



EMPLOYMENT TRIBUNALS

Claimant: Mr Michael Samson

Respondent: Nottingham Trent University

Heard at: Nottingham

On: 03 June 2026

Before: Employment Judge M Siddique, Mrs J.M Bonser, Miss K McLeod

Representation

Claimant: In person

Respondent: Mr Webb (Counsel)

RESERVED JUDGMENT

1. The following complaints, that the respondent failed to comply with section 80G (1) Employment Rights Act 1996 regarding the claimant's flexible working request are well founded and are upheld:
 - (a) The respondent failed to deal with the claimant's flexible working request in a reasonable manner contrary to s.80G(1)(a) ERA;
 - (b) The respondent failed to notify the Claimant of its decision in respect of his flexible working request within the decision period contrary to s.80G(1)(aa) ERA.
 - (c) The Respondent failed to consult the Claimant in accordance with s.80(G)(1)(aza).
2. The respondent is ordered to reconsider the request for flexible working. The respondent is also ordered to pay to the claimant the gross sum of £3,004 compensation.
3. The remaining complaint that the respondent failed to comply with section 80G(1) Employment Rights Act 1996 is not well founded and is dismissed.
4. The complaint that the respondent rejected the claimant's flexible working request based on incorrect facts is not well founded and is dismissed.

REASONS

Introduction

1. The Claimant is Mr Michael Samson and the Respondent is his employer Nottingham Trent University. The Claimant brings a claim relating to a flexible working request.
2. Prior to the hearing, on 26/03/2026, the claimant applied for the full hearing to be converted to a preliminary hearing to clarify the list of issues. The respondent was opposed to this on the basis that this was a relatively straightforward claim. Employment Judge Heap refused this request in correspondence dated 20 May 2026 as there was insufficient time for a preliminary hearing ahead of the listed final hearing and there was still time for a draft list of issues to be prepared ahead of the hearing with the co-operation of the parties.

Claims and Issues

3. The issues were discussed at the start of the hearing and were confirmed to be the flexible working request under the Employment Rights Act 1996 (ERA 1996). The parties had taken the opportunity to prepare a draft list of issues prior to the hearing.
4. The respondent accepted that a flexible working request was made by the Claimant on 01 May 2025 under section 80F ERA 1996.
5. Although the Claimant had, in his ET1 claim form, only raised the grounds that the flexible working request was (i) not handled in a reasonable manner in accordance with Section 80G(1)(a) and that (ii) there was a failure to consult pursuant to Section 80G (1)(aza), the Respondent was aware that the Claimant had sought to amend his claim, by email sent to the Tribunal and Respondent on 29/03/2026, to include two additional grounds, (iii) that the rejection of the request was based on incorrect facts (s.80H (b)) and (iv) that the decision on appeal was after the two month time limit (s.80G (aa)).
6. The Respondent consented to the claim form being amended to allow consideration of these additional grounds. The Tribunal agreed to the amendment.
7. At the hearing the Claimant sought to make a further application to amend his claim form to argue that the reasons given for refusing the flexible working were not genuine. The Respondent opposed this application on the basis that this was not raised in the ET1 form, nor in the email seeking amendment on 29/03/2026. The Respondent argued that this new ground challenging the genuineness of the decision-making process, was essentially challenging the truthfulness of the reasons given, if the amendment was allowed it would require time to investigate and for witness statements to be taken to address the new allegation.
8. The Tribunal confirmed at the hearing that it was refusing this amendment application and gave its reasons at the hearing. Essentially, the Tribunal

found the balance of hardship favoured refusing the amendment and for the hearing to proceed on those matters which had been agreed to be considered at today's hearing. If we allowed the late amendment we would, in the interests of justice, have had to allow the Respondent time to carry out an investigation and prepare statements. The adjournment of today's hearing and the delay would not be in the interests of justice given the issues that were agreed and could be decided and considering the overriding objective to deal with cases fairly and justly including in ways which are proportionate to the complexity and importance of the issues.

9. If liability was established it was agreed that the Tribunal would also go on to determine the appropriate remedy. The agreed issues were therefore:

Flexible Working Request (Employment Rights Act 1996 ("ERA 1996"))

1. It being agreed that a statutory flexible working request was made by the Claimant on 1 May 2025 under section 80F, ERA 1996. Did the Respondent fail in relation to the application to comply with section 80G(1) ERA 1996, as set out below (section 80H(1)(a) ERA 1996)?
2. Did the Respondent fail to deal with the application in a reasonable manner?
 - 2.1 The Claimant's questions are:
 - 2.1.1. Did the Respondent fail to consult before refusing the request?
 - 2.1.2. Did the Respondent fail to properly consider alternative arrangements?
 - 2.1.3. Did the Respondent fail to properly consider the request on appeal?
 - 2.2. Did the Respondent fail to notify the Claimant of the decision on the application within the decision period?
3. Was the Respondent's decision to reject the application based on incorrect facts (section 80H(1)(b) ERA 1996)?
 - 3.1. The Claimant asserts the following incorrect facts:
 - 3.1.1. From the original outcome letter on 24 June 2025:
 - 3.1.1.1. People management elements may not be as effective
 - 3.1.1.2. The need to attend office-based meetings, consult with immediate team members and have discussions with wider DT colleagues
 - 3.1.1.3. Expectation of adhering to the department's directive of a minimum number of on-campus days
 - 3.1.2. From the appeal meeting outcome letter on 29 July 2025:
 - 3.1.2.1. To remain aligned to the department's working model and strategic direction (a minimum number of on-campus days)
 - 3.1.2.2. People management elements may not be as effective
 - 3.1.2.3. A wider engagement across the University has the

potential to increase following the relocation from City Gate East.

Remedy

4. If the Tribunal finds the claim well founded, what remedy applies (section 80I, ERA 1996)

Procedure, documents and evidence heard

10. In the course of the hearing, we heard evidence from the Claimant. On behalf of the Respondent, we also heard evidence from Ms Maxine Robson, the Claimant's line manager, and Mr Chris Ward, Head of Digital Planning and Portfolio Services, who heard the internal appeal. They each adopted their statements, gave their evidence on affirmation and were cross-examined.
11. In reaching our decision, we had regard to the written evidence provided in the final hearing bundle, the witness statements and the evidence we heard during the hearing.

The Relevant law

12. Section 80F Employment Rights Act 1996 (ERA) gives a qualifying employee a limited statutory right to apply to his/her employer for "contract variation" (i.e., a change to his/her terms and conditions). This is commonly known as the "right to request flexible working.

"80F (1) A qualifying employee may apply to his employer for a change in his terms and conditions of employment if—

(a) the change relates to—

(i) the hours he is required to work,

(ii) the times when he is required to work,

(iii) where, as between his home and a place of business of his employer, he is required to work, or

(iv) such other aspect of his terms and conditions of employment as the Secretary of State may specify by regulations"

13. There is no dispute that the claimant is a qualifying employee for these purposes. Nor is there any dispute that the claimant made such an application to the respondent on 01 May 2025.
14. The claimant complains that the respondent has not complied with the statutory procedural requirements in dealing with his application.

15. Section 80G ERA 1996 sets out the statutory duties that an employer is subject to when an employee exercises their right:

“80G Employer’s duties in relation to application under section 80F

(1)An employer to whom an application under section 80F is made—

(a)shall deal with the application in a reasonable manner,

(aza)shall not refuse the application unless the employee has been consulted about the application,

(aa)shall notify the employee of the decision on the application within the decision period, and

(b)shall only refuse the application because he considers that one or more of the following grounds applies—

(i)the burden of additional costs,

(ii)detrimental effect on ability to meet customer demand,

(iii)inability to re-organise work among existing staff,

(iv)inability to recruit additional staff,

(v)detrimental impact on quality,

(vi)detrimental impact on performance,

(vii)insufficiency of work during the periods the employee proposes to work,

(viii)planned structural changes, and

(ix)such other grounds as the Secretary of State may specify by regulations.”

16. The “decision period”, referenced at S.80G(1)(aa) is defined in s.80G(1B) as:

“(1B) For the purposes of subsection (1)(aa) the decision period applicable to an employee’s application under section 80F is—

*(a)the period of **two months beginning with the date on which the application is made**, or*

(b)such longer period as may be agreed by the employer and the employee.” Our emphasis

17. Where an employer allows an employee to appeal the statute confirms that for the purpose of s.80G(1(aa)

“S.80G (1A) If an employer allows an employee to appeal a decision to reject an application, the reference in subsection (1) (aa) to the decision on the application is a reference to—

(a)the decision on the appeal, or

(b)if more than one appeal is allowed, the decision on the final appeal.”

18. Complaints to the Tribunal can be made on the following grounds:

“80H Complaints to employment tribunals

(1) An employee who makes an application under section 80F may present a complaint to an employment tribunal—

(a) that his employer has failed in relation to the application to comply with section 80G(1), ...

(b) that a decision by his employer to reject the application was based on incorrect facts, or

(c) that the employer’s notification under section 80G(1D) was given in circumstances that did not satisfy one of the requirements in section 80G(1D)(a) and (b).”

19. The remedy provided for by statute in such cases is set out at S.80I:

80I Remedies

(1) Where an employment tribunal finds a complaint under section 80H well-founded it shall make a declaration to that effect and may—

(a) make an order for reconsideration of the application, and

(b) make an award of compensation to be paid by the employer to the employee.

(2) The amount of compensation shall be such amount, not exceeding the permitted maximum, as the tribunal considers just and equitable in all the circumstances.

(3) For the purposes of subsection (2), the permitted maximum is such number of weeks’ pay as the Secretary of State may specify by regulations.

(4) Where an employment tribunal makes an order under subsection (1)(a), section 80G... shall apply as if the application had been made on the date of the order.”

20. The flexible working Regulations 2014 confirms that:

“6. For the purposes of section 80I of the 1996 Act (remedies) the maximum amount of compensation is 8 weeks’ pay of the employee who presented the complaint under section 80H of the 1996 Act (complaints to employment tribunals).”

21. The Employment Rights Act 1996 sets the maximum weekly amount:

“S.227 Maximum amount.

(1) For the purpose of calculating—

....

(za) an award of compensation under section 80I(1)(b), the amount of a week’s pay shall not exceed £751.”

22. The flexible working provisions do not give employees any substantive rights to have their flexible working requests granted, however meritorious. They merely have the right to have the matter considered in accordance with the requirements set down in S.80F–80I ERA and for the employer's refusal to be for a valid business reason. Importantly, the decision must not be based on incorrect facts.

Findings of fact

23. In this section we set out our findings of fact. We arrived at these findings of fact on the balance of probabilities, taking into account the evidence before us and, in particular, the contemporaneous documentation. These reasons set out our key findings and the basis for them but are not exhaustive: the Tribunal considered in detail all of the relevant evidence even if it is not all recited in these reasons. Our findings are limited to those matters relevant to the issues the Tribunal has to decide in this appeal.
24. We find the Claimant was employed by the Respondent from 3rd April 2013 and was at the relevant time employed as a Senior Application Specialist in the Digital Technologies department. The Respondent, is Nottingham Trent University. The Claimant's role included line management responsibility.
25. The Claimant had been working on campus for a minimum of one day per week. In approximately January 2025 the Claimant became aware that there were going to be changes to the hybrid working requirements and that there would be a requirement to work a minimum of two days per week on campus.
26. This was confirmed in an announcement on 26 March 2025 by Amanda Neylon, who was the Director responsible for the claimant's department [149-151]. The claimant made various enquiries to try to understand the reasoning for the change and what further changes may take place in the future. The Claimant hoped that the department would reconsider its proposed changes based on feedback from the claimant and others.
27. The Claimant consulted the Respondent's policies and became aware of its policies on flexible working [116-134]. We will not set out the policies at length but we consider what the policy has to say about consultation, after a formal request for flexible working is made, is relevant [128]:

"If you are happy to support a flexible working request in full, there is no requirement to hold a formal Flexible Working Request Meeting with the colleague. It is helpful to have a brief informal discussion with them though, for confirmation.

*If you need more insight, have concerns about the viability of a request or are unsure whether you can fully support it or not, you **must consult** with the colleague and invite them to a Flexible Working Request Meeting. At this meeting, the colleague is entitled to be accompanied by a work colleague or*

trade union representative. During the meeting, talk through the request and the advantages and disadvantages of what is being asked for. There should be an open and two-way dialogue between both of you with a view to reaching an agreement about what could be accommodated.”

28. This eventually led to the claimant having an informal discussion with his line manager, Maxine Robson on 28th April 2025 about the possibility of a flexible working request.
29. Following this brief discussion, the claimant contacted Human Resources (HR) to request they attach a flexible working request form to his myHR record on 29 April 2025 and this was actioned the same day by HR.
30. The claimant made a formal flexible working request on 01 May 2025. He filled out a form, as part of his formal request for flexible working. He sought to work 100% remotely, which was a change from the minimum one day he was working [168]. The form was accompanied by an email, sent by the claimant, late on 01 May 2025, providing supplementary information relating to the request. This included his belief that his role, was one of the rare roles which did not require face-to face interaction and that he was more productive working from home.
31. The Claimant's line manager, Ms Robson, was informed of the formal flexible working request. She made enquiries with HR about his existing terms of employment and on 13 May 2025 was emailed details from his contract confirming his normal place of work was the City campus.
32. On the 13th May 2025, the claimant had one of his bi-monthly 1-2-1 meetings with his line manager Ms Robson. The claimant says that as part of his 1-2-1 there was a brief discussion where Ms Robson confirmed that the request was still being discussed at levels above her and that she did not have an update. Ms Robson in her statement suggests that this was a more in-depth discussion about his reasons for making a flexible working request. We found that the claimant's recollection is more likely to be accurate as he has been consistent throughout about a lack of consultation and discussion prior to being informed of the decision. This was a matter of some importance to him and he is unlikely to have forgotten if he had a consultation about his reasons for formally requesting flexible working. His account of a brief update is also consistent with his contemporaneous notes [424]. We enquired at the hearing if Ms Robson had her notes of this meeting within the bundle, and we were informed by counsel that the notes were not in the bundle of documents before the Tribunal. The Tribunal also observes that in the later appeal minutes Miss Robson indicates that she was not told having a consultation was important [230]. We also take into account that if Ms Robson was following the respondent's policy on flexible working she would have requested a Flexible Working Request meeting, in order to consult, and advised the claimant of his right to be accompanied under the respondent's policy. This did not happen.

33. On the 3rd June 2025, during another 1-21 bi-monthly catch up the claimant was verbally informed, by Ms Robson, that his flexible working request was being refused. He was informed that the decision would be put in writing upon her return from annual leave.
34. The decision letter was emailed to the claimant on 24 June 2025, so within 2 months of the request for flexible working.
35. The decision letter is signed by Ms Robson. However, it is apparent from Ms Robson's statement, paragraph 12, that she did not make the decision and was not aware who did save that she discussed it with her line manager, Lisa Machin (Head of Corporate Applications), and that there were conversations "higher up" (paragraph 20). At the hearing she also confirmed that she was not empowered to make the decision herself but that the refusal of flexible working was made by Nottingham Trent University, which she was delivering. She was in effect the conduit for a decision made elsewhere.
36. The letter gave the following reasons for refusing the request:

"I am writing further to the above meeting held on 24th June 2025 and after careful consideration of your flexible working request. I can confirm that regrettably it will not be possible to accommodate your request based on the following statutory business grounds(s):

-A detrimental impact on performance

The business ground(s) apply in these circumstances because:

As a Line Manager there will be occasions when you will need to have face-to-face discussions including providing coaching and support for your line report. The people management elements of your role may not be as effective if you were 100% remote working. As a member of the CRM team, you will also need to attend office-based meetings. There will be times when consulting with immediate team members and having discussions with wider DT colleagues is essential to fulfil your role and contribute to the team and department's performance. In addition, based on a decision by the Director of Digital Technologies, and the universal University decision, there is an expectation of all colleagues to return to campus working more than one day a week. As detailed by the Director, DT are a campus-based team and other departments within the university are already doing 2 days a week, added to this you have been given the flexibility of when you work the additional day to suit your working week."

37. The outcome letter confirmed that the appellant had the right to appeal within 10 working days.
38. The outcome letter, and the appeal letter gave the opinion that people management elements of his role "*may not be as effective*" if you were 100% remote working. The claimant believes this is a statement without any evidence and is therefore an incorrect fact. The Tribunal does not find this to be an incorrect fact. It is an opinion expressed about the hypothetical

future scenario, of the claimant working 100% remotely, and expresses a tentative opinion that people management elements of his role “may” not be effective. What is meant by people management elements and what is meant by “effective” is not defined or explained. This statement is not expressed as an objective fact but as an opinion.

39. The claimant also disagrees with the statement that *“you will also need to attend office-based meetings. There will be times when consulting with immediate team members and having discussions with wider DT colleagues”*. However, this is contradicted by his acceptance in his appeal letter that he is committed to engaging with essential in-office activities, including team away days, team building exercises and onboarding new starters [216]. The claimant also accepted in evidence that he was attending approximately 1 meeting per month on campus. The Tribunal does not find that the appellant has demonstrated that it is factually incorrect to state there will be occasions where he would need to attend the office to have meetings or consult with team members or wider DT colleagues. The claimant says it is an assumption, however it is based on recent practice. Furthermore, even if it is an assumption about what may be required in the future, it is not, without more, an incorrect fact.

40. On 7th July 2025 the claimant exercised his right to appeal. He appealed on 5 grounds:

- a. Working remotely 100% would not have a detrimental impact on performance because he had proven track record of working effectively when working remotely
- b. The nature of his role meant he did not require physical presence in the office
- c. He could demonstrate effective virtual communication and collaboration
- d. Procedural irregularity and inconsistency with policy. The outcome letter claimed there was a meeting held on the 24 June 2025, which was incorrect. He was not afforded the opportunity for consultation before the decision was communicated.
- e. His ongoing commitment to essential on-campus engagement.

41. On 23 July 2025 an appeal meeting was held. It was chaired by Mr Chris Ward, Head of Digital Planning and Portfolio Service. Others present included Ms Robson, the claimant’s line manager and Connie Harman, HR Advisor. Minutes were taken of the meeting; the meeting was briefly adjourned and once reconvened it was confirmed by Mr Ward that his role was *“reviewing the original decision and the subsequent information”* that he had decided to uphold the original decision.

42. On 29 July 2025 the outcome of the appeal was confirmed in writing. The appeal outcome letter confirmed the following:

“Having considered all the relevant information, including the points you raised in your appeal around your performance, the nature of your role, and the procedural concerns, my decision is to not uphold your appeal.

This decision has been reached after considering the broader operational needs of the department, the expectations around digital leadership, visibility and collaboration within Digital Technologies and the wider university, particularly when we return to an on-campus office location, and the importance of maintaining a consistent approach across the team(s).

In response to the grounds of your appeal:

1. Proven Performance and Effectiveness while working remotely

While your individual performance and contributions are not in question, the requirement for a regular on-campus presence remains aligned with the department’s current working model and strategic direction. Therefore, 100% remote working could have a detrimental impact on performance. 250 1 I want to acknowledge your continued commitment to the University and your willingness to engage in meaningful on-campus activities. Your flexibility in this regard is appreciated and will be important as we continue to evolve our ways of working.

2. Nature of Role

Your role as a Line Manager requires a regular on-campus presence to support team cohesion, mentoring, and informal engagement. The people management elements of your role may not be as effective with 100% remote working. Acknowledging that work processes can be designed for virtual collaboration, the University encourages adaptability to different project types and team compositions to tailor to both a remote and in person way of working.

3. Effective Virtual Communication and Collaboration

The Digital Technologies department has adopted a working model that includes regular campus attendance for all staff to support collaboration, knowledge sharing, and alignment with wider University initiatives. A wider engagement across the university has the potential to increase following the relocation from City Gate East.

4. Procedural Irregularity and Inconsistency with stated policy

While acknowledging that there was no formal flexible working request meeting, I am reassured your line manager made a decision with a full understanding of your request and there has been no new evidence provided since which would have impacted that decision at the time.

5. Commitment to Essential On-campus Engagement

The value of having the opportunity to undertake remote work is acknowledged. Having an on-campus presence is a universal University decision and with that comes the expectation that colleagues will attend campus aligned to the decision of the business-unit’s operations. This written notice of the appeal outcome constitutes the University’s final decision and is the end of the formal procedure.”

43. From the appeal outcome letter, the claimant alleges that the reference to *“remain aligned to the department’s working model and strategic direction (a minimum number of on-campus days)”* is an incorrect fact. However, at the hearing he accepted it was a reference to the University policy and not an incorrect fact. The Claimant was unable to explain to the Tribunal how this was an incorrect fact. The documentary evidence confirmed there were high level communications to the claimant and his department from Director level to have more regular days of coming onto the campus, increasing to a minimum of two days a week [150].
44. The claimant also states there was an incorrect fact where the outcome letter references a *“wider engagement across the University has the potential to increase following the relocation from City Gate East Remedy.”* At the hearing the claimant accepted that if he was attending the campus, as opposed to working remotely from home there was more chance of spontaneous interaction with colleagues. We accept the claimant’s point that it is not certain that such interaction would occur but the statement that there was the “potential” for increased engagement was not an incorrect fact.
45. ACAS conciliation was begun on 22/09/2025 and completed on 03/11/2025. A claim was presented on 01/12/2025.

Conclusions

46. We applied the law to our findings of fact and came to the following conclusions.
47. **Flexible Working Issue 1 and 2.1: Did the Respondent fail to deal with the Claimant’s flexible working request in a reasonable manner contrary to s.80G(1)(a) and (aza) ERA?**
48. The remit of a tribunal is limited. Section 80G(1)(a) speaks of dealing with the request in a reasonable manner. ACAS produced a Code of Practice for dealing with Flexible Working requests (The ACAS Code of Practice 5: Code of Practice on requests for flexible working). The ACAS Code refers to requests being handled in a reasonable manner – as opposed to *decided* in a reasonable manner (our emphasis). A tribunal should not substitute its decision for that of the employer. Our role is more limited. A tribunal should consider whether the correct procedure has been followed. Normally, an employer who follows the procedure set out in the ACAS Code will have dealt with the request reasonably. However, an employer should also deal with the request in good faith when deciding that one or more of the statutory grounds for refusal applies. We accept that some of the requirements in the Code are expressed as “must” and are used to indicate a legal requirement and others as “should” which indicate what ACAS consider as good employment practice and not legal requirements.
49. We considered whether the respondent complied with the ACAS Code. They did so in many respects. For example, by: (a) Having a University policy

which sets out a procedure for handling statutory requests for flexible working; (b) Making it clear to the claimant what information was required by providing the flexible working request form; (c) Considering the request as soon as possible after receiving the written request; (d) Once a decision was made, the respondent informed the claimant of the decision as soon as possible (and in writing); (e) making the initial decision within two months (f) Ultimately rejecting the request for one of the permissible business reasons and providing reasons for how the business reason was met; (g) Allowing the claimant to appeal the initial decision; (h) keeping a written record of the appeal meeting and confirming the outcome in writing.

50. However, the respondent did not comply with the Code in the following respects:

(a) The Respondent failed to consult, which is a legal requirement, before refusing the application. Whilst the Respondent sought to argue that the 1-2-1 meeting on 13/05/2026 met the legal requirements for a consultation, we disagreed. All that happened at this meeting was that Ms Robson provided an update on the status of the outstanding written request and there was no meaningful discussion about the request. We accept that the statute does not prescribe what is required to satisfy the requirement to consult. However, it is clear that there has to be a consultation after the written request is submitted and before a decision is made.

In this case we are satisfied that the decision was made based on the written request. We would observe that the procedure followed also did not comply with the University's own policy, which was that the consultation would include a formal invitation to a meeting to discuss the request, get a full understanding, and to discuss possible alternative arrangements [119]. We do not suggest that such a process was a statutory requirement, but it is indicative that a consultation as envisaged by the University, also did not take place. As it was only the meeting of 13/05/2025 which was said to amount to a consultation, there is no other basis to conclude that the statutory requirement to consult before a decision was reached was met.

(b) The Respondent, because of the failure to consult, did not consider the request carefully, looking at the benefits of the requested changes for the employee and the employer's business and weighing these against any adverse business impact. The Respondent failed to properly consider alternative arrangements because, in the absence of a consultation, they did not understand what alternative arrangements the Claimant would be receptive to or would be willing to compromise for.

(c) It was submitted, on behalf of the Respondent, that the absence of a consultation did not prejudice the claimant as he had the opportunity of an appeal and did not add anything new at that appeal. The Tribunal did not agree that an appeal remedied such a failure. Firstly, because an appeal is not a consultation, it is considering a decision that has already been taken. Simply asking if there was anything else the claimant would have added is not a genuine consultation, which should happen at a formative stage when

the claimant's input can make a difference or allow a genuine dialogue. Secondly, at an appeal stage the balance has already shifted, a decision has been taken and one is no longer seeking to influence an initial decision but seeking to overturn a decision that has already been taken. Thirdly, the absence of a consultation deprived the claimant of a statutory right to a consultation before a decision was taken.

(d) In the appeal outcome letter Mr Ward, upheld the decision, in part, because he was reassured that the claimant's "line manager" made a decision with a full understanding of the request and that no new evidence was provided that would have impacted this. The difficulty with this is that Ms Robson, the line manager, denied making the decision, albeit she signed the decision letter, and was not clear who made the decision. Furthermore, given she did not have a consultation with the claimant it is difficult to understand how there could be any reassurance that there was a full understanding of the request.

(e) They did not deal with the request sufficiently promptly and did not do so within the statutory two-month time limit (see below);

51. In the circumstances, the complaint is upheld. The respondent failed to deal with the claimant's flexible working request in a reasonable manner contrary to s.80G(1)(a) ERA.

52. The statutory procedure permits an employer to reject a request for flexible working only on one or more specified grounds. The respondent ultimately refused the claimant's request on the grounds of:

(c) Detrimental impact upon performance.

53. This is within the list of permissible grounds in section 80G(1)(b). Consequently, the rejection of the request was on one or more of the specified grounds.

Issue 2.2: Did the Respondent fail to notify the Claimant of its decision in respect of his flexible working request within the decision period, s.80G(1) (aa) ERA?

54. The time limit begins to run from the date the request was submitted on 01 May 2025. S.80G(1B) specifies that the relevant time period is two months. The decision therefore needed to be notified by the 01 July 2025.

55. There is a question as to when, for the purposes of the statute, the respondent notified the claimant of their decision – is it when the initial refusal was notified to the claimant or when the outcome of her appeal was notified to her? Section 80G(1A) answers this by stating that a decision on an application is a reference to "the decision on the appeal" (or "the decision on the final appeal" if there is more than one appeal). Thus, the claimant submitted her request for flexible working on 01 May 2025, and although the initial rejection, notified on the 24 June 2025 was in time, the respondent

notified him of their decision, when refusing his appeal, on 29 July 2025. This is approximately four weeks outside the time limit. There was no express agreement between the parties to extend the period. At the hearing the respondent accepted that the appeal was not dealt with within the two-month time limit. This complaint is successful.

Issue 3: Was the Respondent's decision based on incorrect facts, s.80H(1)(b) ERA?

56. In *Commotion Ltd v Ratty* [2006] ICR 290 and again in *Singh v Pennine Care NHS Foundation Trust* (EAT 0027/16) the Employment Appeal Tribunal held that it is not for an employment tribunal to judge the reasonableness of an employer's refusal to provide flexible working. It simply needs to investigate the facts on which the decision was based to determine whether the decision is based on incorrect facts. It is for the claimant to show an incorrect factual basis for the respondent's decision. The thrust of the claimant's argument on this point is that he says the respondent reached the wrong decision and it was based on assumptions and a lack of evidence. He has identified matters which he considered amounted to incorrect facts. However, for the reasons given above, when making findings of fact, the Tribunal found that the statements relied upon were not incorrect facts. They were opinions formed by the respondent as to the assessment of the future if the claimant was to work 100% from home, and the possible impact on performance, based on a certain extent, on what had happened in the past. It is not for the Tribunal to adjudicate on a difference in opinion but to consider incorrect facts, which the claimant has not established here. We would usually expect an incorrect fact to be objectively verifiable. For example, if a parent sought flexible working to accommodate caring for two children and the employer got the age and number of children incorrect, this incorrect fact could be objectively verified by providing the children's birth certificates. The claim that the decision was based on incorrect facts is not proven in this case.

Remedy

57. For the reasons given above we find that the complaint under S. 80H (1)(a) is well founded.
58. We make an order, pursuant to S. 80I that the respondent should reconsider the flexible working request. For the reasons given above we did not accept that the failure to consult was remedied by the appeal. We express no opinion on the merits of the flexible working request, that is a matter for the claimant and respondent.
59. Although the claimant was primarily interested in having his flexible work request reconsidered, the possibility of compensation was also discussed at the hearing. The Tribunal considered 4 weeks compensation, so middle of the range, as just and equitable in all the circumstances. More compensation was not justified as the main remedy sought by the claimant was

reconsideration of his flexible request. Furthermore, whilst there were some failings in the consideration of the request, the respondent did take certain steps to consider his request in a fair and considered way and did not reject his request out of hand so as to warrant a greater level of compensation. Moreover, they offered an appeal, which is not mandatory under the statutory provisions. Whilst their appeal decision was outside the two-month statutory time limit the initial decision was in-time. This meant that the Tribunal did not consider the maximum award would be just and equitable. However, given the significant failing in respect of the lack of consultation, 4 weeks compensation was in our judgment just and equitable.

60. There was agreement between the parties that the gross monthly pay was £3671. A gross weekly amount was therefore £847.15 ($[\pounds 3671 \times 12] / 52$). S.227 ERA 1996 sets the statutory maximum cap for the weekly compensation at £751. Consequently, the compensation for 4 weeks is £3004 ($\pounds 751 \times 4$).

Approved by:

Employment Judge Siddique

02/08/2026

JUDGMENT SENT TO THE PARTIES ON

01/09/2026

J. Woolley
FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/