

Flexible working policies: a comparative review

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INSTITUTE FOR WOMEN'S
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EXECUTIVE SUMMARY

In December 2008, the Equality and Human Rights Commission commissioned the Institute for Women's Policy Research to examine the impact of the UK 'Right to Request, and Duty to Consider, Flexible Working' on gender equality and the access to quality flexible working for both men and women. It was asked specifically to compare this with the impact of flexible working statutes in other countries. Of particular interest are the experiences of countries such as Belgium, France, Germany and the Netherlands where flexible working rights are open to all employees and are not, as in the UK, targeted at employees with childcare or care-giving responsibilities. The review further assesses employers' experience with flexible working laws and reviews policies and best practice initiatives aimed at encouraging the transformation of work.

KEY FINDINGS

Statutory approaches to workplace flexibility

The large majority of industrialised countries have some statutory regulations which make it easier for individual employees to change their working hours. Laws facilitating working time adjustments to attend education or training, or to retire gradually, are also common, but are not covered in detail in this report.

In the majority of countries, as in the UK, laws are specific to employees caring for their children or dependent adults. In many countries, this takes the form of part-time work during parental leave, an option not available to UK parents. Many countries also have a right to reduced hours for parents after parental leave.

Four countries provide a right to alternative work arrangements for all employees, irrespective of their reasons for seeking change. However, with the exception of the Netherlands, such universal rights are additional to flexible working rights for parents and carers.

A separate legal model has been used in Australia, where carers are a protected category under Human Rights Discrimination Law. In two states, New South Wales and Victoria, laws specify that employers have reasonably to accommodate requests from carers for alternative work arrangements. This principle has similarly been established through European and UK sex discrimination case law.

Statutes elsewhere focus on the full-time/part-time dimension; the UK Right to Request includes how many hours an employee works and when and where they do so. Unlike in the UK, most statutes explicitly include rights to request an increase in working hours.

In all countries, employers may refuse flexible working requests on business grounds, but the UK 'soft' approach to flexible working, which does not allow a substantive challenge in court of employer business reasons for a refusal, is unique.

Access to flexible working in other countries is more likely to be governed by collective bargaining and workplace agreements than in the UK.

Access to flexible working in practice

Policy objectives for flexible working statutes differ

As in the UK, in many countries, flexible working statutes were introduced to increase labour force participation, particularly for mothers, and to address short-term and long-term labour shortages. Yet in many countries, such as Germany and France, laws were part of active labour market and work sharing measures and were introduced within a context of high unemployment.

Gender equality has not been the primary motivation for flexible working laws, with the exception of the Nordic countries and the Netherlands. Denmark and Sweden have used tax and benefit policies, combined with extensive childcare provision, to encourage women's return to full-time work; part-time work among mothers has fallen significantly.

Change to the availability of flexible working

The UK benefits from extensive trend data on flexible working. This is much less the case in other countries and makes cross country comparisons of the impact of different laws difficult. The latest available German data on the part-time law were collected while the German economy was still in recession.

Various UK surveys show that the availability of flexible work options has increased since the introduction of the Right to Request; that it has been successful in opening access to flexible working options which do not lead to a reduction in salary, such as flexitime; and that both men and women are requesting flexible working, although

women are much more likely to make requests for childcare reasons. Part-timers have been particularly likely to (successfully) request flexible working.

Countries with universal rights to part-time work have not seen a higher take-up of flexible working from men than the UK. Where reduced hours work is available as part of parental or Sabbatical leave (as in Belgium), men are highly likely to choose a 20 per cent reduction; fathers who reduce hours for childcare reasons are also more likely to share other domestic work.

Gaps in knowledge

Despite the wealth of trend data on flexible working in the UK, there are several gaps: survey data are lacking on the nature or success rate of requests for flexible working from carers or from disabled people. No data are collected on requests for increased hours from part-timers, unlike in Germany and the Netherlands. Data suggest that men are less likely to make successful requests than women, but are too limited to indicate the reasons for this.

There are no data on the consequences of refused requests for flexible working, either for men or women. A Dutch survey found that following a refusal, three-quarters of employees left their job, and a fifth of those who stayed, performed worse. Likewise, there are little data on the consequences of a successful request (or indeed an unsuccessful one) in terms of level of seniority, career advancement, job content or pay.

Available research is ambivalent on the impact on the full-time/part-time pay gap, with some sources suggesting no change and others a slight narrowing. It is also not clear whether the Right to Request has been successful in reducing the need for those who want to cut their work hours to change jobs. At least one survey suggests that the large majority of returning mothers still change jobs when they want to move from full-time to part-time work.

Slow progress in managerial jobs

Employees in managerial jobs in all countries reviewed are less likely to request reduced hours, and when they do, they are less likely to succeed. Flexible working statutes are playing a role in changing this, but need to be supported by broader policy measures to challenge working time norms in senior positions.

The long hours culture and the intensification of work

Both a cap on working hours, and a broader reorganisation of working time, are necessary pendants to policy approaches based on individual rights to flexible working. The experience in countries such as Germany, France and Denmark shows that reductions in working hours, where employees are consulted over implementation, can provide greater work-life balance without reducing competitiveness.

Flexible working rights in the courts

In spite of the 'soft' framing of the Right to Request, the number of claims to tribunals or lower level labour courts in the UK is higher than in Germany and the Netherlands. In the absence of well developed workplace mechanisms for dispute resolution, more UK employees turn to tribunals. Yet in all countries, litigation has been very limited (data are available from Germany, the Netherlands, the UK and two Australian states). In the UK, flexible working disputes annually have comprised at most 0.2 per cent of all tribunal claims since 2003.

Court cases help to clarify the boundaries of flexible working rights and can send strong signals to employers about their obligations to facilitate change. They also provide an illustration of the issues that arise from flexible working requests.

Court cases have successfully challenged employers' blanket refusals to consider alternative work arrangements or seriously to consider the feasibility of a request. In the UK, the combination of legal principles established through indirect sex discrimination case law with the procedural emphasis of the Right to Request has strengthened women's ability successfully to request flexible working in court, in part because employers are aware that this is the prevailing interpretation of the law.

Male employees are disadvantaged by the 'soft' framing of the Right to Request because, unlike women, they are unable to claim that lack of flexibility indirectly discriminates against them as a group and consequently may only challenge employers' refusals on procedural grounds, not substantively.

The 'soft' framing of the Right to Request may contribute to a prioritisation of mothers over fathers in relation to flexible working, and thus inadvertently lead to a deepening of sex segregation in working patterns. The Australian Equalities and Human Rights Commission has come to similar conclusions in its review of access to flexible working.

It has called for new legislation, based on precedent in Australian states, to provide all carers, irrespective of their sex, with a right to reasonable accommodation of care related needs for alternative work arrangements.

Case law in the Netherlands and Germany

Employers have prevailed in court where alternative arrangements led to disproportionate training costs, supervisory costs or where it was genuinely not possible to recruit to a part-time job. Yet courts have also established that employers may be expected to carry some costs resulting from the implementation of flexible working, in recognition of the broad social and economic objectives informing the legislation.

In spite of the universal framing of the laws, the majority of claims were made by women, for childcare related reasons. Yet men have been successful in the courts in circumstances where it is unlikely that they would have succeeded in the UK. German fathers were almost twice as likely as mothers to say that the part-time law had helped them; the latter stated that a part-time option had already been available to them at work.

The transformative role of the tribunals in Australian states

The family carer discrimination amendments in New South Wales and Victoria obliges employers to provide reasonable accommodation of employees' care-giving related needs for alternative work arrangements. The introduction of the new rules coincided with extensive mandatory training, ensuring that tribunal members were more expertly able to assess both employer and employee claims regarding flexible working. In the first two years, only one case was appealed.

In the UK, the vast majority of flexible working cases reach tribunals once the employment relationship has broken down. This limits the potential for Acas to facilitate the introduction of alternative working patterns.

The limits of individual rights to flexible work

A number of tribunal cases deal with requests for exemptions from unsocial hours working. While parents have sometimes succeeded with such claims, such individual solutions to unsocial hours working potentially increase resentment from other employees. Resentment is likely to be less where work arrangements have been reorganised collectively to provide enhanced individual flexibility, predictability and choice for all employees.

Employers and the dissemination of flexible working

The large majority of employers do not report problems with the implementation of flexible working statutes. In the UK, many employers have increased flexible working options. Yet the dissemination of flexible working remains uneven, in the UK as elsewhere. The availability and take-up of flexible working is significantly higher in the public sector and in employers with a predominantly female workforce.

Survey data suggest that (potential) employees would like more information about the availability of flexible work options. German employers, in co-operation with the German Ministry for Women, Seniors, Families and Youth (BMFSFJ), have set targets to increase the proportion of job adverts mentioning family-friendly work arrangements.

The critical role of line managers

The large majority of flexible working requests are made informally to a line manager. The Right to Request has been credited with providing line managers with a process and criteria for approaching flexible working requests. Yet work intensification and tough performance targets may limit line managers' ability to focus on flexible working. A number of new pilot programmes acknowledge the critical role of line managers by developing targeted training programmes and tools.

Small and medium-sized employers (SMEs) and flexible working

Small employers are more likely to provide flexible working informally, but employees working for small employers are not less likely to have access to alternative work arrangements. Medium-sized companies are most likely to report problems with the implementation of flexible working. Both the New Zealand and German governments target flexible working advice at SMEs. In Germany, chambers of commerce and local government jointly provide advice centres on flexible working in several cities.

The German government and the dissemination of flexible working

The German BMFSFJ has played an active role in promoting work-family reconciliation. 'Alliance for Families' brings together employer associations, research institutions, trade unions and foundations, each agreeing to specific targets and work programmes in relation to work-family reconciliation.

The Ministry also coordinates 'Local Pacts for Families' to encourage co-operation at local level; this includes funding for a 'Family Atlas' which benchmarks communities on

factors ranging from family-friendly working to aftercare facilities and affordable housing. Local initiatives support knowledge sharing on flexible working.

The growth of flexible working observed during the last few years has much to do with flexible employers becoming more flexible, while progress in other workplaces has remained modest. The development of targeted resources, particularly at a local level, combined with start-up financial help for employers facing particular barriers, can help push flexible working to the next level.

CONCLUSIONS

The majority of high-income countries have introduced employment statutes which enhance the ability of individual employees to adjust their working hours. As in the UK, such laws are predominantly targeted at parents or carers but a minority of countries additionally have flexible working rights which apply to all employees, irrespective of their reasons for seeking change, and which allow employees to challenge employer refusals in court.

The comparisons suggests that the statutory framework matters, but that it is not a magic bullet for changing gender specific flexible working patterns. Data availability limits the scope for a direct comparison of the impact of flexible working laws. Yet in all countries, women continue to be more likely to take up flexible working rights than men, and are more likely to use these because of caring responsibilities.

The UK Right to Request has made a significant contribution to increasing access to individual flexible working options. In comparison with other national approaches, the comprehensive approach to flexible working, beyond the part-time/full-time dimension, seems particularly helpful.

The lack of data on requests for flexible working from carers and disabled employees has made it difficult comprehensively to evaluate the Right to Request. The report has also identified other areas where more research would be helpful, such as in relation to the consequences of refused requests, a more detailed analysis of reasons for rejections by gender, the seniority and pay consequences of accepted requests, and requests for increased working hours.

Flexible working statutes have a potentially transformative role for traditional gender relations by encouraging men to take greater responsibility for care work. The 'soft' UK approach disadvantages men in particular, and thus limits this transformative potential.

The Right to Request, and flexible working more broadly, is not a panacea for all work-family conflict. Childcare is an important prerequisite for women's ability to work, while a cap on working time overall provides important incentives for employers to reorganise working time more flexibly. A focus on the local level in the development and implementation of work-family policies can encourage linked up thinking between different policy areas and encourage knowledge sharing between employers.

The data reviewed in this report, particularly for the UK, were largely gathered during times of tight labour markets. It is too early to assess whether there will be a retrenchment in employee centred flexibility as a result of the recession. Past experience suggests that employees are unlikely to request flexible working when there is fear of job loss. The role of government and public authorities in actively promoting flexible working is likely to be even more critical in times of recession than in good times.

1. INTRODUCTION

1.1 Background and objectives

The Institute for Women's Policy Research was commissioned by the Equality and Human Rights Commission (EHRC) to prepare a research review of the effectiveness of the United Kingdom's (UK) approach to facilitating workplace flexibility and work-life balance, particularly through the UK 'Right to Request, and Duty to Consider, Flexible Working'. This was compared with policy and legal approaches in other high-income countries. Statutory approaches to increase workplace flexibility are increasingly common across Europe and other high-income economies. This is part of an active labour market and social policy designed to increase labour force participation, particularly of women with childcare and caring responsibilities, and more broadly to facilitate a better work-life balance over the life cycle.

The UK Right to Request, and Duty to Consider, Flexible Working was introduced in April 2003 to provide employees with parental responsibility for children under the age of six (or 18, if disabled) with a right to request a change in how many hours, when or where they work, and to have such a request seriously considered by their employer. In April 2006, the coverage of this right was extended to employees who care for a dependent adult;¹ a second extension, from April 2009, will extend coverage to parents of children under 16. Both extensions were preceded by reviews of the effectiveness of the Right to Request (Department for Business, Enterprise & Regulatory Reform (BERR), 2008).

The UK's Right to Request differs from many other statutes adopted to enhance employee access to workplace flexibility in a number of regards:

- It limits, for the period covered in this review, the right to employees with young children and disabled children and to employees with care-giving responsibilities for dependent adults.
- It provides a right to a process for considering a request, not an actual right to an alternative work arrangement, without the possibility of appealing an employer's refusal to an external court or institution.

- It adopts a comprehensive approach to flexible work arrangements, including the number of hours worked, the scheduling of hours, and the location of work and, unlike most other statutes, it does not more narrowly focus on part-time work.
- It makes no explicit provision for a temporary reduction in working hours.

In contrast to the UK, several countries, most notably Belgium, France, Germany and the Netherlands, have introduced statutes which provide a right to flexible working to all employees, irrespective of their reasons for seeking change. They also provide the legal possibility for employees to challenge an employer's refusal of a request in court; the laws, however, are more narrowly targeted at the number of hours worked. A number of other countries, for example Australia and Sweden, as well as Norway, also target rights at carers and/or parents of young children, as in the UK, but provide different enforcement and contractual conditions for these rights.

All of the statutes view work-family reconciliation, and work-life balance more broadly, as an important objective. This provides the opportunity to assess the potential strength and weaknesses of the UK approach to increasing access to workplace flexibility, particularly its impact on gender equality; on the availability of quality part-time work; on men's likelihood to make use of flexible working; and on employers and the business environment. The objective of the review is to contribute to knowledge of potential best practice and to identify gaps in our current knowledge and research on the contribution of statutes to flexible working in the UK.

1.2 Methodology

This report was conducted primarily by a review of literature on rights to alternative work arrangements in high-income countries. More in depth investigation, including an examination of available policy documents and contact with national experts and/or stakeholders, was conducted in France, Germany and the Netherlands, the countries of greatest interest to the EHRC because of the universal approach to flexible working rights, as well as Australia, New Zealand and Norway. Information for other countries with flexible laws was reviewed in a less comprehensive manner. For the UK, we consulted the views of the Confederation of British Industry (CBI), the Chartered Institute of Personnel and Development (CIPD), the Trades Union Congress (TUC) and the Union of Shop, Distributive and Allied Workers (USDAW).

1.3 Structure of the report

Chapter 2 provides an overview of statutory approaches to workplace flexibility in high-income countries, particularly focusing on those countries which provide a universal right to flexible working. Chapter 3 reviews the evidence of change in flexible working since the introduction of flexible working laws in each of the major countries, beginning with a brief review of different policy contexts for the introduction of each law in each country. Several areas of change will be considered in detail: the transition from full-time to part-time work; access to part-time work and flexibility in managerial and professional work; and men and flexible working. Chapter 4 examines the impact of the laws through the lens of the courts. Chapter 5 considers employer experiences with the law, and highlights initiatives targeted at encouraging workplace change.

2. STATUTORY APPROACHES TO WORKPLACE FLEXIBILITY

2.1 Introduction

Employment statutes aimed at increasing the rights of individual employees to adjust their working hours are now common in high-income countries. A 2007 review of 20 OECD countries found that all countries bar one had laws which facilitated the change of the number or scheduling of contractual working hours for employees (Hegewisch and Gornick, 2008). Such laws reveal that workplace change has lagged behind demographic change. This leads to a 'workplace workforce mismatch'² between workplaces which are still predominantly organised around the ideal of a full-time worker who is unencumbered by caring responsibilities or personal health issues, and workplaces where such workers are increasingly in the minority. Work organisation has partially adjusted to the rapid increase in the proportion of women who are working experienced during the last few decades in all industrialised countries, but it is clear that the transformation is still incomplete (Equal Opportunities Commission (EOC), 2007). The costs of this mismatch in terms of lower labour force participation or marginalisation in lower quality jobs of those who cannot comply with this full-time norm have increasingly become the concern of public policy, leading to legislative and other policy initiatives aimed at speeding up the pace of change (European Commission, 2006).

Work-family reconciliation is perhaps the most prominent target for flexible working policies. However, statutes reflect a variety of policy objectives, from encouraging a return to education and lifelong learning, to work sharing as part of policies designed to reduce unemployment, to gradual retirement and enhancing work-life balance more broadly across the life cycle. Sparked not least by the Lisbon employment objectives of the European Union (EU) and its targets for increased labour force participation of women and (older employees), as well as by national implementations of the 1996 EU Parental Leave Directive and the 1997 EU Part-time Directive, many countries have recently amended or introduced legislation to increase the scope for employees to vary their working hours (Fagan and Hebson, 2006). Rights towards workplace accommodation for disabled people, while frequently addressing similar issues in terms of working time adjustments sought, are generally covered in separate pieces of law. Legislative approaches to workplace flexibility can be broadly differentiated into three groups:³

- Statutes which make rights to flexible working conditional to specified activities, such as the care for young children or dependent adults.
- Statutes which provide access to flexibility not as an employment right, but as part of protection against discrimination either on the basis of sex or, more broadly, family care-giving responsibilities.
- Statutes which provide flexible working rights to all employees, irrespective of their reason for seeking change.

The majority of flexible working statutes, like the UK Right to Request, fall into the first group and are particularly targeted at increasing the possibility of combining responsibility for children with paid employment. Universal flexible working time statutes, which provide identical rights to all employees wishing to adjust their working hours without prioritising any particular reason for seeking change, have been introduced in Belgium, France, Germany, the Netherlands, and, to some extent, Finland (where a right to reduced hours depends on the employment of an unemployed person to replace the lost hours). Such 'universal' laws, however, were not introduced to substitute for all rights to flexible working, but are generally in force in parallel to statutes targeting rights more specifically at certain groups and lifetime circumstances, such as the possibility of taking parental leave on a flexible basis.

Apart from direct employment rights, litigation charging that certain groups of workers, such as mothers or disabled people, are disproportionately disadvantaged by lack of flexibility has provided an alternative route to alternative work arrangements, and that withholding flexibility hence constitutes indirect discrimination. This line of argument is reasonably well established in relation to sex discrimination in EU and UK case law, but is less well developed to date in relation to disabled employees. Outside of Europe, in Australia and the United States, such a discrimination based approach to flexible working has been reframed as protection for employees with family or care-giving responsibilities, in a more gender neutral manner. Substantive legislation linking this to procedures to achieve workplace change was introduced in a number of Australian states in 2001 (see p. 7).⁴

In this chapter, we will review the statutory frameworks in greater detail, beginning with part-time work, then considering other forms of flexible working and, finally, discussing the treatment of business costs, and the framing of rights in terms of enforcement.

2.2 Rights to part-time work for parents

The most common framing of flexible working rights is as a right for parents temporarily to reduce their working hours, as a variant of parental leave. This differs from the UK approach in two important dimensions: it provides an automatic right to return to an equivalent job at the end of the reduced hours period; and, in as far as there is a right to paid parental leave, such pay can (at least partially) compensate for the earnings lost because of reduced working time. Similarly, in most countries, a parent on parental leave is credited with pension and social insurance contributions, reducing the earnings and retirement penalty typically faced by parents as a result of part-time work.

Job-protected temporarily reduced hours options are now available as part of parental leave in 12 out of 15 EU member states and in Norway (Hegewisch and Gornick, 2008; Fagan and Hebson, 2006). In some countries, parents are offered considerable flexibility in the number of hours they work. For example, in Norway, parents are entitled to paid parental leave on a full-time basis for one year, but are able to combine this with working 50, 60, 75, 80 or 90 per cent of their usual working hours for up to three years. Likewise, in Belgium, full-time job protected parental leave of three months can be extended for up to 14 months when it is combined with 80 per cent of usual working hours (Vandeweyer and Glorieux, 2008). In Germany, parents are able to work between 15 and 30 hours per week for up to three years after the birth of a child, at the end of which they are entitled to return to an equivalent job (with the agreement of the employer, it is possible to take one of the three years at a later stage); a similar scheme is available to French parents. Whether parents in practice make use of such flexible options depends on a number of factors, not least the administrative ease with which they can be accessed and combined with parental leave pay (as well as structural factors such as childcare availability and the overall length of leave). The Norwegian scheme, which was introduced in 1996 but used by only about one in ten parents, was reformed recently to simplify the procedures and extend the leave period to three years. Although official evaluations are not yet available, according to the Director General of the Norwegian Ministry of Children and Equality, first indications are that the regulations are increasing take-up, including from fathers.

The second set of flexible working rights for parents concerns the return to work after maternity or parental leave. The first such scheme was introduced in Sweden in the 1970s, providing parents with a right to reduce their working day by 75 per cent until the youngest child turned 8 years or had entered second grade at school. This right to a 32 hour week is credited with playing a considerable role in increasing the labour force participation of Swedish women, contributing to Sweden having one of the highest female labour force participation rates in the world. Likewise in Norway, parents of children under 10 are able to reduce their hours (without specifying by how much) on welfare grounds, and may be exempted from working overtime if they can prove that this would cause difficulties with childcare arrangements. Several other countries, such as Austria and Portugal, have introduced similar rights more recently. Under this variant, parents are not compensated for the loss of earnings resulting from reduced hours, but in principle are guaranteed a right to return to previous hours.

A right to part-time work for parents or carers resulting in a permanent contractual change, as in the UK Right to Request, is less common; only Spain and New Zealand have adopted similar approaches (laws in both countries were passed in 2007).⁵

2.3 Carers' rights to reduced or flexible working

Since 2007, carers for dependent adults in the UK have identical rights to parents of young children to request alternative working practices. A similar law, largely based on the UK Right to Request, was introduced in New Zealand in the summer of 2008.⁶ However, several countries, such as Belgium and Germany, provide specific leave periods for caring purposes, which may be taken as a reduction in working hours. Other countries, such as Finland or Norway, also provide for the possibility to reduce working hours either to care for someone else or because of one's own health. The regulations are similar to those which apply to parents of older children.

A rather different approach to flexible working has been adopted in Australia, or rather in several states of Australia. Instead of providing access to flexible working as a direct employment right, people with care-giving responsibilities (childcare as well as care for elderly or sick relatives) were explicitly included as a category to be protected against discrimination, through an amendment in 2001 of the New South Wales (NSW) 1977 Anti-Discrimination Act. This approach was subsequently also adopted in Victoria.⁷ The amendment provides protection from direct and indirect discrimination on the basis of care-giving responsibilities and obliges the employer to make 'reasonable'

accommodation in the organisation of work. The amendment was primarily targeted at reforming working time arrangements and working conditions through flexible work practices; accommodation may cover all aspects of work organisation, including home based work, relocation, notice periods and overtime requirements (see Bourke, 2004 for an extensive review). In principle, this approach is similar to EU and UK case law which particularly has increased access to part-time work, and to a lesser extent, flexible working, for working mothers (see Palmer et al, 2007 for relevant case law). The advantages of the NSW approach are that men and women, and parents and carers, are treated equally (although the need to prove individual discrimination makes this more difficult to implement for employees than a direct employment right.)

2.4 Universal rights to part-time work

In addition to specific regulations targeted at parents or care-givers, four European countries have implemented laws providing rights to reduced hours for all employees, irrespective of their reasons for seeking change. In three of these countries, France and the Netherlands (since 2000) and in Germany (since 2001), a change to part-time work presents a permanent change to the contract of employment, similar to the approach taken in the UK Right to Request. Moreover, as in the UK, there is a limit to the frequency with which employees can make requests for changed hours. In Germany, at least, an explicit reasoning for the introduction of a general right was 'risk sharing' (even though its primary policy purpose was work-family reconciliation once rights to parental part-time work had expired). This was in order to reduce the likelihood of discrimination against women of childbearing age as those were most likely to make use of such a right (Warth, 2008).

Unlike the UK Right to Request, all three statutes include explicit provisions for a legally enforceable request for increased working hours or full-time employment (although the rights to increase working hours are weaker than the rights to reduce hours). This reflects a concern among policy makers about involuntary part-time work and the marginalisation of many part-time workers in jobs with little scope for advancement.

A rather different approach is in place in Belgium where, since 2002, every employee over his/her working life has the right to a Time Credit of one year of (partially paid) leave, which can be extended for up to five years of working at 80 per cent of usual working hours. At the completion of the leave, the employee returns to previous working hours.

2.5 Beyond the part-time/full-time dimension

The UK Right to Request defines flexible working rights for parents and carers in a comprehensive manner, including the number of hours worked, the scheduling of hours and the location of work, each potentially as independent contractual arrangements. With the exception of New Zealand and the Australian legislation,⁸ the UK is the only country to have adopted such a comprehensive approach to individual working time arrangements. It considerably expands the range of options available to individual employees, particularly by allowing arrangements which do not involve a reduction in earnings.

Elsewhere, instead of adopting an individual approach to flexible working, working time flexibility has been the subject of regulation and collective bargaining in relation to working time. Even though work-life reconciliation is often of secondary importance to collective negotiations over working time (European Foundation for the Improvement of Living and Working Conditions, 2006), the latter have considerably expanded access to measures such as flexitime and time-off-in-lieu arrangements, with a number of countries having passed legislation to regulate the setting up of working time accounts. Moreover in many countries, including Germany, France and the Netherlands, workplace representatives have a formal role in relation to working time organisation, providing channels for consultation and reform of working hours which are much less common in the UK. As we will discuss below, they play an important role in creating greater work-life balance for at least some employees, both by putting a limit on working hours overall and challenging the long hours culture and by providing options for individual flexibility.

2.6 'Soft' rights, 'hard' rights and employer rights

An important differentiating feature of the UK Right to Request law from other laws is its design as a 'soft' law. This provides an employee only with a right to a process for a fair and timely consideration of a request for alternative work arrangements. As long as the employer follows the procedures set out in the guidelines accompanying the Right to Request, an employee does not have a right to appeal an employer's refusal at an employment tribunal. This differentiates the Right to Request from other employment rights in the UK, and sets the UK apart from other European countries, where working time adjustment laws have been introduced since the late 1990s. However, the Council of the European Union has recently proposed an amendment to the Working Time Directive 2003/88/EC, which would oblige member states to:

...encourage employers to examine requests for changes to working hours and patterns, subject to business needs, and to both employers' and workers' needs for flexibility.

(Commission of the European Communities, 2008: 50)

With the exception of rights to gradual retirement, for which employer agreement is usually required, the working time statutes reviewed so far provide court enforceable rights and allow external scrutiny of an employer rationale for refusing a request. Common to all of these statutes, however, is a recognition in the framing of the rights of business reasons for refusing a request for flexible working. Unlike for example in relation to maternity leave, where employers have to allow for time-off, whatever the business consequences, employees do not have an absolute right to changed working hours under any statute. The focus is on finding solutions which are mutually acceptable to employee and employer, even if the employer might be expected to carry some costs as a result of change.

Again, there are a variety of approaches. In the Netherlands, employers must show serious business, organisational or health and safety objections before they are able to reject a claim in relation to the number of reduced hours. The same stringent definition applies to parental part-time requests in Germany, although general requests for part-time work in Germany require only ordinary business grounds for refusal. Yet while Dutch law provides a lesser standard when it comes to the scheduling of hours, under German law, decisions about the number of hours and when these hours are worked are treated as equally weighty. This is in recognition that, particularly in relation to childcare, scheduling is key. The Belgian Sabbatical leave law likewise applies a more stringent standard to reduced hours' work for certain types of leave, such as leave directly following the birth of a child, palliative leave and leave to care for seriously ill family members where employers only have very limited scope for refusing a request. In relation to the general Time Credit/Sabbatical leave scheme, instead of specifying business grounds, more emphasis is placed on keeping the total number of people on (flexible or other) leave arrangements manageable, with employers expected to find a solution unless there are at least 3 per cent of employees already on leave (in which case a queuing system comes into effect).⁹

As White et al (2003: 173) have argued, the UK approach to business costs is based on the assumption that alternative working practices can be introduced at no additional cost,

if not with considerable gain, for employers. Lack of progress in the introduction of flexible working is perceived primarily as occurring for cultural reasons and to be based on a mixture of prejudices and institutional inertia; this might be addressed by focusing more detailed consideration of requests through the process provided by the law. Yet should there be any costs, the employer is effectively exempted from making change. The UK's flexible working policy therefore seems to suggest that change is 'desirable' but not 'essential'. The policy messages outlined through legislation in other countries is that, even though a win-win solution clearly is the ideal, against the background of the social and economic costs from lack of flexibility, employers might be expected to carry some costs.

2.7 Summary

This chapter has reviewed different statutory approaches for providing increased access to workplace flexibility for individual employees. It shows that the UK approach of targeting flexible working rights at parents of young children is followed relatively widely across Europe and other high-income countries. In contrast to the UK approach, however, access to flexible working is more commonly provided as a variant of parental leave. Consequently, employees changing their hours during the parental leave period are entitled to return to previous hours at the end of the leave period, and that, in as far as parental leave is paid, there is some wage replacement for earnings lost because of reduced hours.

Carers' access to flexible working is generally regulated in separate statutes, with the exception of state legislation in Australia where parents and care-givers are equally covered by protection against direct and indirect discrimination and there is a duty of accommodation of flexible working requirements.

Universal rights to reduced hours for employees, irrespective of their reason for seeking change, exist in a smaller number of countries, but generally as a supplement to flexible working rights for parents of young children, not as the primary means of access to flexible working.

The comprehensive approach to flexible working in the UK Right to Request, which gives equal weight to requests regarding the number of hours, the scheduling of hours and the location of work, is less common; most laws only deal with part-time work. Unlike in the UK, in response to concerns over involuntary part-time work, they contain

explicit regulations for an increase in working hours. Access to other dimensions of flexible working is more likely to be provided through collective bargaining in other countries.

The UK 'soft' approach to flexible working, which does not allow employees to challenge employer business reasons for a refusal in court, is unique in measures targeting work-family reconciliation. Yet in all jurisdictions, employers are able to refuse requests if they can demonstrate substantive business reasons.

3. ACCESS TO FLEXIBLE WORKING IN PRACTICE

3.1 Introduction

How far have workplace practices changed as a result of flexible working policies? Individual flexible working rights are one component in broader social and labour market policies. Work-life reconciliation is an important theme in the introduction of flexible working statutes, but not necessarily the dominant one in each country. Likewise, the UK focus on increasing women's labour force participation, and access to quality flexibility, is not equally shared. Differences in policy objectives influence the type of data that are available, and how far these are relevant for comparisons with the UK.

The chapter begins with a brief discussion of the policy and labour market context behind the introduction for each law. Following this, it will consider evidence of the impact of the Right to Request, on flexible working policies and on the take-up of, and access to, alternative work arrangements by individuals. Several aspects will be considered in greater detail, such as whether there has been a change in the need for new mothers to change employment; in the quality of available part-time employment, including in managerial jobs; and in men's take-up of, and access to, flexible working. The final section puts flexible working in a broader context of work intensification and working time reductions.

3.2 The policy context

Before turning to a consideration of the impact of the laws on workplace flexibility, it is necessary to step back and consider the policy context for the introduction of statutes in different countries. The type of data that are available from different countries varies considerably, not least as a reflection of different policy concerns for the introduction of the laws. The UK benefits from a wealth of survey data which allow some tracking of flexible working, and the impact of the Right to Request (although it also suffers from lack of data on some aspects of flexible working). Less data are available from other countries. An additional aspect to consider in term of comparability is that most other statutes only deal with the part-time/full-time dimension; while there might be survey data on broader access to workplace flexibility, these are often not available as part of the same evaluation or dataset.

This difference in data availability is illustrated by the case of France where, to our knowledge, there has been no direct evaluation of the part-time law. While there have

been a number of studies of part-time work, including at parliamentary level, these do not assess whether, as a result of the part-time law, more people have been able to adjust their working hours (Assemblée nationale, 2004; Conseil économique et social, 2008). The French part-time right was introduced in the same piece of legislation which extended the 35 hour week in France, and was somewhat overshadowed by it. As Fagnani (2005: 81) points out, work-life balance was not a primary objective of the 35 hour laws, and this also applies to the part-time provision; instead, the focus was on creating jobs by sharing work and consequently reducing unemployment. In relation to part-time work, French researchers and policy makers make a distinction between *temps partiel d'embauche* ('part-time work at hiring') and *temps partiel réversible* ('reversible part-time work') (Direction de l'Animation de la Recherche, des Etudes et des Statistiques, 2002; Assemblée nationale, 2004). The former consists of structural part-time jobs which are designed as such by employers to tailor labour costs, with few opportunities for an increase in working hours, or indeed, for advancement more broadly; the latter consists of higher quality part-time work, where part-time work is due to a choice of the individual employee (whether, and under what circumstances, such jobs are actually reversible in practice does not appear to have been evaluated in any detail). Both forms of part-time work are seen as detrimental to women, and the right to reduce hours is not discussed by policy makers, unions or researchers as a positive measure to increase access to higher quality reduced hours work or to improve women's labour market outcomes.

In Germany, work-life reconciliation was an impetus behind the introduction of the part-time laws, as in the UK, but much more so for the parental part-time law than for the general part-time law. Both laws were evaluated two years after they came into force in 2001. The general part-time law, as in France, was introduced as part of a policy to transfer hours from those who wanted to reduce their working time to those who were unemployed. In this sense, it is less concerned with the quality than with the quantity of part-time work, and likewise there is little detailed examination of the impact of the right on individual employees, or on gender equality. This perspective is apparent in the evaluation of the general part-time law, prepared by the Ministry for Labour and Social Affairs (Bundesregierung Deutschland, 2005). Data comparability with the UK is further limited because the evaluations also adopt a more narrow focus, including only those requests which were made with reference to the law (Magvas and Spitznagel, 2002). UK surveys on the impact of the Right to Request include all requests, whether these were made by using the actual procedures set out in the guidelines or not, with findings

suggesting that the majority of requests were made outside of the statutory framework (Hooker et al, 2007; Holt and Grainger, 2005). The evaluation of the parental part-time law, under the auspices of a different Ministry, the Ministry for Women, Seniors, Families and Youth (BMFSFJ), deals more explicitly with the workplace reality of the implementation of parental part-time work, and its take-up by men and women, but only covers parents of young children.

Since the introduction of the part-time laws, the German economy has changed from one characterised by high unemployment and negative growth to one dominated by labour shortages, particularly for higher level jobs, and a concern with the long-term negative consequence of demographic change.¹⁰ German policy objectives in relation to workplace flexibility now more closely resemble those of the UK (apart from a much greater emphasis in Germany on increasing birth rates). This is particularly since the publication of the Seventh Report on Families in 2006 (BMFSFJ, 2006) which focuses on the demographic crisis faced in Germany as result of very low birth rates and highlights the lack of work-life balance and family-friendly workplaces as an important reason for Germany's very low fertility rates. The government, under the auspices of the BMFSFJ, has adopted several high-level initiatives to promote change towards family-friendly workplaces, including the Alliance for Families (consisting of employers concerned with developing best practice) and the Pact for Families (a formal co-operation between employers, local communities, research foundations and the Ministry) (see also Warth, 2008; Rueling, 2008) (see also Chapter 5). One would expect that both the change in the economic environment and in policy emphasis would have led to an increase in requests under the part-time laws, as individuals became more confident about approaching their employer for an adjustment in working hours. But any such developments are not yet captured in the available evaluations.

What the German data do seem to document, however, is that economic circumstances, particular fear of job losses, have a considerable dampening effect on the likelihood that employees will make their wishes for alternative work arrangements known to their employer. During the first two years following the general part-time law, only 10 per cent of German workplaces are estimated to have received a request; in over half of the successful requests for reduced hours there was no replacement, with requests being accommodated by restructuring and internal reorganisation (Wagner, 2004).

The Dutch context is different yet again. The Dutch government commissioned two evaluations of the Dutch working time adjustment law. The first one in 2003 covered both employer and employee perceptions of the impact of the law (MuConsult, 2003); the second one, conducted in 2007, was particularly targeted at investigating what happens in case of a rejection of a request (Bureau Bartels, 2008). Both studies found the law's impact on requests rather moderate. The working time adjustment law is not generally credited with having created much change in Dutch access to changed hours because such individual rights had been widespread within collective bargaining agreements since the early 1990s (both to decrease and increase hours) (Fagan et al, 2006). In comparison with the approaches of other countries, the Dutch legislation was introduced much more explicitly with the goal of changing the distribution of paid and unpaid work between couples towards a '150 per cent situation'. This involves each partner working three-quarters of normal full-time hours, instead of the current situation where men work full-time, and possibly long hours or shifts of varying lengths, and women work in short part-time jobs (Platenga and Remery, 2005). The model of 'equal sharing' of unpaid work has been promoted in various social policy arenas since the mid 1990s (Wetzel, 2007).

Compared with the UK, the concern about part-time work has somewhat shifted, with policy makers and employers being increasingly frustrated with the lack of change in the overall hours women spent in the labour market (Portegeijs et al, 2008). The share of full-time workers among women has stayed unchanged at 20 per cent during the last two decades; part-time work is as common for women with young children as it is for women with older children, and for women who do not have dependent children, but work part-time out of personal preferences (although health reasons and care for older relatives also figure strongly as reasons for part-time work among women over the age of 40). Thus policy concerns are shifting somewhat from removing barriers to (full-time) work to increasing incentives for full-time work.

The persistence of part-time employment in the Netherlands is in marked contrast to Denmark and Sweden. Individual rights to part-time work also played an important role in increasing women's labour force (through statutory rights in Sweden and (especially in the public sector) collective agreements in Denmark and the Netherlands). As in the Netherlands, greater gender equality has been an important objective of flexible working policies; Sweden and the Netherlands are the only European countries which have never had policies targeted at decreasing the relative costs of part-time jobs as a means

of encouraging the growth of part-time employment (Portegeijs et al, 2008). Unlike in the Netherlands, this commitment to improving gender equality in employment and family work also went hand in hand with extensive provision of childcare services and financial transfers during parenthood and caring related absences from work (Ellingsæter and Leira (2007). Yet at least in Denmark and Sweden, policy priorities have shifted from enabling part-time work to encouraging full-time work. This is both in recognition of the adverse effect of a long period of part-time work for women's economic equality and as a means to increase the total numbers of hours worked in the economy, and this policy objective is supported by tax and benefit policies which reduce penalties for care-giving activities and increase incentives for full-time work. Part-time work for mothers, particularly mothers of more than one child, is substantially lower in all Nordic countries than in the UK, Germany and the Netherlands (OECD, 2002, cited in Mayhew, 2006: 46). Since the 1990s, research and policy concerns related to gender equality in the Nordic countries have focused on the role of fathers as the key to a more equal distribution of work and family care between men and women. Policy is more advanced in terms of parental leave entitlements than flexible working, particularly regarding the introduction of various models of reserved leave for fathers (Ellingsæter and Leira, 2007; Moss and Korintus, 2008). While research continues to be scarce, there is a growing body of evidence to suggest that fathers who take parental leave are more involved with childcare and domestic work later on, too, particularly when they are in jobs with comparatively less extensive working hours and have access to flexitime (O'Brien et al, 2007). Yet in the Nordic countries, too, women continue to be much more likely to make adjustments to their working hours than men.

Of the policies reviewed here, the Belgian 'Time Credit' or Sabbatical leave law (which allows an employee up to one year's leave over their working life and provides the possibility of stretching this leave for up to five years through a 20 per cent reduction of working time) has been in place for the longest period. It has gradually evolved from a measure primarily directed at unemployment to one almost solely concerned with work-life balance (see Devisscher, 2004). When it was introduced in 1985, the law was primarily a measure to reduce unemployment, even though work-family reconciliation was a secondary objective. At that time, the right of an individual employee to receive leave, which was paid through social insurance, depended on the employment of an unemployed person to replace the person on leave, and an application had to be made jointly by the employee and the employer. Over time, in response to EU directives, employees' rights were strengthened in relation to leave for certain privileged reasons

such as palliative care or care for children under four. In 2002, all employees received a right to leave (although there continues to be a dual approach, with stronger enforcement rights for the causes mentioned above) and the requirement to employ a replacement was abolished. The primary goal of the legislation now, particularly in the Flemish part of Belgium which has one of the highest labour force participation rates in Europe, is work-life balance: the aim is to prevent burn-out and stress related absences rather than primarily to increase labour force participation rates (although this is an objective for older workers) (Devisscher, 2004: 3).

The take-up of leave has risen rapidly since its introduction, with at least half of those taking leave choosing one of the 'reduced hours' options.

In summary, the policy context for introducing individual flexible working rights differs substantially between countries. The policies adopted include active labour market policies designed to reduce unemployment; policies to increase labour force participation rates through making part-time work more accessible; policies to increase labour supply by encouraging part-timers to work more hours or return to full-time work, and, finally, policies targeted at decreasing labour supply temporarily in order to reduce the long-term effects of long working hours on health and burn-out rates. While it is recognised that access to flexible working is a particular issue for women, not least because they are the primary source for increased labour supply, it is probably fair to say that gender equality has not been the primary concern for the introduction of these laws, with the exception of the Nordic countries and the Netherlands.

3.3 Change to the availability of flexible working

The UK Right to Request is widely credited with having made a significant contribution to increased availability of flexible working to employees in the UK. There is debate on exactly how it should be framed and when and how it should be extended to additional groups of employees. Nevertheless, submissions to the recent Consultation by BERR express uniform support for the basic principle behind the law, though not its limitation to family and care-giving responsibilities (BERR, 2008; EHRC, 2008; CBI, 2008; CIPD, 2008; Institute of Directors/UNUM, 2008; TUC, 2008a; USDAW, 2008).

It is probably fair to say that the evaluation of trend data on flexible working, including on the Right to Request, has played a considerable role in efforts to promote flexible working in the UK, much more so than elsewhere. A number of surveys assess the

changing availability of flexible working policies in British workplaces, and while they are not always directly comparable in methodology and coverage, all suggest a significant increase in what is on offer. The CBI's Employment Trends Survey finds that over the ten years in which flexible working policies have been assessed among its members, the share of workplaces which offer at least one form of flexible working has increased from under a quarter of employers in 1998 to more than nine out of ten in 2008. Moreover, almost six out of ten offer more than one option (CBI/Pertemps, 2008: 6). The 2007 Work-Life Balance Survey of employers finds similar coverage, and registers a significant increase since 2003 of the availability in particular of the possibility to reduce hours temporarily (from 30 to 74 per cent of workplaces), job sharing (from 39 to 59 per cent), flexitime (38 to 55 per cent) and compressed hours (19 to 41 per cent) (Hayward et al, 2007: 26). Part-time work is available almost universally (although the ability to shift from full-time to part-time work is less available). The Work-Life Balance Surveys of employees likewise report an increase in availability of various flexible working policies (Hooker et al, 2007; Stevens et al, 2004).

3.4 Individual requests for flexible working

Overall, the introduction of the Right to Request, however, has not resulted in an increase in the proportion of employees requesting change. The share of employees reporting that they have approached their employer, 17 per cent, stayed constant in the two years prior to the introduction of the Right to Request, and in the three years after it (Hooker et al, 2007: 4); this stability in requests is also confirmed by the employer surveys (Hayward et al, 2007). This is perhaps not surprising, as the introduction of the Right to Request was preceded by publicity and awareness campaigns, so that employees might already have felt encouraged to make requests. Case studies likewise found that the introduction of the Right to Request had an affirmative rather than dramatic impact on employee friendly flexible working in organisations (Croucher and Kelliher, 2005).

Those who currently have a statutory Right to Request, that is parents with young or disabled children, were more likely to approach their employer than others: 24 per cent of those in this group had done so, but so had a fifth of employees with older children and a sixth of those without dependent children (Hooker et al, 2007: 177). It is, therefore, not clear whether the higher share of requests from the covered group are a consequence of their position under the law, or is the result of greater need for change

in this group. Parents of children under six, however, have the highest awareness of the Right to Request (Holt and Grainger, 2005: 12).

Applications for flexible working from carers, the other group of employees who are now covered by the Right to Request, are not provided in the flexible working surveys. Similarly, there is no information on flexible working applications from disabled employees as part of these surveys.

It is worth noting that since the introduction of the Right to Request, there has been an evening out in the distribution of requests between different forms of flexible working. In the first evaluation a year after the introduction, requests for part-time work made up 38 per cent of all requests; since then, the share of part-time requests has fallen to about a quarter, and these are about as likely as requests for flexitime (23 per cent). Several studies confirm that flexitime is of high value to employees, and that there is a considerable mismatch between the numbers of employees who have flexitime, and those who would like to have it (Holmes et al, 2007; Hooker et al, 2007). Unlike a reduction in working hours, flexitime of course does not involve a reduction in earnings and hence is a more feasible means of work-family reconciliation than part-time work.

Lack of flexibility, predictability in working hours and control over scheduling is a particular problem for many part-time workers; requests for alternative working patterns from people already working part-time are particularly high, with three out of ten part-time employees having made a request to their employer (Hooker et al, 2007: 179). Within international comparisons, UK part-time employees are less likely than part-time employees in countries with a higher level of workplace bargaining and working time regulation, such as the Netherlands, for example, to say that they have been able to negotiate the number and scheduling of their part-time hours (Cousins and Tang, 2004); the Right to Request appears to be providing one avenue for changing this situation. However, the data do not allow any detailed examination of the type of flexible working requested by part-time workers.

3.5 Employer responses to requests

While the Right to Request seems to have had little impact on the overall share of requests for flexible working, there is evidence to suggest that the law changed the likelihood that employers would positively respond to a request. The proportion of requests that were rejected fell from 20 per cent in the two years preceding 2003 to 11

per cent in the year after the introduction of the new legislation (Holt and Grainger, 2005: 35); but had risen again to 17 per cent by 2006 (Hooker et al, 2007: 179). The Work-Life Balance Surveys and Flexible Working Surveys are not fully comparable, and hence it is not clear from the data whether the dip and rise are due to sampling issues or reflect real trends. Arguably, an increase in rejections might be expected as a result of a higher proportion of employees in organisations being on flexible arrangements. This assumes that the majority of people do not revert to previous arrangements and that thus most requests are adding to the existing 'stock of flexibility', with less scope for accommodation by employers (particularly without a more radical reorganisation of work). The majority of requests are fully accepted, with an equal proportion as rejections having resulted in a partial acceptance.

Perhaps surprisingly, the survey data are ambiguous as to the impact of the Right to Request on parents with young children, that is those who are covered by the Right to Request. Given that they are explicitly covered by the legislation, one would expect a greater likelihood of their requests being accepted. The 2nd Flexible Working Survey (Stevens et al, 2004) found that covered employees were more successful than other employees, yet the 3rd Work-Life Balance Survey (Hooker et al, 2007) found that parents in the covered group were less likely than parents with older children to succeed, and not more likely to do so than employees without dependent children. While these results might be within the margins of statistical error, it does not suggest that the Right to Request provides much added enforcement support for its target group.

The UK survey data provide no evidence of what happened to people who had a request rejected – whether they faced retaliation, left their job, continued in their job as before or whether the rejection had an adverse impact on their performance. Such a question is included in the Dutch evaluation where employers reported that the large majority of those whose requests were rejected, left – as many as 75 per cent in the case of a rejected application for reduced hours and 70 per cent where there was a failed application for increased hours. For one in five of those who stayed, employers reported reduced motivation and absenteeism (Bureau Bartels, 2008: 31). Such data are not available for the UK. The same limitation covers information on the nature of, and reaction to, requests which were only partially accepted.

3.6 Impact of changing jobs to reduce hours

Smeaton and Marsh (2006) found that only 10 per cent of mothers who reduced their hours from full-time to part-time following childbirth between 2002 and 2005 stayed with the same employer. This compared with 85 per cent who returned to full-time work, and 91 per cent who were already working part-time before giving birth and returned to part-time employment afterwards. Motherhood is a key moment in women's economic fortunes, and flexible working rights have been introduced not least to reduce the deskilling that often goes hand in hand with a shift from full-time to part-time work as a result of motherhood. Nurses and teachers, which are key female professions, are particularly likely not to work in their profession if they work part-time, according to the 2005 Labour Force Survey (Women and Work Commission, 2006: 6). It is of course not clear whether the job changes involved in the transition from full-time to part-time work followed an actual rejection of a request for flexible working or were due to an employee's perception that part-time work would not be possible in their previous position. Yet in as far as one of the objectives of the Right to Request has been to increase the ability of working mothers to continue at the same level of responsibility, and with the same employer, albeit at reduced hours, the impact of the Right to Request does not appear to have been substantial.

Both in the Netherlands and in Germany, panel studies were conducted two years after the introduction of the respective part-time laws to find out whether employees who had expressed a wish for a reduction in working hours and who subsequently reduced their hours, were less likely than before the introduction of the laws to have changed employer (Munz, 2007; Fouarge and Baaijens, 2007). Neither found statistically significant change in the probability of people having traded down jobs, although the German study found a slight (non-significant) decline. As we discussed above, the initial period following the introduction of the part-time laws in Germany was characterised by high unemployment and low vacancies; trends might have changed against the background of a much stronger economy. Using similar methodology would provide the opportunity for a more systematic evaluation of the impact of the UK Right to Request.

Analysis of pay data in the UK also largely fails to find a positive impact of the Right to Request. One would expect the Right to Request to lead to a reduction in the pay gap between part-time and full-time workers, as more part-timers would be able to reduce their working hours while maintaining their basic hourly wage rate and position. A study of wage trends between 1975 and 2005 found no narrowing of the part-time wage gap in

response to the introduction of the Right to Request and other measures introduced at a similar time, such as the National Minimum Wage and equal treatment protection for part-timers, (although the authors emphasised that the regulations had only been in force for a short period and the impact might rise over time) (Manning and Petrongolo, 2008). An analysis of the Annual Survey of Hours and Earnings, prepared by the TUC, suggests that there has been a slight narrowing of the part-time gender pay gap between 2003 and 2007, from 40.9 per cent to 35.6 per cent (TUC, 2008b: 16). Yet it is clear that many women continue to downgrade their jobs when they move from full-time to part-time work. Manning and Petrongolo (2008) suggest that more research is needed to understand why some employers appear to be more open to allowing a reduction in working hours within the same jobs than other employers. They suggest that within Europe, women in the UK are least likely to change from full-time to part-time work without occupational demotion.

3.7 Moving from part-time to full-time work

The Right to Request does not formally provide a procedure for requests to increase hours (although of course also does not prevent an employee from using the procedure in this manner). An increase in hours of work is formally included in the German and Dutch laws (although employers are held to a lower standard for justifying refusals than in relation to reduced hours). The evaluation of the Dutch law suggests that this feature has been reasonably successful, with 47 per cent of all requests reported by employers in the 2007 evaluation being for increased hours, at virtually identical success rates as requests for reduced hours (Bureau Bartels, 2008: 15). Smeaton et al (2007: 78) found an increase between 2002 and 2006 in the number of employers stating that they made it possible for employees to move from part-time to full-time work, but the Flexible Working Surveys or the Work-Life Balance Survey do not provide success rates for requests for increased hours. The share of UK workplaces where, according to management, a part-time employee would not, or only in exceptional circumstances, be able to get a full-time position is lower in the UK than in many other European countries, and significantly lower than in Germany and the Netherlands. Nevertheless, even in the UK, almost one in five workplaces say that existing part-time employees would not be considered for full-time jobs (Anxo et al, 2007: 50), with Smeaton et al (2007:13) finding a third of UK employers saying that they do not consider part-timers for full-time jobs. While it is clear that in Germany and the Netherlands the mere right to apply for increased hours, combined with an obligation on employers to provide information about full-time vacancies to part-time workers, has not in itself removed the barriers between

part-time and full-time work, it is playing a role in encouraging employers to take a second look at the potential, skills and experiences of their part-time employees.

An alternative model for the part-time/full-time conversion is provided by those countries where a reduced hours option is provided as part of leave, with a guarantee to return to previous hours at the end of the period. The classic example here is the Swedish right for employees to reduce their working hours to 75 per cent until the eighth birthday of a child. As part of a general strategy targeted at increasing women's labour force participation, including childcare provision and tax and social insurance policies aimed at encouraging workforce participation, this is credited with having substantially increased women's labour force participation. Yet while part-time work was a key factor in high female participation rates initially, over time, part-time work has become more of a transitional facet of women's working lives, with younger women reducing their work hours for a period in response to children, but subsequently returning to full-time work, something less evident for older Swedish women (OECD, 2007: 72). Another important effect of the Swedish approach is its encouragement of substantial part-time work. Taking the OECD definition of part-time work (of less than 30 hours per week), Sweden has one of the lowest rates of part-time work for women in all OECD countries (OECD, 2007).

The period of temporary part-time work during parental leave in Germany, of up to three years, however, is perceived by many mothers as too short. At the end of that period, many mothers would like to continue to work part-time, and they could make such a request to do so under the general part-time law; yet this second shift would imply a permanent change to their contract, something many do not want to risk.

3.8 Flexible working in professional and managerial jobs

People in full-time jobs, and particularly in managerial jobs, are less likely to have made use of the Right to Request. A significant proportion of workplaces which formally allow a transition from full-time to part-time jobs, exclude managers (Nadeem and Metcalf, 2007; Smeaton et al, 2007). One of the highest proportions is found in retail, with almost one in five employers making full-time work a condition of managerial and supervisory positions. USDAW provides several examples from members who were forced to go to a lower level job because reduced hours were not allowed in their more responsible position (USDAW, 2007). The problem in such managerial jobs is not only that they are

full-time, but that they involve rotating evening and weekend work, making planned care work virtually impossible.

Senior staff often have a considerably greater degree of individual flexibility regarding when they work, but little scope to reduce how many hours they work. Research by Baltes et al (1999) reported that the positive effects of work-life balance found among employees more generally, often do not hold equally for professionals and managerial staff. Alternative work arrangements such as flexitime, teleworking or compressed work weeks might provide scope to deal with family emergencies or one-off family events, but often leave the total number of hours of work expected in a position unchanged. As Kossek and Lee (2008: 50) point out:

One explanation of the limited positive results [on perceived work-life balance] from traditional formal flexible working arrangements is that they just reshuffle the work without reducing work hours or loads.

The German expression for such an expectation of constant availability is 'time without borders' (*entgrenzte Zeit*), covering managerial but also much professional work (Wagner, 2000). German human resource managers are particularly insistent that part-time work is not compatible with managerial responsibilities. A recent (ongoing) study of part-time work in managerial jobs found that the majority of human resource managers rejected the possibility of reduced hours in management jobs; in one company where it had been tried, the person who had reduced her hours abandoned the attempt when in practice her workload had not adjusted (Koch, 2007: 25). Koch identifies two types of managers, or gatekeepers, for access to part-time work: Type I, who feel that managerial work and family responsibilities are incompatible in principle; and Type II who expect families responsibility to be dispensed with at weekends and nights, leaving the waking hours for leadership tasks (Hans-Böckler-Stiftung, 2009). Her qualitative research suggests that these decision-makers are guided by their own biography, and cannot conceive of managerial tasks performed in a different manner from their own. Yet the evaluation of the German part-time laws suggests that there has been a significant increase in the proportion of managers who work part-time, rising from 3.7 per cent in 2001 to 9.8 per cent in 2003 (Bundesregierung Deutschland, 2005: 25). Particularly helpful was the option under the parental part-time law, which allows parents to work for up to 30 hours per week while on parental leave (up from a previous limit of 19 hours per week).

Both the German and the UK Governments have introduced targeted best practice initiatives to increase the acceptability of part-time employment in managerial jobs, such as the Quality Part-time Work Fund. Research from the United States shows that it is not just employers who cannot conceive of executives' jobs being done on a part-time basis; employees in those jobs often are similarly unable to imagine an organisation of work in a different manner (Galinsky, 2004). For those who do want to challenge the preconceptions of their employers, it seems that the individual law has opened some new avenues (see Chapter 4).

3.9 Men and flexible working rights

All laws reviewed here are framed as equally open to both men and women. One of the questions is, however, whether laws which are open to all employees are more likely to encourage male take-up than laws which prioritise rights for family care-giving responsibilities, responsibilities which are predominantly performed by women in all countries.

At first glance, the UK statistics suggest a rather traditional picture, with requests for flexible working having been made by 22 per cent of all women compared with 14 per cent of men (Hooker et al, 2007: 177). Among employees with children under six, women are three times as likely to have requested flexibility than men, and while women with dependent children are almost three times as likely to have made a request as other women, parenthood has much less effect on men's likelihood to seek flexibility (Holt and Grainger, 2005: 53). Yet, because there are more men in the workforce than women, men's share of all requests for flexible working is less unequal than one might assume at first glance: 43 per cent of all requests (that is not only of requests from employees covered by the Right to Request legislation) were made by men (Hooker, 2007: 53). For both women and men, the most common reason for requesting change was childcare, not surprisingly perhaps given the nature of the Right to Request legislation; 43 per cent of requests from women, and 22 per cent from men, were for childcare reasons (Holt and Grainger, 2005: 15) (these data refer to all requests, not just requests made by employees formally covered by the Right to Request). Men were significantly more likely to have requested an adjustment to return to education than women, a finding incidentally mirrored by the experience with the Belgian 'Time Credit' scheme (Vandeweyer and Glorieux, 2008). Requests for flexible working beyond childcare and caring reasons, and beyond the predominantly female group of requesters, in principle should help reduce gender stereotyping of female employees as likely to

want to work flexibly. Yet unless men are becoming as likely to request flexible working for care-giving reasons as women, and women as likely to pursue flexibility for education and training as men, this might contribute to gender inequality in a different way by worsening the human capital development gap for women as a result of flexible (particularly part-time) working. Finally, the distribution of requests for part-time and flexitime work is almost reversed between men and women, with 28 per cent of male requests being for flexitime, compared with 18 per cent for part-time work, and 30 per cent of female requests being for part-time work and 18 per cent for flexitime (Holt and Grainger, 2005: 14).

Given the greater proportion of non care-giving reasons among requests from male employees, it is perhaps not surprising that men face a considerably higher rate of rejection than women when they make requests (Hooker et al, 2007: 179), although the available data do not allow a detailed examination of refusals by type of requests. Yet surveys also systematically show that men are more likely than women to work in workplaces with few or no flexible working arrangements (Dex and Ward, 2007: 30). This is particularly so in skilled manual, semi-skilled and unskilled professions. Case law suggests that fathers are less likely than mothers to succeed in disputes related to the Right to Request (see Chapter 4).

The typical pattern for dual income couples after childbirth in the UK is for mothers to reduce, and for fathers to increase, their working hours (Dex and Ward, 2007). While this is also the case for many Dutch families, a report by Statistics Netherlands showed that a larger and increasing proportion of first-time fathers than elsewhere reduced their working hours, rising from 10 per cent in 1997 to 13 per cent in 2003 (cited in Wetzels, 2007: 2). The share is considerably higher for couples in professional jobs, particularly in the public sector where 32 hour-per-week jobs are more common.

German fathers are considerably less likely than Dutch fathers to reduce their hours after fatherhood. Yet the Parental Part-time Law has led to a tripling of the proportion of fathers who combine parental leave with part-time working, from 1.5 to 4.7 per cent of households (Bundesregierung Deutschland, 2004: 18); it is likely that this proportion will have increased since with the improvement of the economy and a greater sense of job security.

Studies of men's use of the Sabbatical leave in Belgium suggest too that there has been a rapid increase in use, for both men and women (Devisscher, 2004). The career break scheme covers a broad range of purposes, including gradual retirement (where reduced hours are not limited to a set number of years). Among older workers (50 years and older), 18 per cent of women and 10 per cent of men are on a formal part-time career break or time credit scheme (Vandeweyer and Glorieux, 2008). Women outnumbered men among those taking leave; and, as in the UK, women were considerably more likely to take leave for childcare reasons than men, who were proportionately more likely to return to education or use their reduced time to change jobs or build up a business. Men who took time off because of their children, primarily by working the 80 per cent option, did significantly more housework and childcare work than men who worked full-time. Hence, the authors of the study conclude, providing reduced working hours for a broader range of families is crucial for changing the domestic division of labour (Vandeweyer and Glorieux, 2008: 290). Unlike in the Netherlands, among employed workers, the use of the Time Credit/Sabbatical leave scheme is not more likely for higher educated men.

As discussed earlier in this chapter, increasing the role of fathers in family care has been an important focus of work-family policies in Nordic countries since the early 1990s, out of concern for both gender equality and child welfare. Much of this research has focused on parental leave, and the conditions which encourage greater take-up from men (namely reserved time for fathers and high levels of wage replacement) (O'Brien et al, 2007; Ellingsæter and Leira, 2007; Moss, 2008). There is an increasing body of evidence that fathers who take parental leave are more likely to be involved in childcare and domestic work after the leave, including in the UK, if – and that is a big if – their work context permits (Tanaka and Waldfogel, 2007). In Norway, both parents are able to adjust their working hours for welfare reasons, including for example the need to collect children from school or childcare facilities. Studies have shown that in families where fathers are adjusting their working hours for family care reasons, they are also more likely to increase their hours for other domestic work such as shopping or cooking, and hence contribute to a more equal division of domestic work.

It is clear that in all of the countries we examined women continue to be more likely to make use of flexible working options, but also that the share of men taking up flexible working options for work-family reasons is growing, albeit from a small base. The Right to Request does seem to have broadened men's options for flexible working, including

for family work. Yet the impact on the traditional division of labour so far is not pronounced. Models such as the German parental part-time work or the Belgian time credit scheme, which include some financial benefits as well as a job guarantee, might make it more possible for men to make an active contribution to work-family reconciliation. Fagan and Hebson (2006: 98) in their review of gender and pay equality in Europe suggest that:

As long as fathers do not take leave, organisational cultures will remain unchanged and premised upon long hours and full-time working in the intensive childrearing years.

Similar arguments apply to flexible working policies.

3.10 The long hours culture and the intensification of work

Holmes et al (2007: 5) concluded their survey of individuals' experiences and aspirations in relation to the organisation of work that:

...while the right to request flexible working is likely to improve the prospects of many parents and carers who need flexible terms and conditions to remain in jobs of their choice, for a large minority, excessive workloads and intensification of work is responsible for their departure – a problem which shows no sign of abating. A cap on working hours, and a broader reorganisation of working time are necessary pendants to a more individual approach to workplace flexibility.

The negative and crucial impact of work intensification was also confirmed by case studies in eight European countries of young couples trying to negotiate the transition to parenthood (Lewis and Smithson, 2006: 13):

...this study shows that pervasive organisational trends such as the intensification of work perpetuate a male model of work and undermine the reconciliation of paid work and parenting.

In the UK, policies targeted at facilitating individual adjustments in work arrangements play a much greater role in facilitating work-life balance than in many other countries where restrictions on working hours overall have been more important. Restrictions on

working hours, particularly where the implementation of such restrictions has been negotiated between employers and employee representatives, can lead to enhanced flexibility for employees. In Germany, as a result of negotiations over reductions in working hours, there has been a considerable increase in opportunities to work flexibly, and particularly to do so by using paid time off as part of formal time saving schemes. Given that such reorganisation of working time involves as a trade off the employer's increased scope for varying working hours, this is not automatically helpful to caring tasks. Yet in combination with rules limiting the overall length of the working day and minimum notice periods for the need to work additional hours, it can provide flexibility for working parents. A survey of 2,000 parents conducted in 2003 found that 40 per cent of women and 48 per cent of men were working formal flexitime schemes, and that 60 per cent had an overtime account (where overtime hours worked were 'stored' to be taken as future leave) (BMFSFJ, 2004: 21). These figures are substantially higher than in the UK. Almost all parents reported that they had used the various flexible time use options for family issues, not surprisingly. Slightly more than two-thirds of respondents found their working hours all in all 'family-friendly', although three out of ten found work-family reconciliation more difficult with the existing arrangements.

The working time reductions in France similarly resulted in an improvement of work-life balance for a substantial proportion of parents. Only one study directly assessed the impact of the reduction in working hours on parents. It found a positive impact for the majority of parents, yet crucial for the effect on hours was some control over how the reductions in working time were implemented, and predictability in working hours. The working time reform provided employers with enhanced opportunities for flexible scheduling of hours, evening and weekend work; parents in those type of jobs, who were significantly more likely to be in lower-skilled occupations, saw a reduction in work-life balance (Fagnani, 2005).

The role of an effective cap on working hours for gender equality and work-family balance is also illustrated by the example of Denmark where working hours have fallen, through negotiation, for both men and women, and actual working hours in full-time jobs are among the lowest in Europe (euro-on-line, 2008). Mothers in Denmark now typically work, and work full-time, and, probably uniquely in Europe, primarily do this out of preference, with fewer women than men in full-time jobs saying that they would prefer to work fewer hours (Rasmussen et al, 2005). Part-time work is still significant in the Danish labour market, but increasingly, has become characteristic for younger workers

who work part-time in combination with their education. Based on the extensive availability of affordable childcare, most mothers choose to return to work full-time.

3.11 Summary

There is considerable diversity between European countries regarding the contexts under which flexible working statutes were introduced. In the UK, policies were introduced as one response to labour market shortages and to remove barriers to employment resulting from work-family conflict. In several other countries, statutes facilitating individual working time adjustments on the contrary were introduced as a means of work sharing in the context of high unemployment. This limits comparisons of data evaluating the impact of statutes.

Compared with other countries, in the UK there is a wealth of survey data charting change in flexible working since the introduction of the Right to Request flexible working. Yet, unlike in the Netherlands and Germany, this tends to focus broadly on change in flexible working, not more narrowly on the workings of the legislation. These surveys suggest that since the introduction of the Right to Request, there has been an increase in the availability of flexible working policies, that it has been successful in opening flexible working options which are not linked to earning reductions, especially flexitime, and that flexible working requests are coming from men as well as women (even though more women than men request flexible working, and certainly more women than men request it for childcare purposes).

Part-timers have been particularly likely (successfully) to request flexible working, but it is not clear whether the Right to Request has been successful in facilitating a change from full-time to part-time employment within the same job. There is not a conclusive narrowing in the part-time wage gap since the introduction of the Right to Request.

The review also highlights several gaps in data availability. While the majority of responses are accepted by employers, a considerable proportion of requests are rejected. There is no information about the consequences of rejections; Dutch surveys found that three-quarters of people who were rejected left for other jobs. Likewise, UK data do not allow an analysis of success or failure rates for different types of requests, and provide no information on the nature of compromises reached in partially accepted requests. Currently, there are no data on success of requests from carers or disabled employees.

The UK Right to Request, and surveys conducted to evaluate it, does not explicitly deal with requests to increase hours, unlike in Germany and the Netherlands. UK data on employee requests for increased hours are not available.

Employees in managerial jobs in all countries are less likely to attempt to reduce their hours, and when they do, are less likely to succeed. Individual rights are playing a role in changing this, but need to be supported by broader measures to challenge full-time norms in senior positions.

Men are requesting flexible working in substantial numbers, although to a lesser extent than women. Countries with general part-time rights have not seen a higher take-up of flexible working from men than the UK. Employers have been more likely to refuse requests from men, but it is not clear whether this is due to the fact that fewer men than women make requests for reasons covered under the Right to Request or whether this reflects the lower availability of flexible working practices in male-dominated workplaces.

The experience with Time Credit/Sabbatical leave schemes suggests that men who take leave as a reduced hours option to spend for family reasons are significantly more likely to take on general household tasks than men who work full-time. Similar findings arise from men who use flexible work options in Norway.

The experience in countries such as Germany, France and Denmark shows that reductions in working hours, and negotiations over the manner in which such reductions are implemented, have resulted in increased work-life balance for families.

4. FLEXIBLE WORKING RIGHTS IN THE COURTS

4.1 Introduction

As noted in Chapter 2, the UK Right to Request is designed as a 'soft' law, in principle providing only limited roles for employment tribunals in the implementation and adjudication of flexible working requests. Nevertheless, since the introduction of the Right to Request, a number of cases related to flexible working have been considered before employment tribunals. Court cases help to clarify the boundary of flexible rights and can send strong signals to employers about their obligations to facilitate change. Court cases also provide practical illustration of the type of issues that arise from flexible working requests at the workplace. In this chapter, we will review the impact of flexible working rights through case law and examine how effectively the Right to Request supports the transformation of British workplaces compared with other countries which provide flexible working as a court enforceable right. The chapter will begin with a consideration of British employment tribunal cases, following a review of the case law in Germany and the Netherlands,¹¹ and finally examine cases brought under the New South Wales Carers laws. The chapter will highlight two particular issues: the experiences of men with enforcing flexible working rights, and the transformative role of courts and tribunals in encouraging new ways of working.

4.2 Flexible working rights in the UK Courts

In the first year after the UK Right to Request came into force, the Acas helpline received almost 10,000 inquiries from people about flexible working rights, primarily asking whether the new law gave them an automatic right to work flexibly (Acas, 2004: 20). Yet even though 10,000 seems a substantial number of callers, altogether flexible working made up less than 2 per cent of all enquiries to Acas helplines that year. Actual claims to employment tribunals have made up an even smaller proportion of all tribunal claims during the last five years (Table 4.1). In the five years after the passing of the Right to Request, Acas registered slightly over 1,500 claims which involved flexible working as a primary or secondary issue, less than 0.2 per cent of all claims to employment tribunals during that period. It is not clear whether this low volume of queries and of individual claims related to flexible working is a sign that flexible working issues genuinely are not the cause of many problems or whether this reflects an awareness among employees of the limited legal rights provided under the law.

Tribunal cases suggest that, at least in some instances, the Right to Request has been able to play a role in challenging employer prejudices. Employers have lost cases, where they have adopted a blanket approach to refusals. The Right to Request in principle does not allow tribunals to question the business rationale for a refusal provided by employers. Nevertheless, in practice at least some tribunals have questioned statements such as 'we cannot recruit anyone to work in this position part-time' by asking for proof that the employer had actually taken reasonable steps to recruit, or questioning the sincerity or creativity with which the employer attempted to facilitate alternative arrangements.¹² Thus, one tribunal found against an employer who, in view of the tribunal, 'could not envisage the job of graded operator being done in any other way than somebody working full-time hours'; in another case, of a manager in retail, the tribunal found that the employer had 'closed its mind to the possibility of the claimant working part-time, given its mindset that all managers other than weekend managers were "full-time managers" working 45 hours per week'.¹³ While the individual claimants of course no longer usually work for the company by the time that claims reach employment tribunals, and hence do not personally benefit from alternative working patterns, such rulings send important messages to employers about their obligations.

Table 4.1 Flexible working claims at UK employment tribunals, 2003–08

	Flexible working as main complaint		Flexible working as a secondary complaint		All flexible working claims	
	Number	Per cent of all claims	Number	Per cent of all claims	Number	Per cent of all claims
2003/04	72	0.1	129	0.2	201	0.1
2004/05	70	0.1	170	0.3	240	0.2
2005/06	91	0.1	146	0.2	237	0.1
2006/07	58	0.1	167	0.2	225	0.1
2007/08	54	0.0	191	0.2	245	0.1

Source: Acas Annual Reports.

4.3 Combined Right to Request and Sex Discrimination claims

This creative challenge to employer intransigence, however, is not generally based on claims solely relying on the Right to Request. In the majority of cases lodged at tribunals, flexible working is not the primary cause of complaint. One analysis of employment tribunal cases involving flexible working lodged in the first two years following the introduction of the Right to Request suggests that over half of all flexible working cases, and almost two-thirds of cases brought by women, involved a combined claim of flexible working with sex discrimination (Fagan et al, 2006). Moreover, the share of combined cases grew rapidly over the period examined. Women are able to rely on a substantial body of British and European case law which establishes that the withholding of alternative working patterns to mothers with caring responsibilities may constitute indirect sex discrimination (Fraser, 2004; Palmer et al, 2007). In a claim of indirect sex discrimination, the claimant is entitled to challenge the business reasons provided by the employer for refusing a request, an option not available under the Right to Request as long as the employer provides a business reason listed in the flexible working regulations. In sex discrimination cases, the tribunals can award substantially higher damages, and an employee is protected from the first day of employment, while the Right to Request only applies to an employee after six months' tenure.¹⁴ Importantly, employers might be expected to bare some costs in relation to a request, unlike under the Right to Request. This was most recently confirmed in *Cronk v. Harley Davidson Europe Ltd*, where a tribunal found against the employer's rejection of a request for part-time work, arguing that it had treated the claim as if it were a request under the Right to Request instead of an issue of discrimination (IDS, 2008).

Two recent cases considered at the Employment Appeals Tribunal (EAT) illustrate this in detail. In the case of *Mrs. Shaw v. CCL Ltd*, Mrs. Shaw had claimed constructive dismissal when, after her return from pregnancy, the employer refused her request to work part-time. The employment tribunal had treated her request for part-time work as a request under the flexible working rules, and because of this had judged her claim as out of time; the EAT instead suggested that the manner in which part-time employment was denied to her constituted sex discrimination, and upheld her claim of unfair dismissal.¹⁵ Likewise, in the case of British Airways pilot Jessica Starmer, British Airways had followed the procedures set under the Flexible Working Regulations when it refused a request by Ms Starmer to reduce her contractual working hours to 50 per cent. British Airways claimed safety grounds and costs related to training, both legitimate ways of framing the business and organisational reasons for refusing a request. The

employment tribunal found in Ms Starmer's favour on the grounds of sex discrimination; the finding was upheld at the EAT,¹⁶ appealed again by British Airways and finally withdrawn and settled by the company in 2007 (IDS, 2007). While there are a small number of cases where an employee prevails solely by making reference to flexible working rights, primarily because the employer made procedural errors or rejected claims outright without any consideration, such cases are rare.

The lack of a legal basis for a detailed questioning of an employer's justification for rejecting a claim on the basis of the Right to Request was confirmed in *Commotion Ltd v. Ruddy*, a case where an employer had rejected an application for part-time work. The EAT ruled 'that the Tribunal is not entitled to look and see whether they regard the employer as acting fairly or reasonably when he puts forward his reason for rejection of the flexible working request',¹⁷ but neither are tribunals precluded from evaluating whether employer grounds are factually correct.¹⁸

Claims of sex discrimination are now an established component for mothers seeking changes in their working hours, and the combination of the legal principles established through sex discrimination case law and the procedural emphasis of the Right to Request arguably strengthens women's ability successfully to request different working hours. Even though the Right to Request arguably does not provide significant new legal rights, in a situation where many employers already accept some legal obligation to adjust working hours for mothers, the procedural emphasis makes it easier to pursue requests for changed working hours, and, if need be, to pursue these in court.

4.4 Beneficiaries of the Right to Request

The need to rely on the Sex Discrimination Act for the teeth to question employers significantly limits the ability of men to get redress. During the first two years after the introduction of the Right to Request, men brought about a quarter of flexible working claims; yet only about one in seven male claimants brought a combined claim of sex discrimination and flexible working, compared with almost two-thirds of female claimants.¹⁹ The claim of indirect sex discrimination is of course not open to men, because men with primary care-giving responsibilities are in a small minority and hence cannot argue that they, as a sex, are collectively disadvantaged by working time arrangements which cannot be combined with care-giving responsibilities. There are some examples where men have been able to claim direct discrimination where female co-workers were able to work family-friendly working hours and men were not; but these

cases continue to be rare. The 'soft' framing of the Right to Request in practice means that men have been less able than women to challenge employers' business reasons for refusing a flexible working request.

Imelda Walsh, in her review of the of the Right to Request (Walsh, 2008) suggests that employers need guidance on how to prioritise flexible working requests, towards parents and carers, in situations where they might be unable to reorganise work to accommodate everyone one's wishes for alternative arrangements. Arguably the 'soft' conception of the Right to Request may contribute to a prioritisation of mothers over fathers, and thus might inadvertently lead to a deepening of sex segregation in working patterns. This differential impact of sex discrimination protection on male and female carers was also noted in a recent review of the Australian Sex Discrimination Act, conducted by the Australian Human Rights Commission (2008). In Australia, as in the UK, there is a substantial body of case law in relation to access to flexible working and sex discrimination. The Commission has strongly recommended that the introduction of a Right to Request Flexible Working in Australia (which will be introduced in January 2010) should go hand in hand with the introduction of legal protection against discrimination on the basis of family care-giving responsibilities (Australian Human Rights Commission, 2008: Section 267 and 268). These arguments mirror our findings regarding the legal impact of the UK Right to Request flexible working.

4.5 Case law in the Netherlands

Dutch (and German) laws provide court enforceable rights to changed working hours, yet this has not resulted in a comparatively higher amount of litigation. In the first four years after the introduction of the Dutch Working Time Adjustment law, there were 27 published judgments (of which two were being appealed) (Burri, 2004). Twenty of these were requests for working time reductions and seven for an increase in working time. In the majority of cases, employees won, primarily because, as in the UK, the employer had made blanket refusals without being able to show that these were based on a detailed and individual investigation of the circumstances. Courts in the Netherlands are entitled to examine business grounds in detail and have done so, arguing in a number of cases that the employer could be expected to carry some costs as a result of a change in hours (Burri et al, 2003). In her study of Dutch case law, Burri concludes that the Working Time Adjustment law is succeeding in helping employees adjust individual working hours. The review of case law includes a number of managerial claimants who prevailed against employers who had argued that managerial work by its nature was

indivisible and required the continuous presence of an executive (Ministerie van SZW, 2004: Table 2). A difficulty under the Dutch law arises from the differential treatment of decisions relating to the number of hours worked, and the scheduling of hours; employers have considerably more authority over scheduling. This creates particular problems for work-family reconciliation as reduced hours are often sought to match specific childcare arrangements.

As in the UK, the evaluation suggests considerable differences in both the number and types of cases brought by men and women. Fifteen of the 20 cases concerned a request for reduced hours following parental leave, and 13 of these were brought by women; on the other hand, four of the seven cases concerned with an extension of working hours were brought by men (who incidentally all prevailed) (Burri, 2004). While acknowledging that case law only presents a rather partial picture of the effect of the Working Time Adjustment law in practice, Burri suggests its effect primarily falls along existing gender lines: it helps women reconcile work and family responsibilities, but seems to have less impact on the division of such care tasks between men and women (Burri, 2004: Section 3.1). Yet, unlike British men, Dutch men of course have the same options for seeking changed working hours as Dutch women, whereas British men wanting to take up caring roles face greater legal barriers than women.

4.6 Case law in Germany

Likewise in Germany the number of requests ending up in court was limited. As discussed in Chapter 2, there are two separate statutes in relation to individual part-time work: rights to part-time work for employees with children under three (employees are entitled temporarily to reduce their hours to between 19 and 30 hours per week), where employers need to show serious business costs to reject a claim, and rights for all other employees, where normal business reasons suffice. In the first two years following the introduction of the law, there were 78 cases related to parental part-time rights. The expert conducting the official judicial evaluation of the law suggests that this is an indication that most employees and parents were able to find solutions but also warns that: 'It can be assumed that some parents are afraid to lose their job in the longer term, and hence forgo their right to work part-time and solely take full-time parental leave.' (Bundesregierung Deutschland, 2004: 43). The first two years of the part-time law resulted in 24 court cases (Burri et al, 2003); a substantial number of decisions in relation to the general part-time law were appealed up to the highest level, the Federal Labour Court, unlike in the case of the parental part-time work (Betz, 2007).

One reason for the higher level of appeals under the general part-time work legislation might be the looser requirements for employer objections. Yet, in practice, a differentiation between 'serious business costs' and ordinary costs has yet to emerge (Bundesregierung Deutschland, 2004). German courts apply a three-fold test to evaluate an employer's claim that a change in working hours is not feasible. Firstly, an employer must demonstrate that there is a (pre-existing) 'business or organisational concept' which requires full-time work (such as in relation to customer service); that secondly, it is not possible to organise work on a part-time basis, for example by offering additional hours to existing employees or by job sharing; and thirdly, that the costs of reorganising on a part-time basis are disproportionate (Betz, 2007; Bundesregierung Deutschland, 2004: Appendix B). Using this three-step approach of rationalising employer refusal, a daycare provider, for example, was found to be justified in rejecting the application for part-time work by one of the childcare workers by claiming that the pedagogical conception of the kindergarten required children to be looked after by the same person during the whole working day. But a retail employer lost when he claimed continuity in customer service required employees to be present on a full-time basis, even though opening hours substantially exceeded full-time working hours. Hence customers were not guaranteed service by the same employee, even on a full-time basis (establishing similar principles as in the UK case of *Mrs. Mehaffe v. Dunnes Stores*²⁰).

Courts have also decided on the issue of legitimate costs. As in the Netherlands, it is accepted that a move to part-time work may result in some costs, and that such costs – for example for recruitment or induction – are expected to be born by the employer. Yet employers have prevailed, where they have been able to demonstrate that splitting a position in two would require significant additional training costs (in the relevant case law of 40 per cent of working time) or other basic investments such as the acquisition of an additional car for a sales representative position.²¹

4.7 Fathers and the law in Germany

As in the Netherlands and the UK, the majority of claims, two-thirds, have been made by women. Yet men have been successful in using the law to support their claims for changed hours in circumstances where it is unlikely that they would have succeeded in the UK, or would have received equivalent damages. In one recent case, a male accountant was awarded Eur 45,000 when his employer Ernst & Young refused his request to return to work on a part-time basis after parental leave, arguing that only someone working full-time could guarantee sufficient flexibility in the project work

required by clients. (In a development more familiar from British courts, by the time the settlement was implemented, his daughter was over the age of three and Mr Schwarz's right to parental part-time work had lapsed) (Rübartsch, 2008). An evaluation of parents working parental part-time work confirmed that fathers in particular were positive about the right to parental part-time work, with almost six out of ten fathers, compared with only a third of mothers, saying that the law had been very helpful to them (Bundesregierung Deutschland, 2004: 18).

Yet the German case law also illustrates that there are clear limits for men wanting to work part-time in traditionally male jobs. In a case decided on appeal at the Federal Labour Court, a male electrician working in a factory wanted a working time reduction of 14 hours to spend more time with his family; the employer refused saying that it was impossible to recruit another electrician on a part-time basis. This was accepted by all parties; the employee then argued that there was a systematic use of overtime, so that with a reorganisation of work it would be possible to justify the creating of a full-time position, which would be easier to fill. This argument was accepted in a lower level court, but on appeal, the Federal Labour Court rejected the claim and ruled that the law did not provide the basis for such an extensive intervention in the employer's freedom to organise work.²² This case illustrates the difficulties for employees wishing to work part-time in occupations where part-time work is rare, a fact which of course particularly applies to many male-dominated jobs, and where courts adopt a narrow definition of work organisation.

4.8 Case law in New South Wales

The implementation of the family carer discrimination amendment in two Australian states, New South Wales and Victoria, provides an example where the legal implementation of a flexible working right was designed to maximise the transformative potential of such a right. The carer discrimination legislation provides an obligation on employers for reasonable accommodation of care-giving related needs for alternative work arrangements. Under the carer discrimination amendment, complaints are conciliated by an administrative agency and if the conciliation is unsuccessful, heard by the Administrative Decisions Tribunal, which is chaired by a legal practitioner. The introduction of the new right in 2001 coincided with extensive mandatory training of legal practitioners with regard to discrimination law, including the carers' amendment, and this training included tribunal members who were legal practitioners. In addition, the President of the NSW Industrial Relations Commission took it upon himself to ensure

that all of the commissioners were trained on the carers' amendment. Such training ensured that tribunal and commission members were reasonably familiar with the policy background to the law, a range of flexible working arrangements and the feasibility and barriers to introducing them, so that they were more expertly able to assess both employer and employee claims (Bourke, 2005). Of 140 claims decided in the first two years after the introduction of the law, only one was appealed (Bourke, 2004). Another innovative approach in NSW and other jurisdictions has been the imposition of some rulings on a pilot basis, providing the employer with a formal channel for having a ruling changed if after a few months the employer's scepticism of the feasibility of a new arrangement proved warranted.

In principle, Acas has been given a similar role in the UK of mediating in flexible working disputes.²³ Yet according to Acas, in the overwhelming majority of cases that are referred to Acas, the employment relationship has irretrievably broken down; mediation and arbitration in those circumstances is primarily concerned with agreeing a financial settlement rather than with assisting in the implementation of new working time patterns. Our review of employment tribunal cases involving flexible working in the first two years after the introduction of the Right to Request found considerable diversity in the level of expertise among tribunals deciding flexible working cases.

The gender neutral formulation of discrimination against carers, however, has not overcome the predominant recourse of women to the law. Of the 140 complaints lodged in the first two years following the introduction of the amendment, 77 per cent were made by women, and primarily by mothers seeking part-time work on return from maternity leave (NSW Anti Discrimination Board Report, 2002, cited in Bourke, 2004: 66). According to Bourke (2005), the composition of complaints, as well as a number of high profile cases which were brought by men in the two years after implementation became considerably less traditional, with more male parents and carers bringing claims (see also Human Rights and Equal Opportunity Commission, 2007).

4.9 The limits of individual rights to flexible work

In all four jurisdictions, the law has helped employees challenge blanket refusals from employers, based on hypothetical statements such as 'it will be impossible to fill this vacancy' without being able to demonstrate that reasonable steps were taken to test that assumption. Yet in all four, there are a number of cases where employees lost because the employer had legitimate business reasons, and which illustrate the limits of the

individual legislative approach. Such limits are particularly apparent in relation to the scheduling of hours worked, rather than the total number of hours. A number of the UK tribunal cases are concerned with parents not being able to work weekends or evenings, where employers refused to allow this because they felt an exemption for some employees would cause resentment and impose an unfair burden on others. Even though employees won in some cases (for example *Clarke v. Telecoms*), as long as there is extensive evening and weekend work this seems a legitimate response from employers (and from co-workers). This highlights the benefits of more systematic and collective attempts to reorganising working time in a more systematic manner which increases elements of individual flexibility, predictability and choice for all employees.

4.10 Summary

All countries reviewed in this section saw a small but significant number of claims brought in response to flexible working rights, and in all countries, the number of legal claims was considerably lower than predicted in advance of laws coming into force. Claims to lower level law courts or tribunals in the UK if anything exceeded those in Germany and the Netherlands, in spite of the 'soft' design of the UK Right to Request. In the absence of well developed workplace mechanisms for the resolution of individual employment disputes, a higher number of UK employees turn to employment tribunals than in Germany or the Netherlands.

While the 'soft' design of the UK Right to Request limits the ability of tribunals to examine employer reasons for refusal, in combination with a sex discrimination claim, the procedural emphasis of the Right to Request has strengthened the ability of employees to challenge intransigent employers.

Women are the majority of those making claims, yet men are at least a quarter of those who have submitted claims in each of the countries. Men, however, are disadvantaged under UK law because they are not able to make a claim of indirect sex discrimination in relation to flexible working; men are less likely to combine a flexible working claim with sex discrimination and are more likely not to prevail in employment tribunal cases related to flexible working. In other countries, where flexible working is provided as a 'hard' right, men appear to have a greater chance of succeeding with claims, and indeed, are more positive about the role of the law in helping them change working hours for caring purposes than women.

The case law also illustrates some structural limits to the scope of individual flexible working rights for providing greater access to work-family reconciliation. This applies particularly to traditional workplaces and occupations with little incidence of part-time work, and hence a limit on how external recruitment might be used to fill vacant positions, thus providing legitimate business grounds for refusing requests.

Several tribunal cases have arisen in situations where requests for changed work arrangements involved an exemption from evening and or weekend work; while parents have sometimes succeeded with such claims, such an individual solution to unsocial and sometimes unpopular working conditions potentially increases resentment from employees who are not covered, and results in problems for managers.

The limited role for external scrutiny of employer decisions in external tribunals, a defining feature of the UK Right to Request, in comparison with other jurisdictions, limits the potential 'transformative role' of the law in helping speed up workplace change. Elsewhere, particularly in New South Wales (Australia), tribunals are playing a more constructive role.

5. EMPLOYERS AND THE DISSEMINATION OF FLEXIBLE WORKING

5.1 Introduction

There is now a substantial literature on the potential business benefits of flexible working and many employers have made progress with accommodating flexible working requests and moving towards a more flexible organisation of work. Yet the dissemination of flexible working remains uneven, both within and across sectors and size of employer. This chapter begins with a brief summary of research on the business case for flexible working and then reviews employer experiences with flexible working statutes. It summarises data on the unequal dissemination of flexible working across employers, discusses barriers to the introduction of flexible working, and highlights the crucial role of support from line managers – and support for line managers – in the successful implementation of flexible working cultures. It argues that medium-sized companies often face particular resource constraints regarding the introduction of flexible working. Finally, it discusses some government initiatives aimed at promoting flexible working, suggesting that initiatives aimed at maximising local networking and resourcing might be particularly helpful in enhancing employer capacity for flexible working.

5.2 The business benefits of flexible working

There is now a substantial body of research on the business case for flexible working.²⁴ UK managers predominantly report positive or neutral impacts of flexible working on performance and productivity, with only a small minority reporting negative consequences (Working Families/Cranfield University, 2008; Hayward et al, 2007; British Chambers of Commerce, 2007). Most studies on the effect of flexible working and work-family programmes find companies with flexible working programs are as, if not more, profitable than employers without such programmes. While the evidence on the causal relationship is often inconclusive in these studies – that is, it is hard to establish whether flexible working is a cause or consequence of superior corporate performance (Riley et al, 2008; Kelly et al, 2008; Yasbek, 2004) – as a minimum it seems clear that flexible working does not lead to reduced performance for the large majority of firms. Benefits may arise from two primary directions: reduced costs of employing staff, and improved productivity of those who are employed. One of the major costs savings arise from reduced labour turnover; once all direct and indirect costs are included, recruitment costs can range from two to three times the monthly wage for lower-skilled service jobs, up to 90 to 150 per cent of the annual salary for professional

staff (Johnson, 1995; Corporate Voices for Working Families, 2005). Other costs savings result from lower absence rates, potential savings in office space as a result of home based working and reductions in overtime costs where working hours are reorganised in consultation with staff (Department of Trade and Industry (DTI), 2005a). Improved productivity may result from fewer mistakes resulting from fatigue, higher individual commitment, greater motivation and improved customer relations.²⁵ BERR has estimated the annual benefits of extending the Right to Request to parents of older children (an additional 8 million employees) at £21 million resulting from reduced recruitment costs, £6 million in reduced absence costs, and £64 million in enhanced profitability, compared with estimated costs to employers of £69 million (BERR, 2008), resulting in a net gain to employers collectively. A German study conducted for the Ministry for Families – though conceding that such quantifications of work-family benefits continue to be 'virgin territory' - estimated a productivity increase in 0.1 per cent per hour per employee. This was as a result of comprehensive work-family programmes because of greater individual motivation and commitment, enhanced time for training and education, and reduced illnesses and long-term health problems (Prognos, 2005). While benefits in relation to recruitment and retention are likely to be more cyclical and related to labour market and skill shortages, the impact on productivity through commitment, motivation and work organisation is less dependent on the state of the economy.

5.3 Employers' experience of flexible working statutes

Employers' experience of the introduction of flexible working statutes has been largely positive, or at least unproblematic. This has been the case as much in the UK, where the statute was specifically designed to incorporate employer concerns, as in the Netherlands and Germany; in the latter, employers' associations were rather hostile prior to the introduction of the law, but subsequently reported few problems with the implementation of the laws (see Hegewisch, 2005; Magvas and Spitznagel, 2002). Fears prior to the introduction of the laws particularly focused on three factors: that new rights would unleash an unmanageable flood of requests; that there would be considerable costs related to the accommodation of requests; and that the introduction of a statutory right would result in a substantial number of legal complaints from employees whose requests was rejected. These fears proved largely unfounded. Only a tiny number of refusals have led to litigation (see Chapter 4), the proportion of employees making requests has stayed largely constant (see Chapter 3), and only a small minority of employers have mentioned costs as a barrier to the introduction of

flexible working (Camp, 2004; British Chambers of Commerce, 2007: 16). However, the need to recognise implementation costs more directly has been stressed by employer associations in the more recent consultations on the Right to Request (CBI, 2005; CBI, 2008; Engineering Employer Federation, cited in DTI, 2005b: 30; Rabbitts, 2009). The majority of employers say that the implementation of flexible working has had a positive impact on the bottom line (IOD/UNUM, 2008; British Chambers of Commerce, 2007; CIPD, 2005). Similar results apply to Germany (although here survey data only apply to requests for reduced hours) (Magvas and Spitznagel, 2002).

One of the problems mentioned frequently in employer surveys is the need to manage potentially negative reactions from employees not able to work flexibly, particularly where flexible working schemes are narrowly targeted at parents (or, more frequently, mothers) (CIPD, 2005; British Chambers of Commerce, 2007; Chartered Management Institute, 2006; Yeandle et al, 2003). This is why, among others, the CIPD has long argued that providing a Right to Request flexible working for all employees, rather than targeting parents and carers, will be preferable to the current approach based on prioritising access to flexible working along traditional lines (CIPD, 2005; 2008).

5.4 The unequal availability of flexible working

The introduction and subsequent expansions of the Right to Request have increased, or at least coincided with, an increase in the proportion of employers offering flexible working. That said, a substantial minority of employers continue to be unaware of the statute, particularly in relation to carers (Hayward et al, 2007: 2). While employer surveys suggest an increase in flexible working options, they also suggest that the spread of flexible working – both in terms of the availability and employee take-up – remains uneven: private sector employers are less likely to have introduced flexible working than public sector employers; and employers where men are the majority of employees are less likely to have significant levels of flexible working than employers where women are in the majority. These features incidentally are not unique to the UK. Three out of four UK public sector employers allow job sharing, for example, compared with less than four out of ten private sector employers; the same difference applies to flexitime (Smeaton et al, 2007: 25). While there is some evidence of a narrowing in the private/public sector gap (Whitehouse et al, 2007; Hayward et al, 2007), the Third Work-Life Balance Employer Survey found that managers in the public sector were significantly more positive towards employees' needs for work-life balance than private sector managers (Hayward et al, 2007: 64).

There are also marked sector differences. According to a YouGov survey of over 4,000 parents of children aged 16 and younger (Ellison et al, 2009), conducted late in 2008, six out of ten employees in manufacturing stated that they did not have access to (any type of) flexible working, as did over half of employees in construction and transport, compared with around a third of employees in the financial sector (35 per cent) and social services (32 per cent) (Ellison et al, 2009). These data of course are a reflection of the second facet of the unequal dissemination of flexible working: that male-dominated workplaces are less likely to offer flexible working than female-dominated workplaces (Whitehouse et al, 2007: 35). Among parents, 50 per cent of fathers, compared with 36 per cent of mothers, stated that flexible working is not available to them (Ellison et al, 2009).

Thus, while there undoubtedly has been an increase in the availability of flexible working, in practice there continues to be considerable disparity in the access of individual employees to alternative working patterns. We know from employee surveys that there continues to be excess demand for certain forms of flexible working, particularly in relation to flexitime. We also know that the majority of employers say that they would consider requests for flexible working positively and sympathetically, and that, indeed, the majority of requests are accepted (see Chapter 3). This raises the question why some employers receive more requests than others. The Third Work-Life Balance Survey found that altogether only four out of ten workplaces had had a request for flexible working during the previous year (Hayward et al, 2007: 133).

One of the factors identified by employees as constraining their access to flexible working is lack of information on the type of options and policies that are available to them. Less than three out of ten employees found available information from their current employer sufficient (Holmes et al, 2007: 48), and fewer than 30 per cent reported having seen any job adverts that mention flexible working (Holmes et al, 2007: 64). This lack of information is also indirectly confirmed by managers, with fewer than half of managers stating that they actively promote flexible working (Hayward, 2007: 8). Employers rely on employees to take the first step, but consequently might lose out on potential applicants who are unaware of alternative working patterns that might be on offer. This gap between what (potential) employees would like to see, and what employers provide in terms of information, is not unique to the UK. The German government responsible for promoting work-family reconciliation, jointly with employers associations, has agreed concrete targets for increasing the proportion of job adverts

mentioning family-friendly working options from a quarter to a third of all job adverts within two years, as one response to the information deficit lamented by (potential) employees (BMFSFJ, 2008: 120).

A substantial minority of employees are not approaching their employers with requests for change even though they are not content with their current work-life balance. This might be because they simply do not know that it would be possible to have a different arrangement; that they do not want to risk refusal; that they are afraid of career consequences of adverse reactions from colleagues; or, last but not least, that they cannot imagine how a different arrangement might be feasible in their jobs. Given the growing body of research suggesting positive outcomes of flexible working and, correspondingly, that not having work-life balance might lead to lower performance (see Section 5.2 above), waiting passively for employees to take the first step instead of proactively promoting flexible working might be a costly business strategy.

5.5 The critical role of line managers

Line managers' perceived support or lack of it for flexible working is critical in facilitating flexible working for employees, particularly, though not uniquely, in countries such as the UK where the statutory framework for access to alternative working patterns is weaker and has not been in place as long as in some other European countries (Lewis and Smithson, 2006). The majority of people requesting flexible working in the UK do not do this by following the formal process set out under the Right to Request, but make requests informally to their line manager (Holt and Grainger, 2005; Ellison et al, 2009). This is also supported by case studies. As noted by Working Families/Cranfield (2008: 7):

To a certain degree informal flexible working is seen by some employees as being 'below the radar', and more likely to be achievable than making a formal request.

The authors point out that while such informality might be the result of a flexible working culture, it might also leave an employee vulnerable to changing line management. This finding was also confirmed in case studies conducted in the United States, of highly educated women who had children and were not in the workforce (Stone, 2007). A frequent explanation for the decision to leave paid employment was that their flexible working arrangement had broken down when their line manager moved on and their

next boss no longer honoured the agreement. Such patterns are less likely where flexible working is common and publicly encouraged throughout an organisation, yet achieving such a 'flexible working culture' requires commitment from top management as well as organisational structures and supports for those having to implement policies (CIPD, 2005).

The longitudinal analysis of the Workplace Employee Relations Surveys (Whitehouse et al, 2007) suggests that the attitudes of individual line managers have become less important as formal availability of different flexible working options has become more widespread (Whitehouse et al, 2007: 3). Likewise, the Right to Request has been credited by human resource managers in helping to put existing flexible working policies into practice by providing line managers with a process and criteria for approaching flexible working requests, thus leading to greater uniformity within organisations (CIPD, 2005). Yet enabling line managers to make considered decisions about flexible working requests, and to provide them with the technical know-how to reorganise work and managing flexible employees, remains a key challenge (EOC, 2007). Case studies find that line managers often would like to accommodate employee requests in principle, but in practice they are not given either resources or training for implementing more flexible work arrangements. As Kossek and Hammer (2008) point out, 'it is common for firms to reward supervisors for making their numbers regardless of the human costs', regardless of longer-term consequences in relation to reduced performance or higher staff turnover. Kossek and Hammer's research took place in the United States, but UK and European research suggests that such a 'pig-in-the-middle' position is by no means unique (Lewis and Smithson, 2006). Flatter management hierarchies, combined with general work intensification (see also Hayward et al, 2007) and tough performance targets (which generally do not include any targets in relation to flexible working), encourage line managers to be risk adverse and leave fewer pockets of time for experimenting with new work designs.

Initiatives targeted at improving the take-up of flexible working need to acknowledge line managers' time constraints. Kossek and Hammer (2008) developed a targeted training intervention for line managers. This included a short self-administered on-line training package of less than one hour; a facilitated follow-up discussion where supervisors set targets for themselves in terms of actively raising work-life issues with their staff; and cross-departmental partnering with other managers to increase cross-training in the workplace. This had the goal of increasing the pool of workers potentially able to step in

at short notice when someone had to be absent. The subsequent evaluation found that employees were more motivated and had reduced levels of health and stress related absences (including reduced blood pressure) than employees in departments where managers had not been trained. This of course is only one example in a broad field of training initiatives targeted at line managers. Yet its combination of delivery mechanisms, designed with the realities of line managers' work context in mind; its focus on individual follow-up targets; its mechanisms for inter-organisational partnering as a means of knowledge and resource sharing; and, last but not least, its built-in experimental design by comparing performance and bottom line effects in departments with and without training, make it a useful model to follow.

Likewise, initiatives aimed at facilitating part-time working in senior positions are increasingly focusing on the design of managerial tools targeted at ensuring that part-time or reduced hours work does not end in failure. This could be either because in practice it turns into a continuation of full-time work (with a reduced salary – euphemistically known as 'The Haircut' among female lawyers in the United States), or into part-time work with reduced, if not terminated, career prospects. The Project for Attorney Retention in the United States has put together a package of measures. These include a job description for a balanced hours coordinator, charged with monitoring the workload, project allocation and performance assessments of those who reduce their work hours. This may help law firms respond to demands for quality part-time work from lawyers and reduce the continuing exodus of highly qualified female staff from the legal profession (Williams and Calvert, 2004).²⁶ A major US research project sponsored by the National Institute for Health, on the health aspects of flexible working, likewise includes several organisational case studies where organisational specialists worked with managers of 'reduced load' professionals²⁷ to help them develop concrete changes in expectations and performance matrices as part of ensuring the success of alternative working practices (Kossek and Lee, 2008).

Closer to home, the TUC-facilitated intervention in Bristol City Council demonstrates both the need for, and the benefits of, developing training programs and tools to address the apprehensions of middle managers tasked with having to implement completely new working patterns (Morris, 2005). The experience with the implementation of new working patterns in Bristol City Council shows how investment in a systematic reorganisation of work arrangements (supported with time to make changes and facilitation) can

significantly expand the boundaries of flexibility and lead to long-term gains in performance and productivity.

5.6 Small and medium-sized employers and flexible working

There is considerable research to suggest that small employers are not less likely to offer flexible working than larger employers, from the UK and from elsewhere (British Chambers of Commerce, 2007; Galinsky et al, 2008). Small employers are more likely to provide flexible working informally, but employees working for small employers are not less likely to have access to alternative work arrangements. Yet the survey of the British Chambers of Commerce (2007) found that medium-sized companies are more likely to report problems with the implementation of flexible working, being too big to rely on informality, but too small to have the resources for developing formal policies. The need for concrete financial support for smaller employers is also established by other research conducted for the Equal Opportunities Commission regarding the transformation of work (EOC, 2007).

Both the New Zealand and German governments are specifically targeting small and medium-sized enterprises in flexible working services. The New Zealand Ministry of Labour sponsored extensive case study research on problems – and potential solutions - experienced by smaller employers with requests for flexible working. This research was conducted in preparation of the implementation of flexible working legislation in New Zealand in 2008. Information is easily accessible on a government-maintained website.²⁸ Such an approach was also followed by the DTI prior to the introduction of the Right to Request, but has since been scaled back. The German Chamber of Commerce, in co-operation with local governments, is going beyond a strategy focusing on information. In several large cities, the Chamber and local government jointly support advice centres on work-family issues. Such advice centres have a dual role: they provide consulting services and sessions for employers who want to introduce flexible working, and they provide advice to employees or returners to the labour market who are seeking information about flexible work options and possibilities for upgrading their skills. They provide crucial additional resources for human resource managers in medium-sized companies who often have little time to dedicate to the development of new work options – unless confronted with the immediate need of having to implement change, in which case the resource centers are able to provide low cost consulting services and networking.

5.7 The German government and the dissemination of flexible working

The EOC investigation in the transformation of work calls for a more active role of government and public institutions in promoting flexible working (EOC, 2007). Such an active role includes emphasising the need for change and prefiguring the future of work. The German government since 2003 has played a proactive role in promoting work-life balance. The German government's strategy, under the guidance of the BMFSFJ is focused on coordinating and supporting the different actors involved in creating effective work-family reconciliation. In 2004, the government supported the foundation of the 'Alliance for Families'. The alliance has four strategic partners, with the government providing support and coordination (BMFSFJ, 2008: 47):

- *Research institutions* analyse trends, investigate the costs and benefits and evaluate progress in work-family policy. As a first step, the Ministry funded several studies estimating the potential macro and micro economic impact of improving work-family reconciliation in Germany (Prognos, 2003; Rürup and Gruescu, 2003; 2005).
- *Employers' associations* disseminate findings on the need for change, support implementation of new policies in companies, and conduct surveys and publicity to promote the importance of action in this field further. Supported by a central knowledge centre, each of 80 local chambers of trade and industry has a person responsible for addressing family-friendly work issues and responding to member queries.
- *Trade unions* support the implementation of work-family policies by initiating projects and campaigns, and build increased competence among their representatives locally through training and advice.
- *Foundations* help in the development of new practical tools and knowledge sharing on family-friendly work organisation and contribute to the development of public debate and discussion of these issues. The Hertie Foundation, for example, developed a work-family audit (akin to an Investors in People kite mark); the Bertelsmann Foundation runs managerial training programs on workplace flexibility.

The BMFSFJ and the Chamber have also jointly formed a best practice network for employers called *Erfolgsfaktor Familie* (Success Factor Family);²⁹ this currently has slightly over 2,000 members and provides examples of company practice, organises national and regional networking events and forums where employers can receive advice on specific practical problems, and gets employers to pledge to a programme of action in relation to work-family policies.

Each partner in the Alliance for Families has set specific targets, with the Ministry coordinating the measuring and reporting back of progress.

5.8 Enhancing local co-operation

The reform of the organisation of work and working time is seen as only one component of work-family policy in Germany; childcare (and other care related services) comprise another leg, with financial transfers for families providing the third leg of the work-family tripod (BMFSFJ, 2008: 48). Apart from harnessing the role and co-operation of different actors on work-family issues at the national level, the Ministry is putting particular emphasis on initiatives aimed at enhancing activities at the local level. *Bündnis Familie* (Family Pacts)³⁰ encourages co-operation at local level between employers, unions, local government and other service providers. Projects might include, for example, the development of a network of retiree volunteers willing to provide childcare in emergency situations or during unsocial hours; the development of training programmes for women returners, or the offer of holiday camps for teenagers during the summer. The Ministry also sponsors a 'Family Atlas', which provides a visible benchmarking map of work-family attractiveness across Germany. The 2007 Atlas includes 433 cities and communities and benchmarks these on four different fields of activities: work-family reconciliation; housing and urban space; schools, further education and training; and leisure activities for children and youth (Prognos, 2007). These activities are designed to make work-family policies a key factor in local economic development initiatives, linking up the dots between different spheres of people's lives. Such friendly competition and benchmarking of work-life balance might also provide channels for more community activities in the UK.

Linking employers up locally with other actors in the work-family field can create synergies, shift expectations and awareness of what is possible and become a tool for knowledge sharing. This is the motivation behind the annual Sloan Awards for Business Excellence in Workplace Flexibility in the United States.³¹ Now in its fifth year, the Sloan

Awards differ somewhat in their approach from other best practice awards in that the competition is not national but is limited geographically (currently to 40 localities). For a city or municipality to be included in the competition, the local chamber of commerce and local government have to make a joint application, and have to agree to support meetings and publicity for the award. By focusing on distinct localities, the organisers of the award are hoping to maximise the potential for knowledge sharing and networking, leading to a broader culture change than would result from more disjointed national competitions.

In its submission to the 2008 Consultation on the extension to the Right of Request, the CBI suggests:

There are limits to the degree of flexibility that employers are able to accommodate – clearly, for some sectors, companies and groups of employees, flexible working is much easier and cheaper to implement than for others.

(CBI, 2008)

Yet, likewise, in every sector of the economy there are companies which are highly flexible, and companies which only have limited level of flexible working; this suggests that there is no absolute barrier to flexibility, or at least that we are far from having reached such a barrier. The growth of flexible working observed during the last few years has much to do with flexible employers becoming more flexible, while progress in many other workplaces has remained more modest. The development of targeted resources and information policies, combined with start-up financial help for employers, particularly smaller employers, facing particular barriers, can play an important role in moving towards the next stage of flexibility and work-life balance.

5.8 Summary

There is a substantial body of research on the business benefits of flexible working. At a minimum, this shows that flexible working is cost neutral for the large majority of employers, but may in fact result in considerable cost savings and productivity improvements for many employers.

The experience of employers with flexible working statutes, in the UK as elsewhere, has been largely unproblematic. Few employers have encountered the costs, increase in

litigation or flood of requests anticipated prior to the introduction of new regulations. UK employers, however, report having to manage negative reactions from employees who do not have access to flexible working.

Since the introduction of the Right to Request, there has been a considerable increase in the number of employers offering flexible working options. Yet access and take-up of flexible working is uneven between sectors and between men and women. This unequal distribution also applies to requests received by employers.

Line managers' perceived support or lack of support for flexible working is a critical factor in employee take-up of flexible working. Work intensification and tough performance targets may limit the ability of line managers to focus on flexible working. To be effective, measures promoting flexible working need to be hands on and acknowledge constraints on line managers' time and resources.

Medium-sized employers are more likely to report difficulties with the implementation of flexible working. Both the German and New Zealand governments have introduced resources particularly targeted at helping SMEs implement flexible working requests.

The German government has played a considerable role in promoting work-life reconciliation by encouraging the co-operation between employers, research institutions, unions and foundations. Its activities include benchmarking of cities and communities on a broad range of work-family reconciliation measures. The local emphasis is designed to enhance knowledge sharing and co-operation.

6. CONCLUSIONS

The majority of high-income countries have, as in the UK, introduced employment statutes which enhance the ability of individual employees to adjust their working hours. The UK Right to Request is unusual in a number of regards: it adopts a multidimensional approach to flexible working, whereas most other statutes more narrowly focus on the part-time/full-time dimension; it offers much more limited enforceability of flexible working rights, providing primarily a procedural right for consideration of requests; requests lead to a permanent change in contract; and, where reduced hours options are chosen, there is no provision for wage replacement of lost earnings. This report has focused particularly on the experience of those countries where a general right to changed hours is in place, for all employees and not, as in the UK, employees with childcare or caring responsibilities. However, in these countries, there generally are additional provisions which provide temporary access to flexibility to parents of young children and those caring for dependent adults.

The comparisons suggest that the statutory framework matters, but that it is not a magic bullet for changing gender specific flexible working patterns. Data availability, and the narrower focus on the number of hours worked elsewhere, limit comparability between the impact of flexible working laws in the UK and other countries. Where progress has been made in reducing the unequal distribution of work, such as in some Scandinavian countries, access to childcare and financial and tax reforms have been as, if not more, important than access to flexible working. Yet it is clear that in all countries, women continue to be more likely to take up flexible working rights than men, and are more likely to use these because of caring responsibilities. Progress is slow. That said, men in the UK have less statutory support for changing their working patterns than women, or men in other countries.

The UK Right to Request has made a significant contribution to increasing access to individual flexible working options. In comparison with other national approaches, the comprehensive approach to flexible working, beyond a primary emphasis on the part-time work/full-time work dimension, seems particularly helpful. Providing options which allow a greater reconciliation of work and other responsibilities without leading to a reduction in earnings makes it more likely that men will make use of flexible working. The Right to Request also appears particularly helpful to those who are already working reduced hours.

A paucity of data and research in relation to requests for flexible working by employees with care-giving responsibilities and disabled employees has made it difficult to evaluate how far the Right to Request has been effective in helping them achieve a better work-life balance. Likewise, while overall considerably more data are available in the UK than elsewhere to track the availability and take-up of flexible working, there are considerable gaps in knowledge. These relate in particular to the circumstances of rejections of requests, the consequences of refusals of requests, and the spread of flexible working requests beyond family care-giving, particularly for training and education purposes. Some of these gaps are related to limitations in sample size; others could be addressed by including additional questions on existing surveys. Such questions should routinely include the consequences of flexible working requests in terms of pro rata pay or levels of responsibility, and, as in other countries, include requests for increased hours of work within the basic flexible working options surveyed.

While there is evidence of a substantial increase in the range of flexible working options available in UK workplaces, progress in key areas appears slow. In particular, there is little evidence that the Right to Request has significantly reduced the need for employees to change jobs when they seek a change from full-time to part-time work, either by changing employers or by downgrading jobs within the same employment. The experience elsewhere does not suggest that there is a single quick solution to this problem; yet the UK is relatively unique in Europe in not allowing parental leave on a part-time basis. As long as employers' needs for sufficient notice periods are met, making it possible for a mother to return to work earlier by working part-time (and stretching out her paid leave period in this manner) should help the skill retention of new mothers. Making temporary part-time work a standard option for parental leave might provide one avenue for challenging perceptions of what can or cannot be done on a reduced hours basis.

Access to flexible working by extension continues to be more difficult in senior and managerial positions. Legal rights, including in the UK, have provided some avenues for challenging the 'full-time/all-the time' assumptions, yet full-time requirements for managerial work remain widespread. Particularly, though not solely, in managerial jobs, the problem additionally is to ensure that formal reductions in hours of work are matched by actual reductions in tasks and intensity of work, something that often is not the case. As has been pointed out before, the transformation of UK workplaces towards a true reorganisation of time and space is being held back by the lack of a cap on working

hours, and fewer incentives than elsewhere to focus on the qualitative rather than the quantitative dimensions of working time reorganisation.

The limits, and potential, of the Right to Request are also illustrated in litigation. Even though the Right to Request formally excludes legal avenues for challenging employers' refusals of requests, a considerable number of flexible working cases have been considered by tribunals. The case law from the UK, Germany and the Netherlands shows interesting similarities in the type of cases where employees have prevailed, and where employers' refusals have been upheld. Where employers have lost cases, this was generally because refusals of requests were based on prejudice and categorical objections of the 'can't be done' type rather than on a detailed and job specific consideration of requests. Where employees have lost, this is often because requests are genuinely difficult to meet given business objectives, particularly in 24/7 operations. Likewise, men, more than women, are often caught in the middle between new and old ways of working, making it, for example, genuinely harder for an employer to fill a position in a traditionally male occupation through a job share or a part-time appointment than it would be in many traditionally female occupations.

In all jurisdictions, men seem to be in a minority of those bringing claims, reflecting the current unequal division of care-giving tasks. Men, particularly in male-dominated workplaces, often face considerable obstacles when they are trying to change their working practices to take greater responsibility for care-giving work. In encouraging men to take greater responsibility for care work, flexible working statutes have a potentially transformative role in relation to the traditional gendered division of labour. Arguably, the 'soft' approach of the UK Right to Request, and the need to rely on sex discrimination case law to contribute 'teeth' to flexible working rights, particularly disadvantages men, and thus reduces the transformative potential of the Right to Request in comparison with other statutory approaches. In Germany, fathers were particularly positive about their new rights to work part-time as opening possibilities not previously available to them, whereas mothers said that new part-time laws had done little to change their pre-existing access to reduced hours. Likewise, case law from Australia, based on a gender neutral conception of care giver discrimination rather than sex discrimination, suggests a more even outcome for men and women than in the UK where men seem to be significantly less likely to succeed in tribunals than women.

The lack of stronger enforcement mechanisms for flexible working for men arguably is damaging to both men and women. Men are disadvantaged directly, by having less enforceable rights (while often facing stronger cultural and organisational barriers); women are disadvantaged indirectly because unless men are increasing their use of flexible working, particularly for care-giving responsibilities, flexible working practices are likely to reinforce existing gender inequalities at work.

Litigation in the case of flexible working rights is always only the most extreme point of the promotion of a flexible working policy. Yet litigation sends important signals to employers about expected business practice and reinforces broader policy measures. The 'soft' formulation of the UK Right to Request, and a lack of effective mechanisms for mediation within workplaces, which lead to much of the litigation taking place once the employment relationship has already broken down, unlike in other jurisdictions, limits the potential of the legislation to lead to a positive workplace change.

While the UK continues to be lagging behind some other countries in terms of access to flexibility, particularly flexitime, the last few years have seen a considerable increase in flexible working options offered by employers. Yet progress continues to be uneven, and particularly slow in workplaces with predominantly male workforces. More research is needed into the factors that may speed up the dissemination of flexible working in workplaces that are lagging behind more flexible employers. Compared with other jurisdictions, the Right to Request imposes only limited obligations on employers. The emphasis on process carries the assumption that barriers to flexible working are largely cultural, with little real costs. While employer surveys in the UK confirm that costs have not been a major factor in the implementation of flexible working rights, it is also clear that there are certain costs which are not recognised, and that these are particularly apparent for smaller employers. Elsewhere, employers have been expected to carry some of the costs of change in terms of flexible working, but arguably that is also leading to a greater acknowledgment that there might be, at least initially, some costs involved.

More proactively, research foundations and non-governmental organisations supporting the dissemination of flexible working have invested in new tools and training programmes directly targeted at improving day-to-day management tasks for those managing flexible workers. Line managers are too often perceived as 'the problem' in relation to flexible working, without acknowledging the actual constraints on their ability

to implement new working practices because of intensification and performance targets which are silent on the promotion of new ways of working.

Importantly, the Right to Request, and flexible working more broadly, is not a panacea for all work-family conflict. Childcare availability is the major constraint on women's ability to work, and one recognised by UK policy makers as much as elsewhere. Policy makers elsewhere more than in the UK have focused on reducing financial disincentives to more equal sharing of paid and unpaid work in families by providing wage replacement for parents who work reduced hours as part of parental leave. Germany provides interesting examples of moving towards an integrated approach to work-family reconciliation which combines a reform of working patterns with investment in a care infrastructure and reform of financial transfer systems for families. The German focus on local communities in the development and implementation of work-family policies can encourage linked up thinking between different policy areas – childcare, transport, further training and education as much as changes in family-friendly working practices – and support the development of knowledge sharing and a critical mass of employers trying to change the way things are done.

The data reviewed in this report were largely gathered during times of tight labour markets. The experience from the Netherlands and, particularly, Germany suggests that employees are much less likely to approach their employer about changed working practices when there is fear of job losses. There has been some suggestion that the current recession in the UK and elsewhere might provide an impetus to flexible working as employers explore alternative options to wage increases to motivate and reward employees. It is too early to assess whether there will be a retrenchment in employee centred flexibility or not as a result of the recession. But it is unlikely that during this period, employees will be very proactive in pushing for further change. To prevent flexible working from slipping back down the agenda, the role of government and public authorities in actively promoting flexible working is likely to be even more crucial in times of recession than in good times.

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ENDNOTES

- ¹ Covered is an employee who cares for a spouse, partner, relative or someone in need of care who is living at the same address as the employee, see for detailed definitions and procedures: <http://www.businesslink.gov.uk/bdotg/action/layer?r.l1=1073858787&topicId=1073931239&r.lc=en&r.l2=1080898061&r.s=tl>
- ² 'Workforce-workplace mismatch' is a term coined by the US Alfred P. Sloan Foundation for its work-family programme.
- ³ For a brief description of legislative provisions in 21 OECD countries, including links to relevant legal texts, see Hegewisch and Gornick (2008). For reviews of national regulations in EU member states see also Clauwaert, 2002; Fagan and Hebson, 2006; Platenga and Remery, 2005; Commission of the European Communities, 2003a; 2003b.
- ⁴ The US Equal Employment Opportunities Commission (EEOC) in 2007 issued guidelines to suggest that differential treatment of people with care-giving responsibilities constitutes disparate treatment under Title VII of the US Civil Rights Act (i.e. Sex Discrimination) (EEOC 2007). The protection against disparate treatment primarily extends to protection against discrimination because someone is on flexible schedules for care-giving reasons, without providing a basis for enforcing a change in working practices.
- ⁵ See http://agingandwork.bc.edu/documents/GPS01_Alt_Work_Arrangements.pdf for a country-by-country summary of statutory arrangements.
- ⁶ One notable difference between the UK and New Zealand laws is that in New Zealand all care-givers are covered, not only spouses, relatives or co-residents with the person they provide care for.
- ⁷ Australian Federal statute, since 1986, includes protecting carers against discrimination, but only in relation to dismissal.
- ⁸ The New Zealand Employment Relations (Flexible Working Arrangements) Amendment Act 2007, modelled on the UK Right to Request but applying to all parents and carers, came into force in July 2008. The Australian Fair Work Act 2008 has passed similar regulations which will come into force on 1 January 2010. Carer discrimination amendments in the Australian states of NSW and Victoria, introduced in 2001, also adopt a comprehensive definition of flexible working.
- ⁹ Small employers are exempted or covered by fewer obligations in Belgium, Germany and the Netherlands, unlike in the UK, New Zealand or Australia.
- ¹⁰ The consequences of the financial crisis and subsequent economic downturn are too recent in Germany to capture in this report; however, given the severity of demographic change in Germany, this is likely to remain a policy concern for the foreseeable future.
- ¹¹ Our search for case law under the French right to part-time work has not found any relevant cases; legal aspects of the Belgian Time Credit law were not included in the review.

- ¹² See for example Mrs K. Powell v. Webasto Roof Systems Ltd; Case 1302903/2004; Birmingham 8 March 2005; or Mrs Glass v. Newsquest (North East) Ltd, Case 2508468/08 Newcastle upon Tyne 11 and 12 November 2004.
- ¹³ See Mrs A Mehaffe v. Dunnes Stores (UK) Ltd, Case 1308076/2003, Birmingham, 21 December 2003.
- ¹⁴ A detailed comparison of the provisions under the Sex Discrimination Act and the Right to Request is available from the Equality and Human Rights Commission at: <http://www.equalityhumanrights.com/en/foradvisers/EocLaw/eoclawenglandwales/Familyfriendlyhours/Righttorequestflexibleworkinghours/Pages/RelationshipbetweenaflexibleworkingclaimundertheERAandSDA.aspx>.
- ¹⁵ Mrs H. Shaw v. CCL LTD, EAT Appeal no. UKEAT/0512/06/DM; London; 22 May 2007.
- ¹⁶ British Airways Plc v. Stamer; EAT/0306/05.
- ¹⁷ Commotion Ltd v. Ruddy [2005] UKEAT 0418_05_1310 (13 October 2005), Section 38. Available at: http://www.bailii.org/uk/cases/UKEAT/2005/0418_05_1310.html
- ¹⁸ See also Equality and Human Rights Commission at: <http://www.equalityhumanrights.com/en/foradvisers/EocLaw/eoclawenglandwales/Familyfriendlyhours/Otheractionandpossibleclaims/Pages/MakinganERAclaimtothetribunalonrefusalofflexibleworking.aspx>.
- ¹⁹ These figures are based on a search of tribunal decisions in Bury St Edmunds in 2005; we are not aware of a more recent evaluation of tribunal cases differentiated by sex.
- ²⁰ See note 13 above.
- ²¹ BAG 9 ARZ 409/04 25 December 2005.
- ²² BAG 9 AZR 16/03 9 December 2003.
- ²³ See detailed regulations at <http://www.emplaw.co.uk/researchfree-redirector.aspx?StartPage=data%2f2006022803.htm>
- ²⁴ See Kelly et al (2008) for a comprehensive review of the literature on the business case for flexible working. While the article is critical of reliance on subjective measures in the performance impact assessment in much of research in this field, it also identifies a small, but growing, body of research with rigorous performance data which has established as a minimum a cost neutral, if not positive, effect on performance.
- ²⁵ See for example Riley et al (2008: 27) or Kelly et al (2008: 12) for a conceptualisation of the business impact of family-friendly working practices.

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- ²⁶ See also the website of the Project for Attorney Retention at: <http://www.pardc.org/BestPractices/>
- ²⁷ The term 'reduced load' rather than 'part-time' professionals is aimed at expressing the fact that for professionals and managerial staff reduced hours might mean a reduction from a 60 hour week to a 40 hour week, more akin to an effective full-time working week than traditional part-time work (Kossek and Lee, 2008: 50).
- ²⁸ See NZ Department of Labor 2007. Available at: <http://www.dol.govt.nz/worklife/resources/making-it-work.asp>.
- ²⁹ The website jointly maintained by the BMFSFJ and the German Chamber of Industry and Trade (IHK) can be found at: <http://www.erfolgsfaktor-familie.de/>
- ³⁰ See: <http://www.lokale-buendnisse-fuer-familie.de/>
- ³¹ See <http://familiesandwork.org/3w/awards/index.html>

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This report reviews the evidence on the impact of the UK Right to Request flexible working compared with the impact of flexible working statutes in a range of other countries. It builds on earlier studies to show that British flexible working rights are less enforceable than in other countries, particularly for men, but that the legislation is more comprehensive by covering a wider range of working patterns than elsewhere.