

Good Work Plan: Measures to address one-sided flexibility

Response from Citizens Advice Scotland

October 2019

Citizens Advice Bureaux (CAB) across Scotland dealt with over 40,000 employment issues in 2018-19 alone. Employment advice is consistently one of our top three advice areas, with the advice categories "terms and conditions" and "pay and entitlements" the most commonly recorded specific areas of advice provided on employment issues.

Between, 2016-17 and 2017-18, employment issues related to terms and conditions, and pay and entitlements grew slightly as a proportion of all employment issues we dealt with.

The Citizens Advice Scotland (CAS) response to this consultation is based on our previous research in this area and analysis of CAB cases submitted by frontline advisers between April 2018 and September 2019.

Summary of key points

CAS welcomes the principles of a reasonable notice of work schedule, and compensation for shift cancellation or curtailment without reasonable notice. However, CAS would also promote other models, such as standby, unsocial hours, enhanced shift and callout payments, which can maintain employer and worker flexibility when exact staffing requirements are unknown, without recourse to specific notice periods or shift cancellation.

Particularly, we support the expectation that workers should not experience retaliation from employers for turning down shifts offered with less than reasonable notice. Currently, this is a common feature in CAB cases.

In setting the length of time that would count as "reasonable notice" we would urge the UK Government to be ambitious and consider a notice period for mandatory work schedules of one month. At an absolute minimum, workers should be given a standard policy on reasonable notice at the start of their employment (or when these proposals are introduced), and that policy must be adhered to for the duration of the worker's employment unless change is mutually agreed.

Consistency should be a key principle in the development of these proposals. A reasonable notice of work schedule, the cut-off point at which compensation becomes available for cancelled or curtailed shifts, and notice expected from workers on availability (not including emergency or sickness/ill-health absences) should bear some relation to each other.

In all elements of the Good Work Plan, consideration must be given to which groups of workers will be affected by the proposals. If proposals are implemented in such a way as to only benefit those with 'employee' status, leaving some groups of workers with fewer rights, it is possible that rogue employers will increase their use of these less-protected workers to avoid compliance with new

regulations. CAS would support any new regulations or legislation applying to 'workers' and 'employees', with careful monitoring of where "bogus self-employment" occurs.

Answers to questions

Temporary Right to reasonable notice of work schedule

Q1. If you are an employer or worker, what notice (if any), do you / your workers receive of your / their work? Does this vary by different types of work or worker?

CAS is not responding as an employer or a worker.

Q2. How are work schedules currently organised or planned, and how are they currently recorded? Are you aware of best practice examples where work schedules are organised or recorded particularly well?

CAS is not responding as an employer or a worker.

Q3. What would you define as 'reasonable notice' of work schedules? Does this vary between different types of work or contexts? And what working hours should be in scope?

In setting the length of time that would count as "reasonable notice" we would urge the UK Government to be ambitious. Many of the CAB cases we see where problems have arisen involve shifts being cancelled with one day's notice or less. However, we also have some evidence which shows that workers who are reliant on child care or support from carers to work may much longer to make alternative arrangements and avoid financial loss. Therefore, the shorter the notice period is set at, the more likely it is to disproportionately impact on people in those situations. These people are also likely to face other barriers to work. At an absolute minimum, all workers should be given a standard policy on reasonable notice at the start of their employment (or when these proposals are introduced), and that policy must be adhered to for the duration of the worker's employment unless change is mutually agreed.

As suggested by this consultation's title, the issue with the current notice of work schedules from some employers is not always the length of time itself, but the one-sided nature of this notice. CAS evidence suggests that the notice given by rogue employers tends to be much shorter than that expected from workers if they are unavailable for shifts. CAB cases do not indicate a specific length of time that would be universally appropriate as "reasonable notice"; rather, the common thread is this imbalance between worker and employer rights.

For example, if an employer provides only a few hours' notice of shifts but there are no consequences for workers who cancel shifts at a few hours' notice, then this is at least genuinely mutually flexible, although its effectiveness as a business practice may be questionable. However, what we see from CAB is that where employers give short notice for shifts, there is limited reciprocity.

CAS recognises the need to fill shifts at short notice in some sectors and some circumstances (e.g. emergency services, if scheduled staff fall ill, etc.), meaning that it can be difficult for some employers to provide reasonable notice of accurate work schedules. However, CAS would also promote other models, such as standby, unsocial hours, enhanced shift and callout payments, which can maintain flexibility when exact staffing requirements are unknown, without recourse to specific notice periods or shift cancellation.

Q4. What impact (if any) would the introduction of the right to a reasonable notice of work schedules have on you (or those you represent)? How would existing practices change?

CAB across Scotland see examples of shifts changed at or offered at short notice with penalties for staff who turn them down. For example, see the case below.

An East of Scotland CAB reports of a client working for a restaurant in a busy town for a year and a half averaging 40 hours a week. While visiting a city over two hours away with family and friends on a day off, the client received a text telling her to come into work for a shift starting shortly as someone had called in sick. The client could not get back to the town in that time, and therefore told her manager she could not take up the shift. The client has now been removed from the rota completely and has been given no hours for the foreseeable future. The client also has no contract. She believes she has been sacked and feels too intimidated to return for her personal effects.

The offer or cancellation of shifts at short notice is not only inconvenient, it can be expensive. Transport and care provision are often cheaper if purchased on a regular basis, in advance. Where travel or care has to be found at short notice, this can result in considerable expense. Similarly, if arrangements have already been made (including rejecting shifts from other part-time or zero hours contracts), but a shift is cancelled, then a worker may have spent significant sums but earned nothing.

As such, the introduction of these proposals would offer more security, reduce opportunities for retaliatory practices for turning down shifts, and help workers plan their lives better. It may also incentivise employers to more carefully plan shift patterns and pay closer attention to customer demand.

Q5. In your view, should the right to a reasonable notice of work schedules be something that is guaranteed from the start of someone's employment, or should an individual need to work for a certain amount of time before becoming eligible?

- **Guaranteed from the start if someone's employment**
- **An individual needs to work for a certain amount of time before becoming eligible.**

If so, how long? Please explain your answer.

If a reasonable notice of work schedule is introduced, it should be something guaranteed from the start of someone working for an employer. Otherwise there may be an incentive to treat newer workers less favourably in terms of notice, or conversely for employers to deprioritise staff retention in favour of more "flexible" newer workers.

Q6. In your view, should Government set a single notice period for work schedules which applies across all employers, or should certain employers / sectors be allowed some degree of flexibility from a the “baseline” notice period set by Government? Which employers / sectors (if any) should be allowed some degree of flexibility?

- **Government should set a single notice period that applies across all employers**
- **Certain employers / sectors should be allowed some degree of flexibility**

Please explain your answer.

If Government opt for a more ambitious notice period like one month, Government should set a single notice period that applies across all employers, with exemptions or flexibility available on application. The shorter the single notice period is set at, the weaker the justification for flexibility is, especially considering the other paid standby and on-call models described in question three.

Q7. What would be an appropriate “baseline” notice period and degree of flexibility to you? How would this impact you, or those you represent?

CAS believes that one month’s notice period for mandatory work schedules would allow much greater freedom for workers to arrange travel, care provision and other domestic and social commitments and to minimize financial detriment that result from last minute changes. As well as arranging care for others, some disabled workers may also require notice to arrange regular care provision for themselves. When this is not available it can make staying in work extremely difficult, as shown by the case study below.

A West of Scotland CAB reports of a client with learning difficulties who is able to live alone with three days’ care from her carer. The client has also been able to work part-time hours a week at a garden centre for over 10 years. Although she has enjoyed her work and been well treated by her past two line managers, a new manager has started to harass the client by constantly changing her hours at short notice, general bullying to speed up her work rate, and failed to advise the client when the garden centre was closed because of snow. The client is now terrified by the manager. One of the problems of the constant shift changing is that client has to take two buses to get to work and also her three days’ care are difficult to change because of her carer’s work patterns.

In more general terms we believe that having more notice of mandatory work schedules will enable workers to achieve a better work-life balance with which can have well documented positive impact on well-being.

Q8. In your view, are there any instances where reasonable notice of a work schedule would not need to be given? If so, for which workers / types of work?

Some workers (in education, or healthcare for example) may choose to be “on standby” for last minute shifts, but a standing rate should be paid in these cases. Additionally, if there is no requirement for the worker to accept the shift, and the worker need fear no repercussions, reasonable notice would not need to be given.

Q9. How do you think a reasonable notice of a work schedule would be recorded?

It should be recorded via email, text, or a written hard copy should be provided to the worker to keep. It is vital the notice can be corroborated by both parties, meaning that registering notice only on an employer controlled system would not be appropriate (although this could be in addition to the recording methods above).

Q10. What impact, if any, would the requirement of recording work schedules have on you (or those you represent) and how you organise work?

A recorded work schedule would assist workers, employers and tribunals to resolve disputes related to hours, including pay as well as notice.

Q11. If Government were to introduce the right to a reasonable notice of work schedule, what support measures would be most useful for employers within statutory guidance?

CAS recognises that employers may need support from Government to introduce a reasonable notice of work schedule, but believes other stakeholders are better placed to comment on what that support should be.

Q12. What would an appropriate penalty be in the event of non-compliance (when workers are not given reasonable notice of their work schedule, and / or if it is not recorded correctly)?

Workers should be under no requirement to work when not given reasonable notice of their work schedule. If workers are forced by employers to take up shifts without reasonable notice, penalties should be at a level consistent with other areas to provide clarity to workers and employers. The 200% penalty on wage arrears could be used as guidance, with penalties equal to 200% of the value of wages for the number of hours of work scheduled without reasonable notice.

Smaller penalties may be more appropriate for non-compliance of recording, but again, they could be in line with that required by National Minimum Wage legislation to provide consistency for employers and workers.

Compensation for shift cancellation or curtailment without reasonable notice

Q13. Are shifts or hours of work cancelled at short notice? Why? Are reasons provided to workers? Are these hours then replaced?

- **Yes – shifts or hours of work are cancelled at short notice**
- **No – shifts or hours of work are NOT cancelled at short notice**

Please explain your answer.

Yes – shifts our hours of work are cancelled at short notice. Reasons are sometimes provided, but we do not regularly see hours replaced. The two cases below show examples of shifts being cancelled at short notice.

An East of Scotland CAB reports of a client who was texted at 11.30 pm with hours for the following day. At 3.30pm the following day, the client was texted to cancel that shift, due to start at 5.30pm. The client knows from a colleague that the manager was employing someone else for those hours and feels manager does not like her.

A South of Scotland CAB reports of a client who has been employed as a labourer for three months. When he took the job the client was told that there was plenty of work and he would be full time. However, the client's employer has been contacting him in the mornings via text to say he's not needed for that day's work and he has not been paid for these days. The client has not been issued with a contract.

Q14. How often are shifts or hours of work cancelled at short notice? Why?

It is not possible to make national average estimates from CAB cases, but we know for individual workers it can vary from once every so often, to multiple times a week. Reasons for cancellation also appear to vary, but low demand for services or products feature in CAB cases. The most common reason in cases submitted by CAB advisers appears to be retaliation for workers turning down shifts or raising employment rights issues in the workplace, as in the cases below.

An East of Scotland CAB reports of a client in full time work as a delivery driver who has been in employment for over two years. In the last few months, there have been discussions at work relating to pay and conditions and the management decided to level out hourly rates between their standard and overtime rates. There was also agreement in that the new wages rates would include adjustments in relation to National Minimum Wage conditions.

The last two monthly wage slips showed the change in hourly rates, but did not reflect the adjustment for National Minimum Wage. The client raised the issue with his boss in person in the presence of boss' wife, in person again, and over text. When the issue stayed unresolved, the client had a discussion with his line manager, where the client stated his annoyance over the matter to the extent that if the money was not sorted out, the client did not wish to come in to work. The following day he received a text from his boss claiming no knowledge of the discussion about his wage rate or any adjustment, that the client was not to bother coming in to work and they would pick up his clocking on card and keys. The client was due to go on shift in early hours of the following day and did not know what to do.

The client was concerned that if he went to work and took his van out on his delivery run, his employer might report the van as stolen.

An East of Scotland CAB reports of a client who has handed his notice that morning. The client had been working for a firm operating across multiple sites for just under two years with no issues regarding sickness or discipline. Up until the start of the financial year, the company had been paying for his travel to get to work with his home address being his base, meaning he would be paid his hourly rate for the time he spent travelling. However at the start of the new financial year, his contract was changed so that this travel was not paid. As a result, the client estimates that he has lost 30 hours of pay as a result.

This shortfall caused the client some stress. The client raised this informally, along with another issue - that he was being told he had to stay away (at the company's expense) at very short notice. Within a matter of days, he was phoned to say that his contract would be terminated subject to two weeks' notice. This concerned the client as he feels that he has been bullied into accepting these jobs at very short notice and because he expressed concern at this and requested more notice of these jobs, he's been shown the back door. The formal reason the company gave for dismissing him was that there was no work for him in the local area. However the client is aware of others working in the area for the same company and so cannot understand why this would be the case.

Q15. What notice, if any, is provided before the shift or hours of work are cancelled? Does this vary at all?

This varies considerably but can be as late as when the worker is already on her way to a shift, and in some cases after the worker has actually begun their shift. The case below describes one instance where a worker was informed of a cancelled shift at extremely short notice.

An East of Scotland CAB reports of a client who has been paid for nine hours work, less a £1.25 deduction for access to online training -. She claims she also worked three hours 'training' in which she was not trained or paid.

She worked two further afternoon shifts of three hours each, and was told only after she had worked the second shift that afternoon sessions were 'commission only', and she had earned no commission on those shifts.

She alleges that a Saturday shift was written in the book for her, but was cancelled as a result of her text enquiry about these issues on the Saturday morning, when she had almost completed her hour and a half long bus journey to her place of work. The company alleges that a text message was sent to her on Friday cancelling the Saturday shift, which the client claims not to have received. Even if the text message was sent, 24 hours is not a significant notice period.

Q16. Do you/workers receive compensation if shifts or hours of work are cancelled? If so, what compensation is provided?

- **Yes – I / workers receive compensation if shifts or hours of work are cancelled**
- **No – I / workers DO NOT receive compensation if shifts or hours of work are cancelled**

Please explain your answer.

We have no evidence of recent CAB cases where workers have been provided with compensation if shifts or hours of work are cancelled.

Q17. Does this compensation vary by different types of work/worker? If so, how does this vary?

- **Yes – compensation varies**

- **No – compensation DOES NOT vary**

Please explain your answer

We do not see cases of any compensation. Therefore, this does not vary in our experience.

Q18. Are you aware of any best practice examples from other areas of industry where workers receive compensation for shifts or hours of work which are cancelled?

Standby, unsocial hours, enhanced shift and call-out payments all achieve positive two-way flexibility in a way that could be viewed as compensation. These payments exist in a range of sectors, including health, care and IT.

Q19. What impacts, both positive and negative, would this proposed policy have on you (or those you represent) (if any)?

There would be a positive impact on the CAB clients we see who currently suffer detriment if a shift is cancelled at short notice, when plans including care provision and travel arrangements may have already been made. Some workers who may have two or more different part-time contracts to make ends meet would also benefit from this compensation if they have turned down shifts elsewhere in order to work during the shift that has been cancelled.

Q20. Noting the three proposed options put forward by the LPC, if compensation were introduced for shifts or hours which are cancelled at short notice, what would you consider to be a 'fair' amount of compensation?

- **The value of the shift in question**
- **The worker's appropriate NMW rate multiplied by their scheduled number of hours**
- **A multiple of the worker's appropriate NMW rate**
- **Other.**

If so, please specify

The value of the shift in question would be a suitable incentive for employers to consider other models, including paid standby shifts, where the risk and flexibility is more evenly shared between worker and employer.

Q21. If compensation were introduced, what should be the cut-off point at which employers have to give their workers notice of a cancelled shift or hours (after which workers would become eligible for compensation)?

This should mirror the "reasonable notice" period for work schedules.

Q22. If Government were to implement a policy where the notice period for cancelling shifts or hours of work was shorter than the amount of time you suggest above, what impact (if any) would this have on you (or those you represent)?

If this is distinct from the “reasonable notice” decided upon, it would add an additional layer of complexity to the system for workers and employers. It would likely make it harder for CAB clients to have a decent work-life balance, make any long-term plans or budget easily. It would also likely increase stress levels, resulting in further pressures on public services, and result in additional expenses for those with caring responsibilities.

Q23. Should all types of employer, across all sectors, be expected to pay compensation?

1. Yes – employers should be expected to pay compensation

2. No – employers should NOT be expected to pay compensation

Please explain your answer.

Yes. For any sectors where this is not appropriate, standby payments and working patterns can be employed.

Q24. Which workers, if any, should be exempt from receiving compensation?

None.

Q25. In your view, should workers become eligible for compensation from the start of their employment, or should they become eligible after a certain amount of time?

1. Guaranteed from the start if someone’s employment

2. An individual needs to work for a certain amount of time before becoming eligible

Please explain your answer.

Workers should become eligible for compensation from the start of them working for an employer. This prevents rogue employers treating new workers less favourably, and also removes the potential for workers to be dismissed in favour of those with fewer rights.

Q26. How should a policy to provide compensation for short notice shift cancellations be designed to best target workers who experience one-sided flexibility? Compliance and guidelines for employers

Being cognisant of low wages is positive, but it is also important to consider number of hours worked and working patterns. Missing out one or two hours where total shift hours amount to 16 is a sizeable proportion of income. For those whose working pattern is full-time, a small number of hours may have less of an overall impact. However, hours at certain times of day may be much more inconvenient than others, and this should also be recognised.

One-sided flexibility can be most challenging when it involves working evening and weekends when transport and care options may be limited, and specific regard to these kind of shifts would be beneficial for workers in the low income sectors where these shifts are common (hospitality, retail, care, etc.).

Q27. What could employers/employer representatives do to share best practice and

drive change through their workforce?

A standard statement of rights and policies, including notice periods and shift curtailment/cancellation compensation should be given to all workers on contract commencement.

Citizens Advice Scotland (CAS), our 59 member Citizen Advice Bureaux (CAB) and the Extra Help Unit (EHU), form Scotland's largest independent advice network. Advice provided by our service is free, independent, confidential, impartial and available to everyone.

In 2018-19 the Citizens Advice Service network (CAB & EHU) helped over 272,500 clients in Scotland and dealt with over 730,000 advice issues. With support from the network clients gained over £131 million and our self-help website Advice in Scotland received approximately 3.7 million page views.