



How will the office of the future work? |

The impact of flexible working on our towns and cities:
the market and legal considerations

October 2020



Introduction

The role of the traditional workplace is evolving. Flexible working practices have become part of the new normal and there has been a mass migration from city to urban hubs. This presents a new set of challenges for office-based workers, as they attempt to create effective home working environments, and for businesses, who will be attempting to keep office spaces alive as social and cultural hubs.

As more of us move to flexible working potentially long-term, the latest in our ‘How will the office of the future work?’ series looks at how these changes will reshape our towns and cities, from the emergence of urban hubs to the need for improved connectivity. We’re also going to consider some of the key employment and data protection issues that could be triggered by flexible working.

Simon Peacock, Head of South & Wales and Project Management UK Regions at JLL, joined our discussion on this topic to share his insights as a key industry professional on the issues that will reshape our cities.

You can watch the **webinar** (passcode 6%7Q\$Aq#) and **Q&A session** (passcode: nhQs!11!) we hosted in September on this topic.



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‘Flexible working practices have become part of the new normal and there has been a mass migration from city to urban hubs....’
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Evolving towns and cities

The way many people work has changed in recent months and both employees and employers have quickly recognised the many benefits flexible working can offer. These include increasing productivity, creating a better work / life balance by reducing commute time, opening out job offers to a nationwide or international pool of talent, and reducing carbon footprint.

However, it also poses a question; if flexible working is the future, what does this mean for our towns and cities? How do they adapt to become thriving urban hubs instead of the ghost towns of recent months?

In a recent poll, we asked how towns and cities could evolve to accommodate flexible working practices. Our respondents said:



7%

Greener
infrastructure
and transport
networks



16%

Better
connectivity



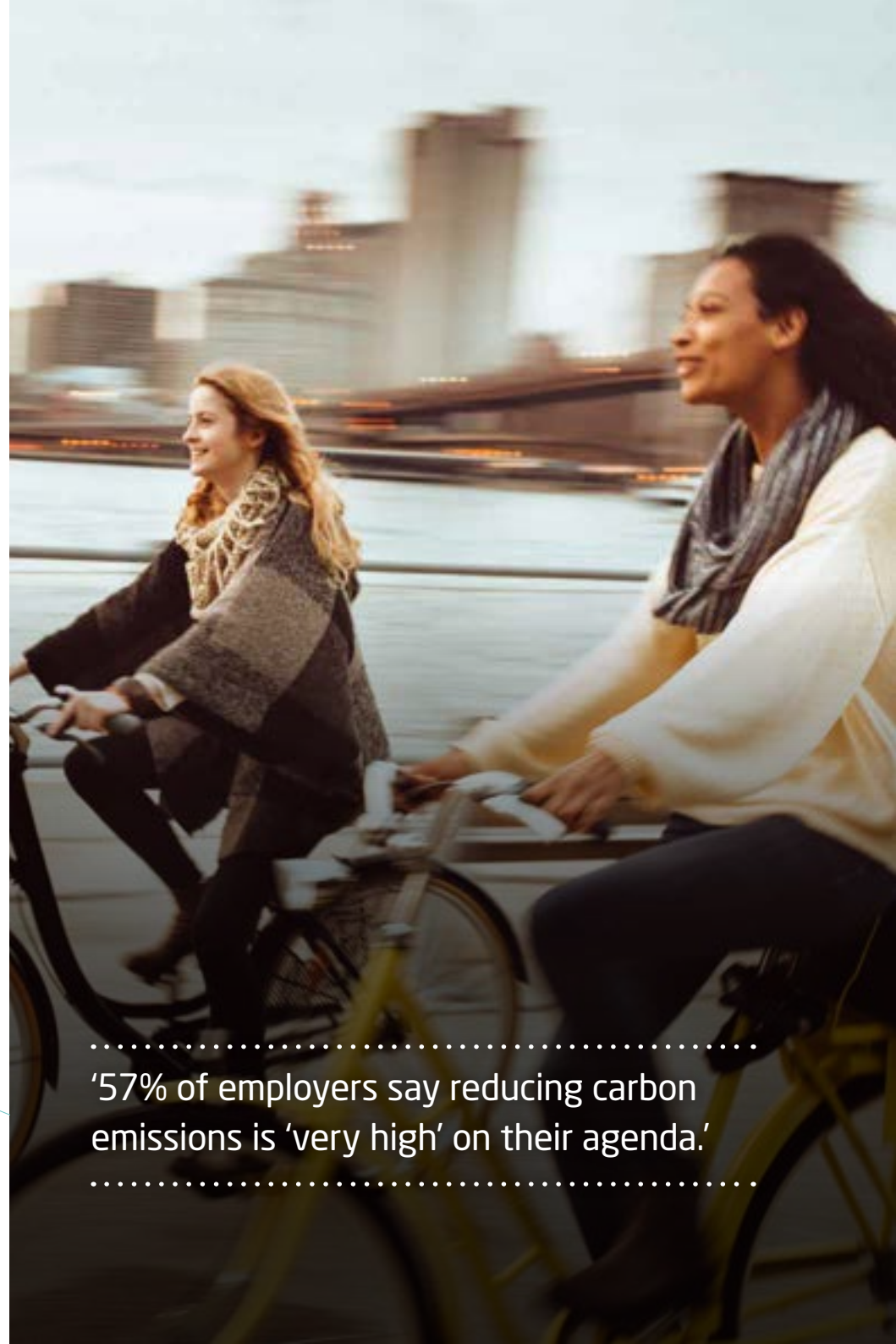
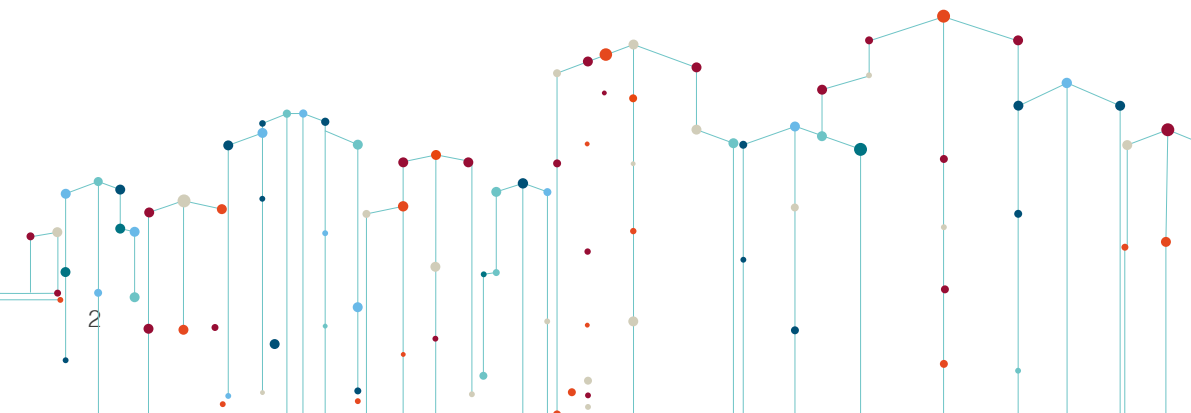
8%

Creation of
local retail and
office hubs



69%

All of the above



.....
'57% of employers say reducing carbon
emissions is 'very high' on their agenda.'
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Co-working

The cities and towns of the future will, without a doubt, look and feel very different. Some of the trends that were already emerging before COVID-19, such as co-working spaces, could support this change by providing localised hubs, addressing connectivity issues, and being integrated into green transport networks. Co-working spaces also have the added benefit of offering employees social interaction, something that many people feel is a disadvantage of continually working from home.

Looking ahead at medium to long-term adaptations, businesses are likely to become more interested in the co-working model. They'll need to make sure they're aware of the best way to approach documenting signing up for co-working space.

The right solution is highly dependent on the nature of the space involved. Is it a genuine co-working space, where desks are used by workers from different organisations in a shared facility? In this instance, a licence to occupy - which is a contractual right to occupy the space, use the facilities and be provided with the building's services - would apply. This option does not allow the occupier to use the space on an exclusive basis as it's not a lease.

If the co-working space provided is actually a dedicated office space or meeting room in the facility which the occupier is going to use on an exclusive basis, it must be approached differently. If the occupier's space has a locking door which can exclude other users and the landlord then it will be classed as a tenancy and should be documented as a lease.

As interest in the co-working model increases, it is likely that there will also be an increase in hybrid offices. This option offers the flexibility and facilities of a co-working environment but with an increased level of permanence and security. Considering the requirement for flexible terms and the inclusion of services beyond those normally expected in a lease, the documentation associated with taking a co-working space or hybrid office is likely to evolve. Going forward, it could become a combination of licence to occupy and a traditional lease.

Jurisdictional variations: Scotland

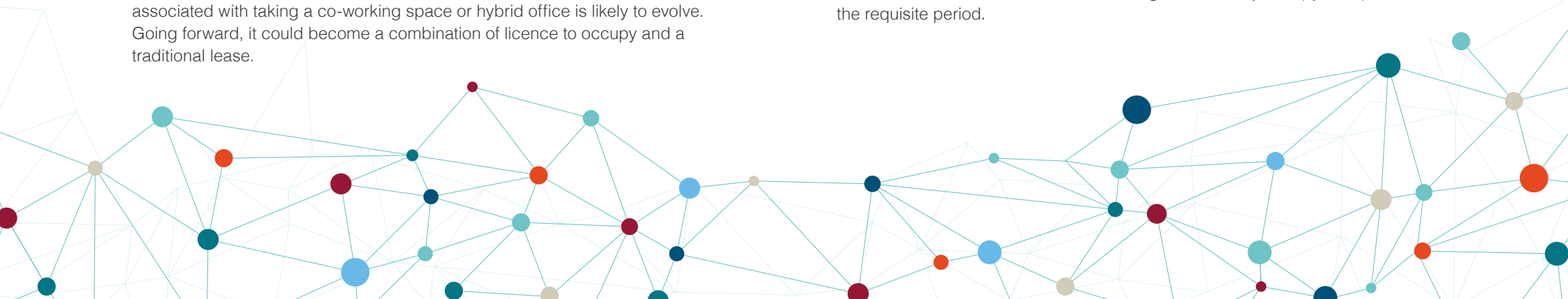
In Scotland, as in England, an arrangement to occupy a co-working space could take the form of a lease or a licence to occupy, depending on the terms. A licence to occupy is more applicable where one of the essential elements of a lease is missing. This could be a co-working space that offers desk sharing with no fixed demised space, or where there is a personal contract, as this would prevent the occupier from assigning or subletting the space.

Either way, the occupier's obligations would be far less onerous than those in a typical ten-year FRI office lease. Shorter terms, reduced obligations to repair, rent which is inclusive of the cost of services, and no dilapidations in the typical sense. However, the documentation regulating these arrangements will continue to evolve over the next few years to reflect changing market conditions.

Jurisdictional variations: Northern Ireland

In Northern Ireland (NI) flexibility is driving the co-working market. Occupiers are agreeing to take on space on a month-by-month basis using rolling contracts. As a result, many co-working spaces have already moved towards flexible contracts - normally in the form of a licence - that can be adapted to fit the occupiers' needs and include the right to use common areas and/or services when required. These could include additional meeting room space, a larger area for an event or inclusive use of car parking spaces, offered either on a pay-per-use or, more commonly, a 'one fee for all services' basis, without dilapidation exposure for the occupier.

If an occupier needs dedicated office space for exclusive use within a shared office environment, a short-term lease would usually be put in place. This option gives the occupier more certainty and security, while still providing flexibility around the services and access to common areas. However, it is worth noting that in NI, this option can potentially lead to the occupier acquiring security of tenure under the NI business tenancies legislation if they occupy the space for the requisite period.



The flexible office

Alongside flexible working, the concept of the flexible office needs to evolve so businesses can manage workplace mobility, provide business continuity, and ensure operational resilience.

Flexible office space is a fast-paced and easy to acquire market. Companies are likely to look to flexible office space to support their changing property needs and drive cost savings in a difficult economic climate.

While current landlord and tenant legislation isn't designed to let occupiers increase or reduce their requirements in a truly flexible way, it doesn't prevent change. Previously, the market had been driven by long-term arrangements that provided landlords with a steady income.

However, as the market changes, both landlords and tenants are going to have to adapt these arrangements. More flexible terms will become the norm and landlords will need to develop business models that don't rely so heavily on long-term fixed income streams.

There has already been movement in this direction, with some landlords looking to deliver their own flexible office solutions or to sign management agreements with flexible office operators. For example, in Bristol, CEG are developing EQ, a 180,000 sq.ft prime office development which includes various space options, from traditional to flexible space. This trend is likely to continue, as employers embrace both the core and flexible model of office working to try to get the best of both worlds. Simon Peacock, Head of South & Wales and Project Management UK Regions at JLL, says: "To justify its existence the physical office will evolve into a place that increases the feel-good factor, is a deep source of inspiration and become social hubs where value is created through community and collective experiences rather than aggregating individuals work."

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'21% of businesses are reluctant to set up regional co-working hubs due to additional rent.'
.....

Regional & city hubs

Another emerging trend is the creation of regional or urban hubs. These spaces will allow employers to take advantage of localised talent pools while also letting employees enjoy shorter commute times and access to workplaces that prioritise health and well-being.

That said, a portion of the growing talent pool still want to live and work in central locations. As our cities change, smaller city-centre hubs could emerge as more concise versions of today's traditional headquarters. These could be a one location offering or, in larger cities, spread throughout what were the more traditional business districts. The knock on effect of creating associated localised retail, last mile distribution centres and greener infrastructure will all affect how the cities of our future look and feel.

In a recent poll, we asked whether business owners are considering setting up regional hubs, and what they believe is the biggest issue stopping them from doing so. Our respondents said:



Our findings indicate the market is not quite ready for the hub model. But it's important to note that flexible working and continually working from home, like many employees have been and are currently doing, are slightly different things.

Most employees want a balance of home and office working, as they feel that this mix leads to increased productivity, provides social interaction and a better work life/balance. This is particularly apparent with the younger generations, as they don't necessarily have the infrastructure to solely work from home, leaving them feeling very isolated. To protect employee happiness, employers are going to need to look at how they can achieve the best balance for their teams over the coming months; this is where the hub concept is expected to come into play.

The investor conundrum

As the office market becomes more flexible, and short-term lease arrangements the new norm, new challenges are going to arise for investors. This new model will not necessarily support the capital value of the property typically required by pension funds, potentially increasing risk.

However, despite short leases and break options, the data shows that, even in the context of flexible office space, there will still be a reliable core tenant group. As a result, a portfolio of offices with different tenants on a range of contracts (from flexible to traditional) reduces the risk of exposure.

Investor appetite is very much going to depend on the individual risk profile and the balance of the portfolio, but as the market continues to move in this direction, we are likely to see more investors becoming comfortable with this model.

Class E, a refresher

The Class E amendment to the planning use classes came into effect on 1 September 2020. Class E now combines the following types of uses into one single class:



Changing between use classes typically amounts to a material change of use and requires planning permission, whereas a change within a class (so from one Class E use to another) does not require planning permission. Use Class E means landlords and their tenants can move flexibly between any one of the uses in the new Class E without the need to secure planning permission.

New data challenges

With the growth of flexible working and increased use of alternative office spaces, there are questions around how employers and employees can effectively manage and protect their data.

Co-working & data sharing

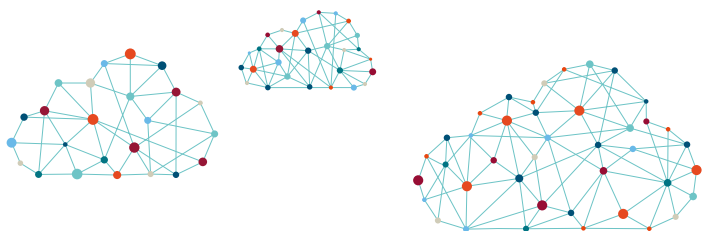
In the context of co-working, employers may be required to share information regarding their employees for both booking and tracing purposes. If there is a legitimate and justifiable reason for sharing the data, and employees are notified that their data will be shared for this reason, then the data can be shared with the co-working operator.

It is important to comply with all the relevant data protection principles and to consider whether it is necessary to share the data in the first place. For example, depending on the employer's model, they may want to offer employees a choice about whether or not they use co-working spaces. If an employee opts out of co-working, there would be no reason to share their data.

Employees might also be able to share information directly with the provider, particularly in the case of contact tracing. This could be preferable, as it gives employees more autonomy and control over their data and how it is being used.

When using co-working spaces and sharing personal data with operators, it's best to enter into a data sharing agreement with the operator. The agreement would set out the parameters of data sharing and outline what the operator intends to do and, possibly more importantly, not do, with that data. For example, you may want to stipulate that the operator cannot use that data to market to employees.

The agreement can also help to protect staff if the operator uses data in ways that have not been agreed. If employee complaints or claims were raised, employers would have an avenue to claim for damages against the operator.



.....
'22% of employers believe security issues
may arise when using a co-working space.'
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Remote monitoring

An area that is high on the regulatory radar is the remote monitoring of device usage and productivity. This area is one that needs to be carefully addressed from a data protection perspective, particularly where employees are using personal rather than company devices to work remotely.

If an employer is remotely monitoring what its employees are doing, this is intrusive processing of personal data and there needs to be a strong, evidence-based justification for doing it. For example, if there are clear indications that an employee is not sticking to set home-working principles or is breaching company policies when working from home, this could help to justify monitoring that employee's activity.

However, monitoring will only be justifiable if employers can show they have considered other, less intrusive ways of achieving the same purpose. It is unlikely there would be a legitimate reason to implement blanket remote monitoring of all employees.

Because of the high level of intrusiveness and risk to individuals' privacy, carrying out a data protection impact assessment is vital before implementing any type of remote employee monitoring.

If an employer is going to implement remote monitoring, it should never be done covertly. They will need to be completely transparent with the affected employees about how they are going to be monitored. It's important this message is also delivered in the right way to avoid damaging employee trust.

It is also possible, depending on the lawful basis used to do this type of processing, that employees may need to be given the opportunity to object to the monitoring. Employers will need to consider how this is built into the process and also look how employee rights and employer interest in ensuring staff are staying productive remotely are balanced.

The employer need to thinks carefully about any decisions it makes using the data gathered during monitoring. When processing personal data, it's vital this is done fairly. Employers should avoid making decisions, for example, about dismissals based on data gathered during monitoring.

With so many data protection issues to consider, alternative measures should be considered before implementing remote monitoring.

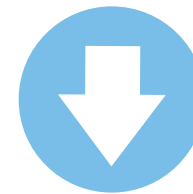
Cyber attacks

Anecdotal evidence suggests that cyber-attacks have increased as more employees are working remotely, and this is certainly an area of concern for many employers.

In a recent poll, we asked - as far as you are aware - has your organisation seen an increase in scams and cyber-attacks since the beginning of lockdown?



27%
YES



25%
NO



48%
**DON'T
KNOW**

One interpretation of these figures could be that the higher than expected percentage of "don't know" responses shows many employers have good awareness and protocols in place to deal with these type of attacks. As a result, cyber-attacks could have been successfully diverted before they reach the attention of employees. In addition, media coverage has heightened awareness of suspicious-looking emails, which could mean employees are already on high alert and are acting in accordance with company policy to deflect attacks.

Without a doubt, the number of suspicious emails has increased in recent months, particularly in areas that are data heavy such as financial services, insurance, pensions etc. Preparation is key to preventing an attack; employers should raise awareness amongst employees and ensure they're taking part in regular cyber awareness training.

Employee focused flexibility

Switch on, switch off

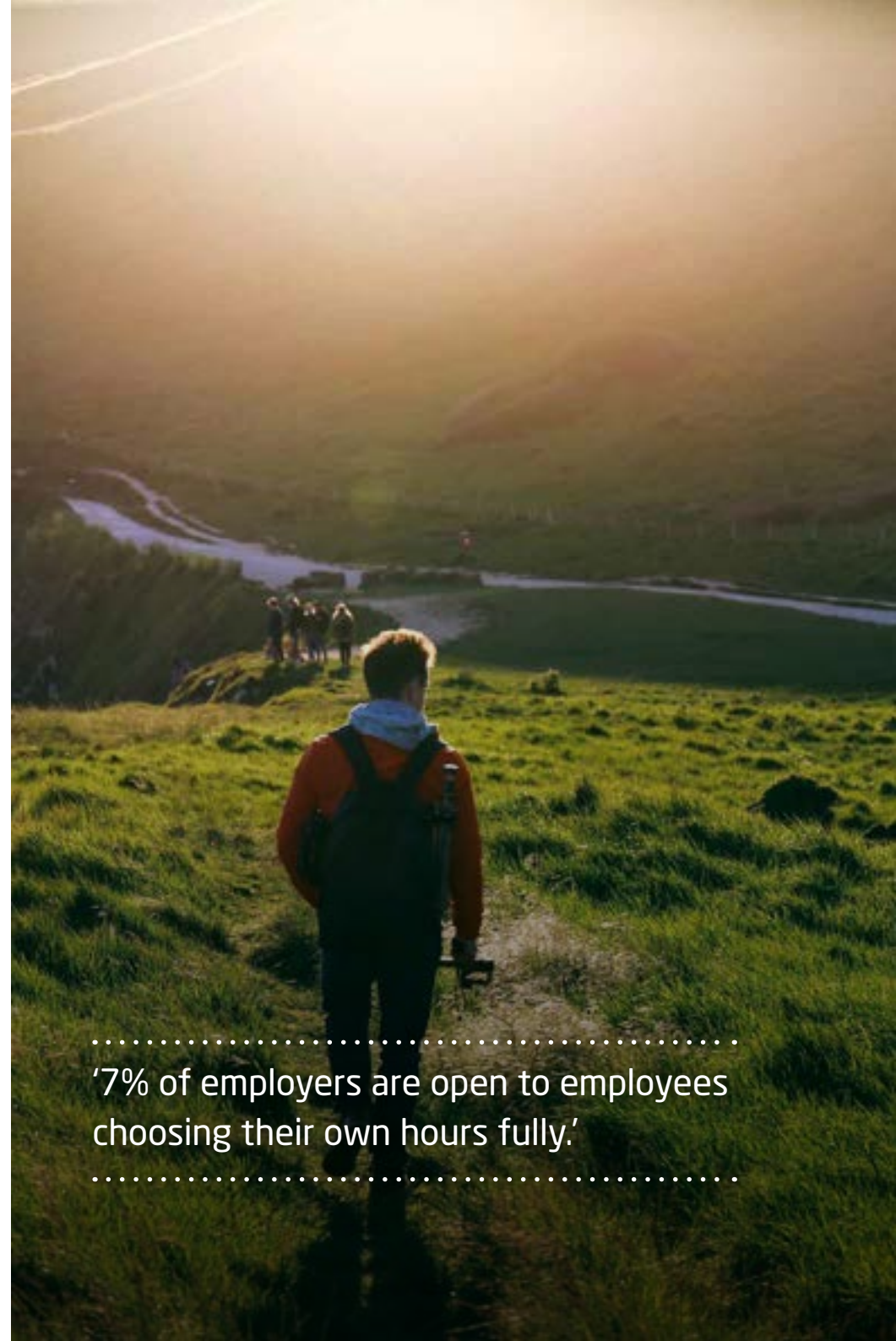
One of the challenges with increased flexible working is how employers ensure employees switch off from work at the end of the day and maintain a healthy work/life balance. Part of this is encouraging employees to set boundaries and providing them with the tools and support needed to switch off, especially as reduced commute times, working from home and the feeling of constant availability that goes with it have all extended the working day.

Alongside a safe working environment, employees need to work in a way that helps to maintain their wellbeing. A number of businesses have turned to the Mindful Business Charter and are utilising its four pillars to implement good practices within employee working arrangements. Managers and leaders need to act as role models and lead by example so employees have an understanding of the employers' expectations, allowing them to set strong working life boundaries.

Flexible working is going to be a feature of future workplaces, but, for many, home working and flexible working are an unfamiliar concept. Employers need to be proactive in monitoring outputs, assessing wellbeing, dealing with performance issues, and providing ongoing supervision, training and monitoring remotely.

Objective decision-making

Current guidelines indicate that employees should work from if they can. However, not every role or employee circumstance suits home working. The lack of definition around what 'can' means gives employers some flexibility around allowing home working, but equally can give employees confusion about what is expected from them. If an employer can demonstrate that a particular role cannot be reasonably be carried out from home then they are entitled to require employees to attend their place of work, but they will of course need to comply with the hygiene and social distancing requirements needed to make that workplace COVID safe. It might be that the activity and/or equipment needed to carry out the role cannot be transferred to an employee's home, meaning that the employee must continue to work on site.



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'7% of employers are open to employees
choosing their own hours fully.'
.....

There is also the issue of employees who are not able to work from home in a way that matches their employer's reasonable expectations. In these circumstances, can the employer force an employee to return to work?

There is a growing expectation, particularly following on from Nicola Sturgeon's recent speech, that employers will be legally compelled to permit home working where possible. This is not yet (and may not become) a legal requirement in Scotland, and similar legislation has yet to be mentioned for Northern Ireland, England and Wales. However, expectations are shifting from what an employer would like to accommodate to what an employer should accommodate.

Currently, employees have the legal right to request flexible working, including the right to request working from home on a permanent basis. Whilst employers have an obligation to consider those requests in line with the current regulations, they are not obliged to agree to the employee's request. Employers have eight prescribed grounds on which to say no, and they must demonstrate one applies if they refuse the request. In practice this is a fairly low hurdle for employers to overcome.

Case study

Let's look at the example of an employee working from home with young children who requests flexible working. This is not actually a COVID-related issue, even though the request may have come about because of COVID and the restrictions. Employers will be accustomed to parents requesting to work flexibly from home to balance childcare with work. There are also a surprising number of requests made by parents who wish to work from home with children at home as well, although in reality there will be very few jobs where this is actually practically possible.

It is not unreasonable for an employer to require an employee to be free of other obligations at the times when the employee is contracted to work. As an employee, it may not be possible to balance a full time job while maintaining full time parenting responsibilities. In this situation, the employer is in a strong position to refuse the request and require the employee to perform the role as per their contract.

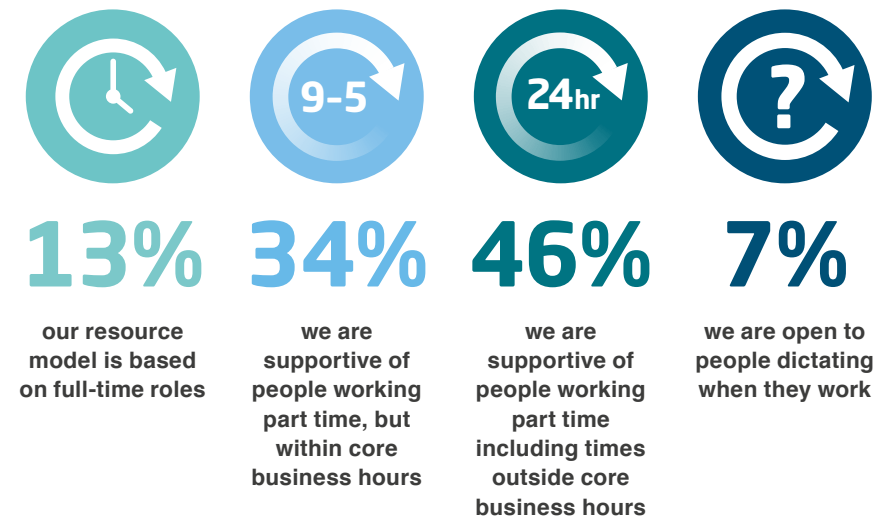
However, the situation requires a careful balance, and it is always worth discussing the parameters of the request in the first instance. If, for example, the employee is carrying out their contractual duties while the children are being looked after by someone else in the household, that is a different situation. Here, the issue that needs to be addressed is one of creating a workspace within the home that allows the employee to provide the right

level of customer service, client service development and interaction with colleagues without background noise or interruption. The employer should initiate a conversation with the employee to discuss how they can adapt the home environment, working hours, and childcare arrangements to enable them to carry out work duties properly and effectively.

Fit for purpose resourcing

In a recent poll, we asked if people agreed with the following statements.

In our business:



The results are indicative of the different sectors, services, and industries that employers operate in. It also demonstrates there are roles that require specific working patterns and hours due to customer demand or service delivery. While it will be dependent on the employee's specific role, this may mean that it is not possible to let them work between seven and nine in the evening, for example, because the people they work with, or the clients they look after, are not available.

However, when considering your business, remember that customers, clients and colleagues are also facing challenges around changes to working practices and will also be working in different ways. The flexible working practices adopted need to be fit for purpose for the individual organisation, inevitably leading to offering greater flexibility in employee working hours.

Connectivity

The increase in flexible working has highlighted the importance of having good quality connections at home. The feelings of frustration and isolation that happen when a Zoom, Teams or Google Meet call does not connect or keeps disconnecting is likely all too familiar by now.

The government has promised £5 billion to help roll out full fibre and 5G across the country. If there is an absence of good quality connectivity in an area, employers can help encourage roll out. For example, if the network operators in an employer's or employee's particular area is slow in providing good quality connectivity, whether that is full fibre or super-fast broadband, lobbying the provider and the local authority to roll out better coverage in its local area could produce results. A letter from one CEO to another can really encourage action.

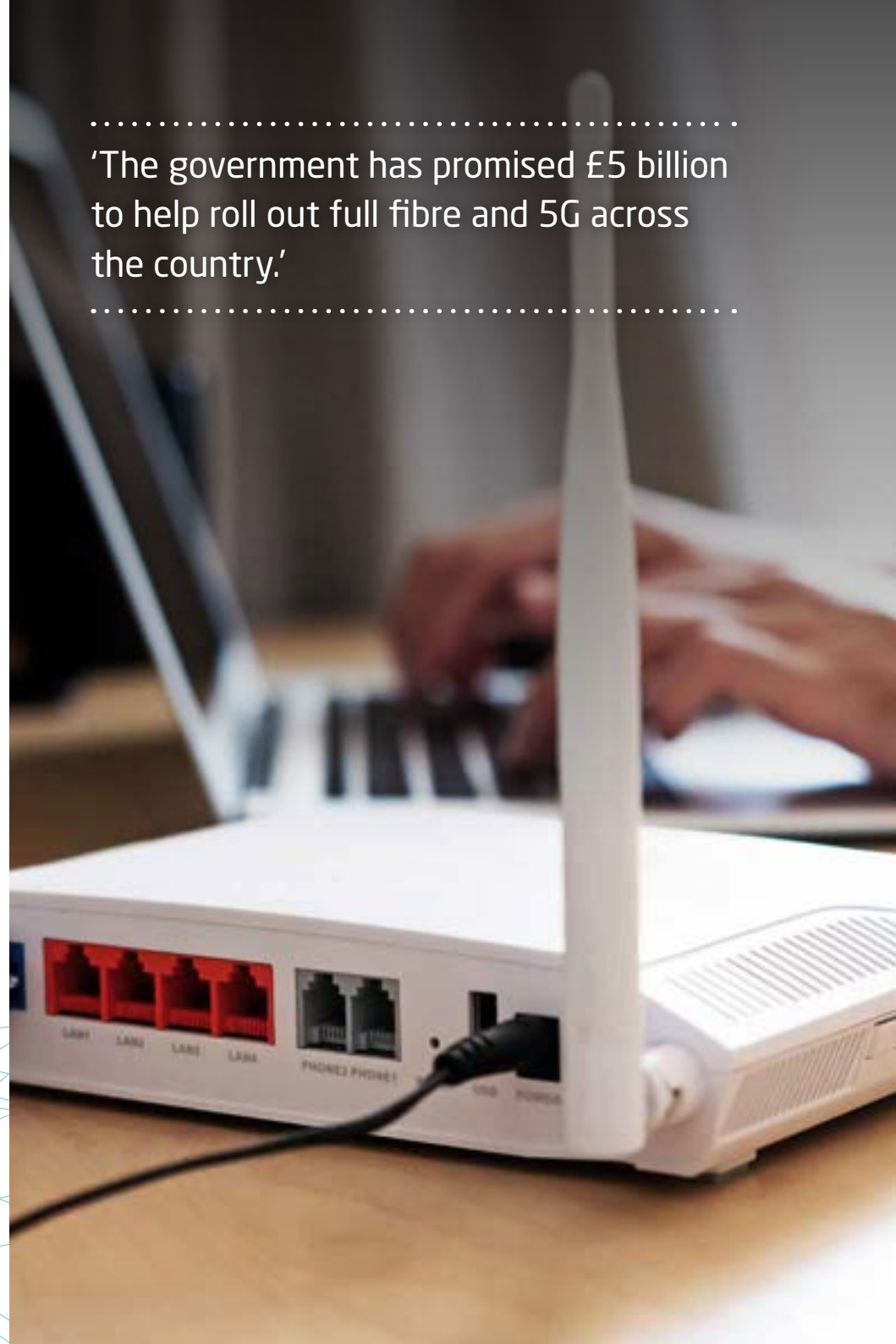
In addition, employers can support employees with the move from office to home working by getting a better sense of the quality of the network in the area. Answering the following questions will enable the employer to ensure its staff can work effectively.

- Who are the providers?
- What services do they offer?
- What speed is provided?
- What is the security of the network?

And if the employer is looking to create a hub or offer a co-working space they should also ask additional technical questions such as:

- What is the latency?
- What is the jitter?
- What is the dropout rate?

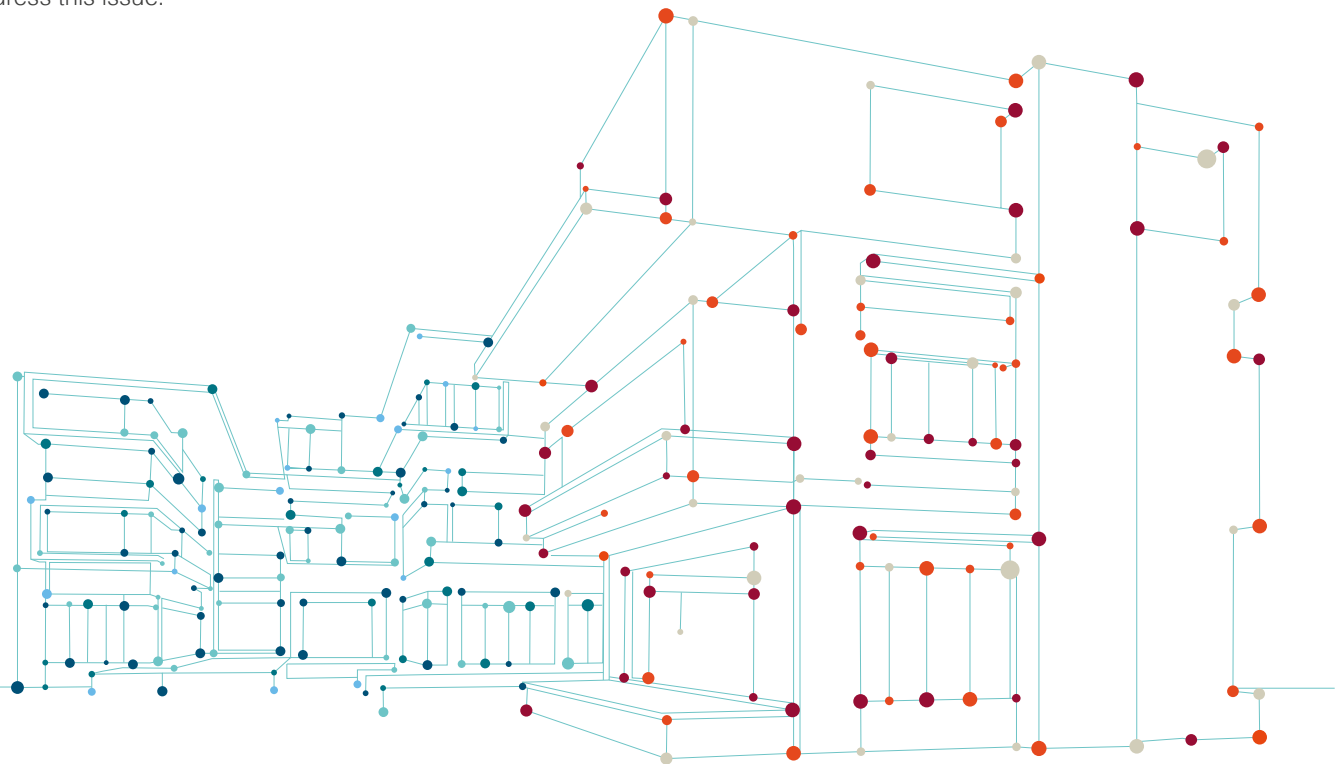
.....
'The government has promised £5 billion to help roll out full fibre and 5G across the country.'
.....



For employees living in rented accommodation, the issue of connectivity can be particularly challenging, especially if the landlord doesn't appreciate the importance of good quality communications. In this case, employees and employers need to understand where the issues are and how they can work with the landlord to remove them. For example, is the landlord blocking access to the communal spaces the telecommunications/network provider needs to access in order to install good quality communications? Can anything be done to encourage the landlord to provide better communications? Is the telecommunications/network provider being slow to act? Is there anything the employer can do to encourage the telecommunications/network provider to offer good quality communications to the employee's home?

Where employers are assessing new hires and flexible working requests, it is important to look at the role that the employee is or will be doing, what level of communications are needed for them to successfully carry out the role from home and what is already available to them. If the communications available do not match up to the basic requirements to undertake the role, the employer needs to discuss how they can provide support to address this issue.

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'For employees living in rented accommodation, the issue of connectivity can be particularly challenging, especially if the landlord doesn't appreciate the importance of good quality communications.'
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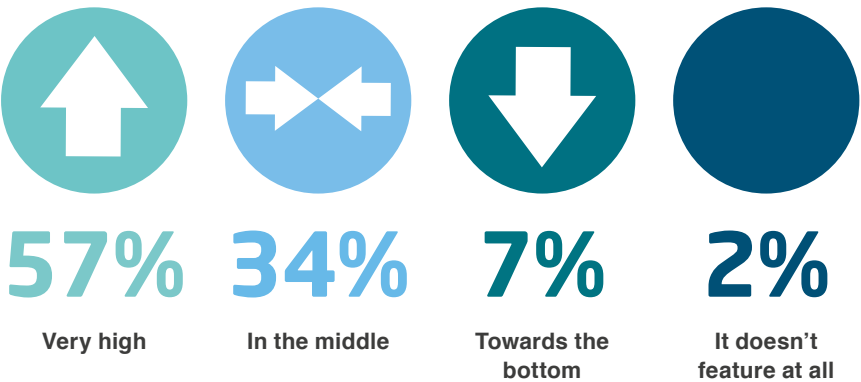
Conclusion

The changing nature of our offices and the increase of flexible working practices will affect how the towns and cities of our future look, and the infrastructure needed to support them.

With the UK focused on a green economic recovery and meeting its 2050 net zero and 2030 vehicle electrification target, key areas of development over the coming months include pedestrianised areas, cycle routes, electric vehicle infrastructure, localised retail, greening cities and urban spaces.

In addition, there is a real opportunity for employers to use flexible working practices to reduce their carbon emissions. Reducing commute times and encouraging office-based staff to use sustainable transport methods such as e-bikes will have a big impact, as will the savings from energy usage and other carbon outputs such as printing that come from reducing office footprints.

In a recent survey, we asked – “How high up your agenda is reducing carbon emissions?”



Employers that are looking to utilise co-working spaces or create office hubs should be mindful of how employees will travel to those destinations and how, particularly in the context of co-working space, energy is sourced. Is the co-working operator sourcing its energy from a renewable supply, and if not, what can the employer to do encourage this?

The positive outcomes of flexible working, including the impact on the environment and air quality, present an opportunity that every employer should look to build on. Achieving net zero and balancing a flexible workforce has never been more achievable.

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'Better connectivity, greener infrastructure and transport and more local retail and office hubs would help 69% of towns and cities adapt to flexible working culture.'
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