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Workplace temporalities: A time based critique of the flexible working provisions

Abstract

The right to request for flexible working legislation (sections 80F-80I, Employment Rights Act 1996) attempts to reconcile the demands of employees' jobs with those in their personal lives. It does this by detailing a procedure whereby employees can request an adjustment to the amount of time spent working and the timing of those hours. The duration of work time and the timing of work time are indeed critical factors in employees' ability to manage their work and personal lives. But it is questionable whether these purely quantitative features of work time capture the temporal issues that feed into the work-personal life problem.

This article reviews the temporal assumptions implicit in the flexible working legislation and critically evaluates them in light of broader theoretical perspectives on time. In particular, it highlights the role of temporal subjectivities, which employees develop at work, and the relationship of these to new emerging patterns of work. A case study focusing on software engineers and managers is presented to demonstrate these theoretical viewpoints in practice. The article concludes that the legislation's failure to address the social and collective nature of time is problematic, and that this hinders real progress in achieving flexible working.

The flexible working provisions contained in sections 80F-80I of the Employment Rights Act 1996 (hereafter referred to as the ‘flexible working’ legislation or provisions) constitute an important component of the government’s objective to achieve family friendly and flexible paid work (hereafter simply referred to as ‘work’) environments.¹ The legislation provides that certain employees² have the right to request a variation to their contract of employment if the change relates to the hours worked, the times worked, or the location of work.³ Changes of this nature constitute a form of flexibility for employees, from which it is hoped that they will be better able to exercise individual choice regarding their work and personal lives.

Work time—both its overall duration and the timing of work hours—is conceived of as part of the problem and part of the solution to the work-personal life issue. This assumption is supported in social research on the topic. Long work hours and the time at which these take place can be problematic for many employees.⁴ The flexible working legislation recognises that employees need sufficient time to attend to the reproductive and recreational aspects of life. It also recognises that these needs vary depending on the individual. The flexible working provisions provide a mechanism for individual employees to manipulate the extent of time that is spent working and when this work time takes place. The temporal manipulation need not only favour the employee. An important feature of the flexible working provisions is that the particular delineation between work time and non-work time is something that is to be mutually agreed upon between employees and employers. From the late 1990s government policy—on both sides of the political spectrum—has sought to

¹ BIS, *Flexible, Effective, Fair: Promoting Economic Growth through a Strong and Efficient Labour Market* (London, October 2011); BIS, *Modern Workplaces Consultation – Government Response on Flexible Working* (London, November 2012).

² Those who have been continuously employed for a period of at least 26 weeks, as per the Flexible Working Regulations 2014 r 3.

³ Section 80F(1)(a) Employment Rights Act 1996.

⁴ J Schor, *The Overworked American: The Unexpected Decline of Leisure* (Basic Books, New York 1992); AR Hochschild, *The Time Bind: When Work Becomes Home and Home Becomes Work* (Metropolitan/Holt, New York 1997).

promote the idea that the flexibility sought by employees can be aligned with the flexibility needs of employers.⁵

On one measure, the flexible working provisions appear to be highly successful. Evaluations of its operation reveal high levels of positive responses from employers to employee requests for flexibility.⁶ But if we consider the spread of flexibility amongst a broad range of occupations and in a variety of workplaces a different picture emerges. Certain employees, including managers and professionals, are less likely than others to report having access to flexible working or making requests for working flexible.⁷ Moreover, employees in certain workplaces, including male dominated, private sector and small workplaces, are less likely to request temporal adjustments to their work.⁸ There are hints that the workplace 'culture' may be the problem in some cases,⁹ but these observations remain little explored.

The aim of this article is to try and understand why the flexible working legislation appears limited in its application. I do this by providing a time based critique of the provisions and exploring more generally theories regarding the operation of time at work. This exploration leads me to highlight time's social dimension. I detail the phenomenon of collectively based temporal subjectivities and the relationship of these to new emerging structures of work. These theoretical points are highlighted in a case study that examines the time culture of a group of software engineers and managers working for a multinational company in the field of telecommunications.

⁵ White Paper *Fairness at Work* (Cm 3968) (May 1998); DTI, *Work and Parents: Competitiveness and Choice*, (London, December 2000); DTI, *Balancing Work and Family Life: Enhancing Choice and Support for Parents* (London, January 2003).

⁶ H Hooker, F Neathey, J Casebourne and M Munro, *The Third Work-Life Balance Employee Survey: Main Findings (Revised Edition with Corrected Figures)* (BIS, Employment Relations Research Series No. 58, London 2011); BIS *The Fourth Work-Life Employer Survey* (BIS Research Paper No. 184, December 2014).

⁷ *Ibid.*, BIS.

⁸ *Ibid.*, BIS.

⁹ A Hegewisch, *Flexible Working Policies: A Comparative Review* (Research Report 16) (Equality and Human Rights Commission, Manchester 2009); J Kodz, H Harper and S Dench, *Work-Life Balance: Beyond the Rhetoric* (Report 384) (Institute of Employment Studies, Brighton 2002).

The participating software engineers and managers are based in the Australian offices of this organisation. The global nature of the production process in which they are engaged is discussed.

The broader aim of the article is to present a socio-legal account of the flexible working provisions. By this I mean,¹⁰ that my analysis of the law will be contextualised by a theoretically and empirically informed understanding of social life. This contrasts with more outcome based evaluations of the legislation, for example, counts of the number of applications for and levels of acceptance of flexible working. As such, my account may present some explanatory description of such measures.

The structure of the article is as follows. First, I describe the operation of the flexible working provisions. Second, I highlight the temporal assumptions implicit in the legislation. Third, I consider the effectiveness of the flexible working provisions. Fourth, I discuss theoretical perspectives on time and work. Fifth, I present a case study of a workplace time culture. Sixth, I conclude with a discussion.

1. The operation of the flexible working provisions

The basic mechanics of the flexible working provisions contained in the Employment Rights Act 1996 are that qualifying employees¹¹ can apply to their employer for a change to their terms and conditions of employment.¹² The request must relate to the hours the employee is required to

¹⁰ Here I draw in part on the work of Roger Cotterell, 'Why Must Legal Ideas Be Interpreted Sociologically' (1998) 25 *Journal of Law and Society* 2, 171.

¹¹ An employee who has been continuously employed for a period of at least 26 weeks, as per the Employment Rights Act 1996 s 80F(8) and the Flexible Working Regulations 2014 r 3.

¹² Employment Rights Act s 80F(1).

work, the times when the employee is required to work, and/or where the employee is required to work (as between his or her home and the place of business of the employer).¹³

The category of employees that are eligible to take advantage of the flexible working provisions has broadened since the legislation's inception.¹⁴ Originally, it applied to employed parents of children under 5 or under 18 if the child is disabled. This was extended in 2007 and again in 2009 to cover other care responsibilities. Most recently, in 2014, the requirement for any care responsibilities was discarded.¹⁵ Now any employee, provided they have been employed with the same employer for more than 26 weeks, can make a request under the legislation.

In the employee's application itself, which should be made in writing,¹⁶ the employee must outline the changes they are requesting¹⁷ and also explain the effect, if any, that he or she thinks such changes will have on the employer and how this might be dealt with.¹⁸

The provisions give an employee the right to simply *request* flexible working—something it would appear that they have always held. However, employers now have a statutory duty to consider the request and to respond to it in a prescribed manner and within a prescribed timeframe.¹⁹ The bases upon which an employer can reject a request for flexible working are broad, relating to a range of what can be termed 'business reasons'.²⁰ This includes, for example, the burden of additional costs, the detrimental effect on the ability to meet customer demand, or the inability to re-organise work amongst existing staff.

¹³ Employment Rights Act s 80F(1)(a).

¹⁴ See for example, G James, 'The Work and Families Act 2006: Legislation to Improve choice and Flexibility?' (2006) 35 ILJ3, 272.

¹⁵ From 30 June of that year.

¹⁶ Flexible Working Regulations 2014 r 4(a).

¹⁷ Employment Rights Act 1996 s 80F(2)(b).

¹⁸ Employment Rights Act 1996 s 80F(2)(c).

¹⁹ Employment Rights Act 1996 s 80G.

²⁰ Employment Rights Act s 80G(1)(b).

2. Temporal assumptions implicit in the flexible working provisions

At a basic level, the legislation frames the problem of managing work and personal life as one of the *quantity* of time spent working (specifically, that it is too much time) or that the *timing* of the hours spent working is problematic. It is assumed that certain blocks of time are allocated to work and other blocks of time to employees' personal lives. Employees' difficulties in managing their work and personal lives relates to the relative proportions of these blocks (be they allocated to work or personal life) or the point within a 24 hour frame in which they are distributed. The solution presented in the legislation (excluding that relating to changing the place of work) is to manipulate these blocks of time. Adjustments can be made to reduce the *duration* of the hours spent working or to shift around the *timing* of those hours.

The flexible working provisions view time as an objective measure. It captures its quantitative aspect. Individuals may fill the 24 hours in a day with different degrees of work and personal life activities. The division between these two activities can be manipulated. Whatever mix they engage in will have no bearing on the nature of time itself. Time operates externally to people. It is essentially mechanical and neutral.

This approach reflects how the work-personal life issue is predominantly conceptualised in sociological studies. Dealing with time shortage and time pressure has long been recognised as a

key contributor to the strain between work and personal life.²¹ So, too, is the issue of the *timing* of work and how this relates to employees' abilities to meet demands in their personal lives.²²

The quantitative aspect of time emphasised in the flexible working legislation also reflects the framing of time in the business world. Time becomes commodified²³ and on that basis forms a resource that can be used, allocated, controlled and exchanged in the labour market.²⁴

The flexible working provisions make additional assumptions about time that are important to the workability of the legislation. Firstly, it views work time and personal time as elements that can be distinguishable from each other and kept largely discrete. This is necessary if an employee seeks to make a contractual adjustment to the time he or she spends working as compared to the time he or she is not working. Secondly, it assumes that an individual employee's use of work time can be separated out from the way that other employees within the employing organisation use work time. The provisions encourage individual solutions for employees seeking flexibility. Employees can individually request flexibility that is specific to them. The employer, then, for their part, must assess each individual request for flexibility, including the specifics of the flexibility that is requested. A situation can easily result whereby an employer has multiple employees working varying flexible working arrangements.

Given these temporal assumptions underpinning the flexible working provisions, how does the legislation fare? What is its success in facilitating employees' manipulation of working time?

²¹ For example, Schor n. 4; Hochschild n. 4; CS Piotrkowski, *Work and the Family System* (Free Press, New York 1979); JH Greenhaus and J Beutell, 'Sources of Conflict between Work and Family Roles' (1985) 10 *The Academy of Management Review* 1.

²² Hochschild, n. 4.

²³ K Marx 'Economic and Philosophical Manuscripts' in D McLellan (ed), *Karl Marx. Selected Writings* (Oxford University Press, Oxford 1977).

²⁴ EP Thompson, 'Work, Time-Discipline, and Industrial Capitalism' (1967) 38 *Past and Present*, 56; B Adam, 'Within and Beyond the Time Economy of Employment Relations: Conceptual Issues Pertinent to Research on Time and Work' (1993) 32 *Social Science Information*.

3. The effectiveness of the flexible working provisions

Headline findings from evaluations of the legislation reveal high levels of positive responses from employers to employee requests for flexible working.²⁵ The most recent study, *The Fourth Work-Life Balance Employer Survey*,²⁶ reports that 79% of employees who requested a change to their working patterns in the previous 12 months had their request accepted (61% having the request accepted without negotiation/compromise/appeal and 18% having it accepted following negotiation/compromise/appeal). The four most common forms of flexibility requested were: to work reduced hours for a limited period; to work part-time; to have flexitime; and to work a compressed week.²⁷ The other forms of flexibility considered by the study comprised job sharing, term-time only working, annualised hours and working from home regularly.

It should be noted, though, that these findings and other literature on the operation of the flexible working provisions don't tend to make a distinction between requests for flexibility arising as a direct result of the flexible working legislation and those that would have taken place regardless.²⁸ Moreover, the majority of requests for flexible working are made informally through face-to-face discussion, i.e. not complying with the requirement that the request be in writing.²⁹ Likewise, the majority of responses by employers to these requests were given face-to-face.³⁰

²⁵ Hooker et al. n. 6, BIS n. 6.

²⁶ BIS n. 6, 44.

²⁷ BIS n. 6, 40.

²⁸ D Smeaton, K Ray and G Knight, *Costs and Benefits to Business of Adopting Work Life Balance Working Practices: A Literature Review* (BIS: June 2014), 93.

²⁹ *Ibid.*, 104.

³⁰ *Ibid.*

The Fourth Work-Life Balance Employer Survey also revealed some interesting findings relating to perceptions (held by both employers and employees) about flexible working and the importance of work contexts in the take-up of flexible working. There was a marked distinction between employers' views about whether a flexible working practice was available should an employee request it and employees' perceptions of the availability of such practice.³¹ For example, 88% of employers considered that working reduced hours for a limited period was available. Yet only 56% of employees took this to be the case. Similarly, 72% of employers considered job sharing to be available compared with 43% of employees. Employees' perception of the availability of flexible working was distinctly lower than that held by employers.

In terms of actual take-up of flexible working (here take-up refers to a flexible working practice that is provided by a workplace and has been used by at least one employee in the 12 month period prior to the survey³²) distinct trends appeared in relation to certain workplace characteristics. Rates of take-up of flexible working practices were higher in larger workplaces, those with a union presence, and those in the public and third sectors.³³ Workplaces with higher percentages of women in the workforce were also positively associated with higher levels of take-up of flexible working practices.³⁴ These findings raise the issue about what is distinct about such workplaces as opposed to the private sector, workplaces with a minority of women and smaller workplaces that operates to limit take-up of flexible working.

There is no recent data about the pattern of requests for flexible working by occupational break-down.³⁵ However, *The Second Work-Life Balance Study*,³⁶ published in 2003, reported that

³¹ BIS n. 6, 29, refer Table 3.1.

³² BIS n. 6, 26.

³³ BIS n. 6, 33.

³⁴ BIS n. 6, 48.

³⁵ Smeaton et al. n. 28, 97.

requests were most common among administrative and secretarial occupations (19%), sales and customer service occupations (19%), and associate professional and technical occupations (16%), and was least common among managers and senior officials (10%) and skilled trades (10%).

More recent analysis has been undertaken, though, on the situation for managers versus non-managers. Data from 2013 reveals that managerial employees were restricted from taking-up all flexible working practices (with the exception of working from home) to a greater degree than non-managerial employees.³⁷ For example: 52% of employers restricted managerial employees working part-time, while only 4% of employers restricted non-managerial employees in this way; 46% of employers restricted managerial employees working in a job-share arrangement, while only 2% of employers restricted non-managerial employees in this way; and 42% of employers restricted managerial employees working reduced hours for a limited time, while only 2% of employers restricted non-managerial employees in this way. In effect, managerial employees were more restricted than other employees in their ability to alter the temporal arrangements of their jobs.

Given these figures, it is perhaps unsurprising that data show consistently lower rates of requests for flexible working among managers.³⁸ A 2004 employee survey reported that managers, senior officials and professionals were more likely than other groups of staff to identify a lack of flexibility in the type of work they do as a reason for not making a request.³⁹

³⁶ S Woodland, N Simmonds, M Thornby, R Fitzgerald and A McGee, *The Second Work-Life Balance Study: Results from the Employer Survey – Main Report* (DTI: Employment Relations Research Series No. 22: October 2003).

³⁷ BIS n. 6, 38, refer to Table 3.5.

³⁸ Smeaton et al. n. 28, 118.

³⁹ Chartered Institute of Personnel and Development (CIPD)/Hammonds, *Flexible Working and Paternity Leave: The Full Rate for Fatherhood* (CIPD, London 2004), as reported in Smeaton et al. n. 28, 119.

What can be concluded from these results? Well, the fact that most requests are accepted is, of course, very positive. At the least, it indicates the success of the flexible working provisions for making the idea of flexible working more widely publicised and socially acceptable.

However, both the availability of the various forms of flexible working practices and actual take-up of these are strongly associated with particular types of workplaces and particular types of jobs. What is happening in those workplaces and/or job roles that mean that flexible working practices are less available, or perceived to be less available, or less sought out by employees? What is the nature of the resistance towards flexible working? Some commentators of the flexible working provisions identify an ongoing problem relating to workplace 'culture'.⁴⁰ This broad term seems to refer to expectations of the employer, be this in the form of a long hours' culture or one where flexible working is not the norm. I suggest that this issue of workplace culture is indeed critical. The heart of the matter, though, relates to time. In the section below, I explore theoretical accounts of work time that go beyond the purely quantitative conception implicit in the flexible working provisions. It will become clear that a multi-layered approach to understandings time and its operation is necessary.

4. Theoretical perspectives on time and work

The quantitative conception of time that underpins the flexible working provisions reflects only one dimension of time. Viewing time purely as an abstract measure effectively disconnects it from the materiality of people's experience.⁴¹ The subjective dimension of time, which operates simultaneously and in close interconnection with objective time, is hidden from view.⁴² But the

⁴⁰ Hegewisch n. 9; Kodz et al. n. 9.

⁴¹ Adam n. 24.

⁴² B Adam, *Time & Social Theory* (Polity Press, Cambridge 1990).

subjective aspect needs to be revealed in order to gain a more complete picture of the operation of time within specific workplaces.⁴³ My aim in this section is to explore this social aspect of time.

Time is a socially constructed phenomenon in the sense that we all hold particular temporal subjectivities that are shaped by our cultural experience.⁴⁴ Our thoughts and feelings about time are mental constructs that are learned through time related symbols and rules.⁴⁵ A scholar on time explains: "As a socially constituted reality, time finds its shape in the interpretive domain that lies between the subjective definitions of the self and the objectively available cues that are available in the situation."⁴⁶ Time, then, is both subjective and social.⁴⁷ In day-to-day life our temporal subjectivities take the form of socio-temporal norms and symbolic meanings.⁴⁸ The normative aspect of time powerfully shapes how we act and feel we should act by providing guides into the standards, rules and limits of time use.⁴⁹ In a workplace context this can be revealed in the sense we develop of the appropriate duration of lunchbreaks, the pace at which we should undertake our work, or the response time to email communication. The symbolic dimension to time reflects the meanings we attribute to certain temporal behaviours. For example, in certain occupational groups, such as managers, working long hours can carry with it the meaning of dedication to work. A 'moral economy of time' can develop in which certain forms of time use are valued and attributed virtuous status in comparison to others which are thought of as less appropriate or even immoral.⁵⁰ In the workplace context the moral economy of time is likely to champion speed and efficiency and condemn a wasteful and laissez-faire approach.⁵¹

⁴³ W Bergmann, 'The problem of time in sociology' (1992) 1 *Time & Society* 1, 81.

⁴⁴ KJ Daly, *Families & Time: Keeping Pace in a Hurried Culture* (Sage, Thousand Oaks, California 1996).

⁴⁵ N Elias, *Time: An Essay* (Blackwell, Oxford 1992).

⁴⁶ Daly n. 44, 44.

⁴⁷ Daly n. 44.

⁴⁸ E Zerubavel, *Patterns of Time in Hospital Life* (University of Chicago Press, Chicago 1979).

⁴⁹ Daly n. 44.

⁵⁰ JL Telles, 'Time, Rank, and Social Control' (1980) 50 *Sociological Inquiry* 2, 171.

⁵¹ Daly n. 44.

It is worth reiterating that our temporal subjectivities, while experienced individually, are social in nature. Time operates at a collective level.⁵² This means that an individual in a work environment cannot simply step out of existing temporal expectations or meanings attributed to particular temporal practices. Once an employee has learnt the temporal culture of a workplace, he or she will perceive their temporally infused actions or inactions in relation to this.

Moreover, temporal subjectivities will vary in different contexts⁵³ and between different occupational groups⁵⁴ and/or between employees at different levels within an organisational hierarchy.⁵⁵ Individual workplaces—even those undertaking similar types of work—may have greatly diverging temporal cultures, with distinct temporal norms and symbolic meanings attributed to various aspects of work. Likewise, certain groups within workplace may have varying temporal freedoms, restrictions and expectations placed on them.

These theoretical insights reveal that time is, in fact, not neutral,⁵⁶ as is assumed to be when it is conceptualised solely in quantitative terms. Rather, time represents a persuasive influence on a range of aspects of employees' work lives, including the timing, tempo, sequence, duration and the appropriate content of work time. Hall⁵⁷ aptly describes time as acting like a silent language to which people can be subject. Of course employees have a degree of agency in the way they respond to socio-temporal subjectivities in the work context. But this agency operates within the bounds of the workplace relationship, which is more often than not one of an imbalance of power.

⁵² Zerubavel n. 48; ET Hall, *The Silent Language* (2nd edn Anchor Books, New York 1981).

⁵³ Zerubavel n. 48.

⁵⁴ Bergmann n. 43.

⁵⁵ Telles n. 50.

⁵⁶ Adam n. 42.

⁵⁷ Hall n. 52.

Indeed, employers are deeply implicated in the shaping of temporal subjectivities within the workplace to further organisational outcomes. Telles,⁵⁸ for example, reveals how employers (through their representative managers) use variation in time use between employees as a means of social control. This includes rewarding those who give additional time to the organisation (time which could have constituted an employee's personal time) through praise and ultimately promotion, and censuring or even sanctioning unproductive uses of work time. This has the effect of generating both patterns of behaviour and attitudinal conformity amongst employees regarding temporal practices. These temporal practices are aimed at furthering the employers' organisational goals. It is important to note that these employer practices operate akin to an informal contract with individual employees.⁵⁹ The subtle temporal expectations and reward systems fashioned by employers tend not to be specified in the formal contract of employment.

The normative and symbolic dimension of time can also be shaped by other social structures in which an employing organisation operates.⁶⁰ To fully understand the operation of temporal subjectivities developed by employees, it is necessary to be cognisant of the particular social and structural context in which their work takes place. This means taking into account, for example in the case of private sector organisations, the broad context of a globalised and highly competitive marketplace. It also means taking into account specifics relating to the operation of the particular work organisation in question, for example it may include high levels of information and communication technology (ICT) use, globally distributed production models, and fast and/or just-in-time production turnarounds.

A range of empirical studies have revealed the type of interplay these structural features of work have with employee temporal subjectivities. The increased use of ICTs by some employees,

⁵⁸ Telles n. 50.

⁵⁹ Telles n. 50.

⁶⁰ Bergmann n. 43.

particularly managers and professionals, are a case in point. Links have been made between ICT use and a sense amongst employees that work now operates at a faster pace.⁶¹ Moreover, the technical features of ICTs to facilitate work in different physical locations and outside of standard work times have been associated with the development of new norms regarding both availability and responsiveness to technologically mediated work interactions in what could normally be considered 'down times' or non-work times.⁶² Relatedly, there have been shifts in employees' understandings of and ability to distinguish between what is work time and what is personal time, as the two appear to have become increasingly blurred through the use of ICTs across the work-personal life boundary.⁶³

It should be noted, though, that particular temporal subjectivities do not arise inevitably from the use of ICTs or other structural factors such as the production model in place. Different time cultures can exist in workplaces that operate within similar structural contexts.⁶⁴ What is important to consider is the interplay between these structural factors and temporal norms and symbolic meanings, as well as the role that employers play in developing these.⁶⁵

⁶¹ N Chesley, 'Information and Communication Technology Use, Work Intensification and Employee Strain and Distress' (2014) 28 *Work, Employment & Society* 4, 589; J Wajcman, M Bittman, and J Brown, 'The Mobile Phone, Perpetual Contact and Time Pressure' (2009) 23 *Work, Employment & Society* 4, 673.

⁶² M Mazmanian, WJ Orlikowski, and J Yates, 'The Autonomy Paradox: The Implications of Mobile Email Advices for Knowledge Professionals' (2013) 24 *Organization Science* 5, 1337; L Perlow, *Sleeping with Your Smartphone: How to Break the 24/7 Habit and Change the Way You Work* (Harvard Business Review Press, Boston MA 2012).

⁶³ MP Valcour and LW Hunter, 'Technology, Organizations, and Work-Life Integration' in EE Kossek and SJ Lambert (eds), *Work and Life Integration: Organizational, Cultural, and Individual Perspectives* (Lawrence Erlbaum Associates Publishers: Mahway, NJ 2005); CE Nippert-Eng, *Home and Work: Negotiating Boundaries through Everyday Life* (The University of Chicago Press: Chicago and London 1996).

⁶⁴ L Perlow, 'Time to Coordinate: Toward an Understanding of Work-Time Standards and Norms in a Multi-Country Study of Software Engineers' (2001) 28 *Work and Occupations* 1, 91.

⁶⁵ Ibid.; E Rose, 'Who's Controlling Who? Personal Communication Devices and Work' (2014) 8 *Sociology Compass* 8, 1004, noted in a discussion of a group of mobile service engineers (a group of non-managerial/professional workers) whose job characteristics and collective norms limited the use of work mobile phones to standard work times only, refer D Hislop, and C Axtell, 'Mobile Phones During Work and Non-Work Time: A Case Study of Mobile Non-Managerial Workers' (2011) 21 *Information and Organisation*, 41.

To bring to life this discussion of temporal subjectivities and the role they play in time practices within workplaces, I am going to sketch out the time culture in a specific workplace context. I will then reflect on what this may mean for employees hoping to achieve flexible working.

5. A case study of a workplace time culture

Background to the case study

I undertook a case study in a multinational company that operates in the telecommunications industry.⁶⁶ The company will be referred to as 'Telco'. My focus was on the experiences of the software engineers and managers within this organisation. The empirical work was undertaken in the Telco's Australian offices during 2007. The fact that Australia is a different legal jurisdiction to that governing the flexible working provisions that I'm examining in this article does not detract from my goal here.⁶⁷ What I'm trying to do is present a picture of a workplace time culture, in particular the normative and symbolic understandings of time held by Telco employees and the role these played in influencing the temporal structure of their work. This allows me to illuminate the time theory discussed above and provides a basis upon which to consider how a workplace time culture can influence employees' perspectives regarding flexible working.

As detailed in section 4, above, time cultures vary in different contexts—even in workplaces seemingly undertaking similar types of work—and over time. Workplaces in the UK will all demonstrate vastly or subtly different time cultures. However, that there exists a socially constructed dimension to time holds true in all workplaces. It is helpful to understand the factors

⁶⁶ Refer to the Appendix for details of the case study methodology.

⁶⁷ Although it should be noted that Australia does have similar flexible working provisions as prescribed in the Fair Work Act 2009.

that contribute to the social construction of time and how this can be experienced by workers in terms of socio-temporal norms and symbolic meanings. Presenting data drawn from Australia does not render this problematic. It still fits the purpose of demonstrating the qualitative features of time in a workplace. Increasingly, though, the globalised nature of contemporary capitalism means that the temporal features of a workplace are influenced by its interconnections with other entities and clients in different physical locations. This will be the case for many UK based organisations, as was the situation at Telco.

The case study data was collected as part of a broader project focusing on the role of ICTs in shaping the relationship between employees' work and personal lives. The nature of the empirical data collected provided key insights into Telco's time culture, especially its nuances as it related to the software engineers and managers working in the organisation. The drivers, motivators and inhibitors of the study participants' time use and temporal attitudes could be extracted. In this way, these findings are well placed to allow reflection on the implications of work time cultures for flexible working.

Telco's time culture

The Telco software engineers were contractually required to work 37 ½ hours per week. They had to be in the office during 'core' hours of 10am to 4pm, but had some flexibility about when they made up remaining hours. However, these stated hours were only really a starting point to understanding the time culture of the workplace. In practice the software engineers tended to work much longer hours than those contracted for and the timing of these hours was variable.

The specifics of the production process played a vital role in shaping workplace temporal patterns. The software engineers contributed to the production process by working in teams undertaking project based work. Each engineer would be allocated a particular task in the different project phases, which involved moving through the initial 'ramping up' stage, to 'the build', 'testing' and the final 'ramping down' phase. Pressure points existed in this cycle – meeting the final deadline, but also the completion of the various stages of the project.

Production was continuous and followed a model referred to as 'chase the sun' programming. Production was carried out in different locations around the globe, taking advantage of the varying daytime hours in the different time-zones. The Australian software engineers worked on a project during their daytime and, then, during the Australian night time another team in a different country continued to work on the project during that team's daytime. This could be colleagues or clients located in Europe, the United States or Asia.

The flow of work from one group to another required communication between the teams. This involved either email or telephone communication to explain the type of work that had been undertaken and the problems encountered, and to answer any queries.

The way in which the software engineers responded to this situation was strongly influenced by organisational norms and values regarding time. The software engineers had developed particular temporal subjectivities that shaped how they used time and what they perceived to be appropriate uses of time. Underpinning these were management strategies that encouraged an entrepreneurial, market-oriented work culture, where the focus was on achieving outputs and not the detail of how this was done. The software engineers were responsible for meeting required outputs within set timeframes and were expected to cope with the often high workloads required of them. While the software engineers had certain freedoms with respect to work time, such as how

they went about their tasks and the order in which they did them, there was an expectation that they would self-regulate how they used time so as to complete tasks. In practice, this resulted in the valuing of efficient and effective uses of time to demonstrate the successful management of one's own time. This was the mark of an enterprising employee who was able to create his or her own success.

So, when faced with tight deadlines, the software engineers responded by working faster and longer hours. This was due in part to fulfil their role within the team based work and allow the broader goal of the team to be completed. Importantly, though, meeting a deadline ensured that the engineer demonstrated his or her ability to successfully self-manage work time.

Likewise, the software engineers went to extreme efforts to engage in communication with the other teams based in separate geographical locations working on a project. This could mean taking part in mediated communications very late in the evening or early in the morning to crossover with the worktime of their geographically removed counterparts.

And sometimes I'll think, oh, I'll get up early because I know these guys are finishing work, because there's 12 hours difference, and so I'll go, right, they're finishing work at 6 or 7 ... and I just get out of bed early and see if there's any updates I can quickly give them. (027, male)

It was not simply that information had to pass between the different teams, but also that the work done needed to flow from one group to another to ensure the continual progress was made. Again, this could involve work outside of the standard workday for the Telco software engineers.

And so Friday when I was here till 11.30[pm] that was because What I was trying to get finished, even though it was the end of Friday, and normally you'd be able to think it doesn't make any difference if I finish it now or I finish it Monday morning, but because

people are waiting on it to do work in the US on Friday, their Friday, I had to get it finished that night. (O23, male)

In effect, effort was made to reduce any 'downtimes' for a party working on the project, thus assisting deadlines to be met. The temporal subjectivities experienced by the Telco software engineers crystallised as feelings of responsibility to ensure that production continued constantly and at a reasonable pace. This involved a heightened sense of needing to be available and responsive to those both locally and beyond the immediate location of work.

Ultimately, the software engineers' participation in these communications, particularly when undertaken early in the morning or late in the evening, reflected a moral code regarding how time should be used. The interactions contributed to the efficient use of time by all teams working on the project, and contributed towards the project's overall progress.

These behaviours and attitudes towards time use were normal within the Telco organisational context. They have been actively encouraged by managers, and the software engineers who have moved up the work hierarchy all demonstrated these behaviours and attitudes towards time. Deviating from these practices would be incongruent with what was accepted and valued. It would go against the message being expressed and perpetuated within the environment about the appropriate uses of time.

Managers' work, too, was strongly shaped by workplace norms operating against a backdrop of the global nature of the organisation's operation. Managers participated regularly in conference calls with colleagues and clients around the world. Despite best attempts to find mutually acceptable times, these interactions often occurred outside of standard work times for the Australian employees. In this situation, the managers were expected to adapt to the difficulties of working across multiple time-zones. One manager commented:

If we all have discussion with the US and I need people from Asia to be on the call, say, I have to wait until 11 o'clock at night, which is 9 o'clock at night in Singapore and 9 o'clock in the morning on the east coast of the US. So, quite often we're on calls at that hour of the night from 11pm until midnight. After midnight I don't like it too much but I'll do it if I have to. (013, male)

Managers accepted these patterns of time use, which in effect prioritized organisational demands over local time norms of what constituted non-work or family time. But they were willing to do so, at least in part, because of the valuing of time as a resource that should be used effectively to facilitate the progression of company goals.

More generally, high workloads and expectations about timeframes played a role in the way that managers used their time. Managers received very high levels of communication around the clock. The sheer number of these communications required managers to attend to them regularly to keep up to date. But more than this, norms existed whereby prompt response times were expected. The managers perceived it to be their responsibility to progress the issues raised in a timely manner, optimizing the overall efficiency of the organisation.

Reflections on the implications for flexible working

With this insight into the time culture of Telco's software engineers and managers it is possible to think through how the flexible working provisions may apply to these employees. If, for example, one of the software engineers or managers wanted to limit his or her hours of work until 3.30 each day or go down to a 3 day week, what would they need to ask themselves in order to do this?

Critical questions would emerge, such as:

- *Can I continue to function effectively in my role?*

- *Will I still be able to make a valuable input into Telco's production process?*
- *What will it mean for me to operate differently to all of the other software engineers/managers in the organisation in terms of how my superiors will view my contribution?*
- *How will my peers view my contribution?*
- *Will asking for a change to the existing temporal order signify my rejection of a system that has been developed to make the organisation successful?*

The time culture that prevailed within Telco makes it difficult to find clear answers to these questions. High value was placed on effectively self-managing one's own time; ensuring availability and responsiveness to colleagues and clients at almost any time, including standard non-work times. These attitudes galvanized around structural features of the work in which geographically distributed but technologically networked teams engaged in constant 24-hour production.

Utilising the flexible working provisions would require that the software engineer or manager attempt to step out of the norms and temporal meanings animating the temporal structuring of work at Telco. To achieve flexibility under the flexibility provisions, the software engineers and managers would effectively need to ignore the workplace time culture and propose working in a different way. They would need to go against their own temporal subjectivities, which, to that point, had powerfully shaped their actions at work and their feelings about how they should act in relation to their work.

From this example, it is possible to see how a workplace's time culture could inhibit an employee from requesting an alternative to their standard pattern of work. It is even possible to see how an employee may find it difficult to conceive of how they could effectively undertake their job if they were to deviate from the standard pattern of work.

6. Discussion

The flexible working provisions represent a key response by the UK government to the issue of employees struggling to manage the relationship between their work and personal lives. Headline findings of evaluations of the legislation's effectiveness appear to demonstrate that it is successful. However, certain groups of employees and employees in certain types of workplaces report lower levels of flexible working.

This article has critiqued the temporal assumptions inherent in the legislation. I revealed that the provisions conceptualise time in a particular and incomplete manner. The quantitative aspect of time is emphasised. Time is framed as objective and neutral; something that can be lengthened, reduced, cut up and reassembled. This manipulation can be arranged individually between the employee and employer. The contextualised temporal backdrop of work is obscured.

My discussion of a social constructivist theoretical perspective of time reveals that actually requesting flexible working may be more problematic than the legislation suggests. There is a critical social dimension to time. Employees develop temporal subjectivities that reflect workplace temporal norms and symbolic meanings. These give rise to feelings and values relating to time. The effect is to act as a guide of appropriate behaviours relating to various temporal aspects of work. The temporal subjectivities that are present in work environments powerfully shape how employees act and feel they should act. They operate collectively and are present in particular workplace contexts and amongst particular groups of employees. This social dimension of time is something to which the flexible working provisions appear blind. In this article I have sought to demonstrate how this can be problematic.

A critical issue is the individual focus of the flexible working provisions. The legislation places the onus on individual employees to initiate a temporal alteration to their work schedules. On the face of it, this approach makes sense. The employment relationship is based on a contract between an employer and an individual employee. The temporal arrangements of work are framed as operating at an individual level. This has become increasingly so in recent decades as the demise of collective bargaining, and union power in general, has reduced the last vestiges of collective work time—typically that undertaken during standard work hours, with extra compensation given for work outside of those hours.⁶⁸ In its place is the assertion of managerial authority of time which has encouraged a shift towards an individual temporal perspective and a focus on ever-increasing flexibility.⁶⁹

However, despite this individual conception of time in the employment relationship, time is socially constructed in particular workplace contexts at a collective level. Moreover, the employer plays a critical role in bringing about the particular temporal norms and symbolic meanings that operate through their management strategies and disciplinary techniques.⁷⁰ This means that when an individual employee requests an alteration to their work time arrangements they are effectively attempting to go against what is socially accepted and expected in that environment. The individual employee puts themselves in a position of being problematic – in the sense that they don't fit in with the organisational time culture. If they do achieve flexibility they demonstrate deviant behaviour in relation to the accepted temporal practices in that workplace. The employee may rightly fear negative repercussions as a result. Empirical studies have repeatedly shown this can occur when an employee departs from the standard norms regarding work time, for example to rates of pay, career

⁶⁸ J Rubery, K Ward, D Grimshaw and H Beynon, 'Working Time, Industrial Relations and the Employment Relationship' (2005) *Time & Society* 14(1): 89.

⁶⁹ *Ibid.*

⁷⁰ See for example Thompson n. 24 and N Rose, *Governing the Soul: The Shaping of the Private Self* (Routledge, London and New York 1989).

progression and access to training opportunities.⁷¹ There is no acknowledgement in the flexible working provisions that the collective time culture within a workplace itself may be problematic. As such, some employees find themselves in a bind.

What, then, can be done about this? It is arguable that the flexible working provisions do, to some degree, overcome this issue by encouraging and, over time, legitimating the adoption of alternative temporal practices by individual employees within workplaces.⁷² Eventually it will be part of the norm that some employees work to an alternative temporal pattern. However, I suggest that there is still particular resistance to change in some workplace contexts. This is borne out in evaluations of the flexible working provisions that reveal persistent lower levels of availability and/or take-up of flexible practices by managers and those in male-dominated, smaller or private sector workplaces (as detailed in section 3 above).

One approach to overcome the issue is to encourage more collective solutions in order to achieve employee flexibility. Workplace (or smaller organisational unit) level change to temporal practices could open up space for new ways of working without stigmatising individuals. This may include, for example, employer validation of widespread adoption of shorter work hours or shifting the focus from time spent at work as a proxy for dedication to one's job to other measures such as quality of work outputs. The current legal environment in the UK, though, falls short of facilitating this. Levels of trade union membership have declined sharply during recent decades and with it the ability of unions to bring about widespread collective response to the issue. In its place is an array of

⁷¹ M Francesconi and A Gosling, *Career Paths of Part-time Workers* (EOC Working Paper Series no. 19, Manchester 2005); K Hurrell, *Facts About Women and Men in Great Britain 2005* (EOC, Manchester 2005); HB Joshi, P Paci and J Waldfogel, 'The Wages of Motherhood: Better or Worse?' (1999) 23 *Cambridge Journal of Economics* 5, 543; S Fredman, 'Women at Work: The Broken Promise of Flexicurity' (2004) 33 *ILJ* 4, 299; see LA Perlow and EL Kelly, 'Toward a Model of Work Redesign for Better Work and Better Life' (2014) 41 *Work and Occupations* 1, 111 at 113 for a brief review of the US literature on the topic.

⁷² S Himmelweit, 'The Right To Request Flexible Working: A "Very British" Approach to Gender (In)Equality?' (2007) 33 *ABL* 2, 246.

individual employment rights.⁷³ But some claim these can operate against collective action by having an individualising effect.⁷⁴ There is some evidence of collective action operating outside of the regulatory framework.⁷⁵ Examples from the US reveal employer initiated (at times with the assistance of academics) efforts to change workplace temporal practices, which have resulted in positive developments for employees and their efforts to manage their work and personal life responsibilities. The limitation with these approaches, of course, is that they are dependent on managerial will to initiate and maintain them.

Another key issue that is highlighted in this article is the shifting and increasingly permeable boundary between work and personal life. The flexible working provisions assume that work time and personal time can be easily distinguished and separated from each other. Again, this reflects the assumptions underpinning the employment relationship more broadly. Labour, in the form of work time, is exchanged by the employee for wages. This time constitutes subordinate time, during which the employee must make him or herself available to the needs and will of the employer, in contrast with the employee's 'free' time.⁷⁶ However, the data from the Telco case study demonstrates that in some work environments it is not necessarily easy to clearly distinguish work time from non-work time. In this example work time began to enter into what would normally be considered personal time and, for the Telco employees, it did so irregularly depending on the phase in the production process and/or particular difficulties or issues arising in the general undertaking of work. This is part of a broader trend in which the mechanisms that demarcate work time from non-

⁷³ GS Morris, 'The Development of Statutory Employment Rights in Britain and Enforcement Mechanisms' in L Dickens (ed), *Making Employment Rights Effective: Issues of Enforcement and Compliance* (Hart, Oxford and Portland 2012).

⁷⁴ M O'Sullivan, T Turner, M Kennedy and J Wallace, 'Is Individual Employment Law Displacing the Role of Trade Unions?' (2015) *ILJ* 44:2, 222.

⁷⁵ Perlow n. 62; LA Perlow, and EL Kelly, 'Toward a Model of Work Redesign for Better Work and Better Life' (2014) 41 *Work and Occupations* 1, 111.

⁷⁶ C Everingham, 'Engendered Time: Gender Equity and Discourses of Workplace Flexibility (2002) *Time & Society* 11(2/3): 335.

work time are diminishing.⁷⁷ These include the linking of pay and rewards to time worked, the performance of work undertaken outside of standard hours done on a voluntary basis and compensated for over and above standard pay, and the clear separation of work space and personal space.⁷⁸

This issue raises questions about the form of flexibility envisaged by the flexible working provisions and whether it really meets the needs of those who are experiencing difficulty managing their work and personal lives. There is an emerging literature that emphasises the growing desire and need for predictability of work schedules.⁷⁹ This is occurring at both the upper end of the labour market (for example amongst managers and professionals) and those at the lower end undertaking largely unskilled work on non-standard employment contracts. It is possible that the flexible working provisions are too narrow in its focus on how employees may achieve an ongoing solution to work-personal life difficulties. Contemplating additional temporal needs from employees, such as predictability, could be critical.

More broadly, though, the question is raised as to whether the juridical frame to describe the employment relationship should recognise the blurring of work time and non-work time that does occur for some employees. If it did so, certain regulatory protections could be put in place to shield employees from this phenomenon. On the other hand, though, recognition of this temporal blurring could lead to its acceptance as part of the normal course of the employment relationship,

⁷⁷ Rubery et al. n. 68.

⁷⁸ A Supiot, *Beyond Employment: Changes in Work and the Future of Labour Law in Europe* (Oxford University Press, Oxford 2001).

⁷⁹ Perlow n. 62; Centre for Law and Social Policy, Retail Action Project and Women Employed, *Tackling Unstable and Unpredictable Work Schedules: A Policy Brief on Guaranteed Minimum Hours and Reporting Pay Policies* (Washington, DC, New York and Chicago 2014); L Morsy and R Rothstein, *Parents' Non-Standard Work Schedules Make Adequate Childrearing Difficult* (EPI Issue Brief #400, Washington DC Aug 2015); JR Henly and SJ Lambert, 'Unpredictable Work timing in Retail Jobs: Implications for Employee Work-Life Conflict' (2014) 67 *Industrial & Labour Relations Review* 3, 986; M Blair-Loy, 'Work Without End? Scheduling Flexibility and Work-to-Family Conflict Among Stockbrokers' (2009) 36 *Work and Occupations* 4, 279.

potentially raising a range of issues relating to employee obligations to employers during these times.

Fundamentally, these issues point towards an emerging politics of time that is playing out between employers and employees. The flexible working provisions do not tackle these issues head on. Perhaps it is more accurate to say that they do not challenge the status quo in which the employer has the power to dictate work time demands and the employee has little power but to accept them. While the provisions facilitate an employee to seek variation from this, the employer is given wide leeway with which to decline any employee request for flexibility. Moreover, there appears no real limit to employers' ability to shape the work time culture, including attitudinal conformity regarding time, amongst its workforce.

I conclude that widespread improvement to employees' ability to manage their work and personal lives will only come about when pressure is put on employers—and not individual employees—to promote change at an organisational level. However, creating the political will to bring about this situation is another matter.

Appendix: Case study methodology

Empirical research was undertaken at Telco during the period August to December 2007.

The multinational company designed and produced a range of communication related products and services to meet the needs of both business and individual consumers. Three sites based in Australia were visited, focusing respectively on software development and system design, sales and marketing, and national and regional head office functions.

Twenty-five employees contributed to the information presented in this article (refer Table 1). Fourteen worked as engineers and 11 in managerial roles. Most of the participants were male and fairly young. They were also highly educated, with 20 out of 25 holding a university degree.

Table 1: Case study participants

Sex (n)	Age (n)	Job function (n)	Highest education (n)
Male (19)	20-29 (9)	Software engineer (14)	Secondary school (1)
Female (6)	30-39 (8)	Management	Vocational training (4)
	40-49 (5)	General (4)	Undergrad degree (10)
	50-59 (3)	Human resources (3)	Postgrad degree (10)
		Administration (1)	
		Customer services (1)	
		Corporate affairs (1)	
		Education/training (1)	

A range of methods were employed. I visited Telco offices on at least 25 separate occasions. During these periods I conducted informal, direct observation. I interacted with each of the 25 participants on at least two occasions each. In the first meeting, I explained the study and got them to complete a short profiling survey that captured background information about their work, their personal life situation and their access to ICTs during the workday. In the second meeting, I conducted a semi-structured face-to-face interview with each participant. These lasted an average of 45 minutes. Topics covered included information about the participants' job roles, how they organised their work and temporal features of their work practices. Meetings took place in a range of locations in the Telco offices (such as offices, staff lunch rooms, reception areas, and open plan work spaces). In between the two meetings participants completed an episode diary in which they recorded details about all the personal mediated communications they engaged in during a period of two workdays. This logged the mode, time, direction (incoming or outgoing), interlocutor(s), and content of each interaction.

In terms of data analysis, the profiling survey and episode diary of personal mediated interactions was analysed in SPSS version 16.0 to produce a range of descriptive statistics, and the semi-structured face-to-face interviews (all but one of which was audio-recorded and fully transcribed) were analysed thematically using NVivo 8 software. Observational notes served as useful contextual background through which to interpret and understand interview data.