working hours, and can't be coerced to do so. Branches should ensure the policy establishes the right for workers to disconnect, and following consultation with members, could seek to task the employer with seeking technological solutions to encourage workers to take a break and help their co-workers to disconnect too.**

Covering the costs

Where staff are home working regularly or on a permanent basis then they will incur increased heating, lighting, phone and broadband costs a result. It is important that branches seek to ensure these costs are covered by the employer.

It is worth noting that working from home could have implications for the individual on home insurance premiums. Usually, the cost will be neutral because your presence at home for longer will make burglary less likely, but if someone needs to have expensive equipment in the home to remotely carry out work there may be a significant impact.

HMRC currently allows workers to claim for these costs via tax relief of £6 per week, but this means each member of staff has to make a separate claim: **www.gov.uk/tax-relief-for-employees/working-at-home**

Rather than creating chaos, it would be better to discuss with the employer how it will cover these costs. Covering the costs might involve using different processes, e.g. claiming specific identified costs via expenses claims and others via an allowance for hybrid workers.

> **Branches should seek to agree with the employer how the extra costs of hybrid working will be met by the employer and ensure this is specified in the policy.**

Reviewing the policy

It is always important to build a review process into any workplace policy, but with something that is a new way of working in the vast majority of workplaces, building in a review is even more important.

Such a review process should be evidence-based and ensure that where hybrid working is working effectively it can continue.

> **Branches should ensure that a formal evidence-based review is built into the policy so that changes can be made to empower people to produce their best work.**