



## Shilpen Savani

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**Shilpen Savani** has a dual practice focused on dispute resolution and employment law. His expertise as a litigator is in high-value commercial dispute resolution and contentious corporate and partnership matters, often involving an international element. He has conducted a number of reported cases and cross border disputes and has a reputation for securing the best commercial outcome for his clients.

Shilpen also advises and represents employers, employees and professional clients in all aspects of employment and partnership law. He has expertise in restrictive covenants, discrimination, whistleblowing, restructuring and bonus disputes. He represents senior executives, self-employed professionals and company directors in connection with their entire workplace needs, including claims in the Employment Tribunal and the High Court. Shilpen is a Londoner and is passionate about the capital's unique identity and cultural variety. He is a committed advocate and driver for diversity and inclusion in the workplace.

Shilpen is a CEDR-accredited independent mediator and accepts appointments in relation to business and workplace disputes.

**gunnercooke** is one of the UK's fastest growing law firms, providing a wide range of corporate and commercial legal services to businesses, banks and financial institutions. The firm was founded in 2010 to challenge, improve and evolve the way that legal services are delivered. We believe that the legal industry serves neither clients nor lawyers the way it should.

Our founders set about doing things differently from day one, flattening out the traditional hierarchy and establishing a new model based upon flexibility, transparency and freedom. All gunnercooke lawyers have a client-focused approach and at least 10,000 hours' practising experience. They also operate on a fixed-fee basis, meaning work is scoped out from the outset and cost certainty is guaranteed. As a result, all clients have access to trusted advisors who have a breadth of experience and knowledge, enabling them to work on all matters from straightforward transactions to complicated cases that require complex solutions.

The firm has been recognised for 44 industry awards and currently employs over 330 legal professionals and management consultants across seven offices; London, Manchester, Leeds, Birmingham, Edinburgh, Glasgow and Berlin.

### QUESTION ONE

**Has WFH/hybrid culture enabled businesses to broaden their talent search? What impact has this had on employment and skills availability in your jurisdiction?**

The UK has undoubtedly seen a culture shift towards a more creative approach to work. There has been a right for employees to request flexible working for a number of years, but this was not used very widely, and the employer's only real obligation was to deal with such requests in a reasonable manner. The law itself has not changed, but the Covid-19 pandemic gave the idea of greater flexibility a huge push because it forced home working on the country as a whole. Now even the most sceptical employer will accept that remote working is possible and recognises it is something that employees increasingly expect.

Technology has also played a large part, with video conferencing in particular reducing the need for in-person meetings or for employees to be based at a fixed workplace.

The hybrid working revolution has helped businesses to access a much wider pool of talent. This includes people who cannot work full time, and those who have difficulty commuting. This can be due to various reasons, such as childcare commitments, disability or just simply because an employee lives too far away to travel to the workplace every day.

There's no question that those employers who are open to a greater

degree of flexibility are able to reach sectors of the working population that may previously have been out of reach to them. This is good for candidates and for employers, who can secure a more diverse and motivated workforce simply by introducing more modern, flexible working methods.

The UK government is supportive of the drive for more flexible working methods, and a formal consultation was started last year to review the existing statutory scheme.

### QUESTION TWO

**Proximity bias is becoming a critical issue in hybrid workforces – what do businesses need to be aware of and how can they ensure they are not discriminating against remote employees?**

As great as hybrid working can be, working from home can sometimes have the unintended effect that employees suffer from being 'out of sight, out of mind'. This is especially likely if the senior management of a business are primarily office-based, while their workforce work partly, or wholly, from home. This can then lead to management placing greater focus on the employees they see in-person on a day-to-day basis, to the detriment of those who have a lesser physical presence. If this feeds into management decisions, it can cause real injustices.

This type of skewed view of the workforce can mean that the wrong factors are used to decide promotion, restructuring or redundancy decisions. For example, an employee who works from home on a part-time basis because of childcare commitments might be valued less than a colleague who is office-based and a full-time employee. This can result in allegations of unfairness and less favourable treatment and, in extreme situations, trigger claims of unfair dismissal and/or breaches of the Equality Act 2010.

Employers must be alert to this danger and take steps to make sure that something intended to improve conditions for their workers doesn't end up with the opposite effect. This requires clear lines of communication with line managers, regular contact with all staff, and regular business-wide appraisals of the whole workforce.

### QUESTION THREE

**How can businesses ensure that their onboarding and training processes remain fair and balanced in a hybrid work culture?**

The starting point is to create a clear homeworking or hybrid working policy, which can be added to the employee handbook so that it is available for all staff to access. The policy should set out whether employees are required to submit formal flexible working requests (if eligible) to request a contractual change reflecting the agreed arrangement, or whether a policy of discretionary hybrid working is preferable. Some employees may value a flexible arrangement, but others may prefer a formal contractual change.

As far as recruitment and onboarding is concerned, it is important to provide clear information to candidates during the recruitment process about the opportunities for flexible and hybrid work and, wherever possible, share specific

## TOP TIPS

**Adapting employment contracts to a hybrid working model**

✓ **Ensure your contracts are geared for hybrid working and clearly state what is expected.**

This should include place(s) of work, hours of work, the right to require physical attendance in the workplace, and whether there is a geographical limit to where they work from.

✓ **Managing confidentiality and data protection is essential.** It is normal for employment contracts to require that the employer's information is not disclosed, but in a hybrid scenario this should go further and require the employee to keep information secure too. There should also be express precautions for keeping confidential information secure such as forbidding access by household members, passwords and encryption, a secure filing cabinet and facilities for confidential disposal such as a shredder or confidential bin.

✓ **Retain control of flexible arrangements.** No matter how strong the case for flexible working may be, the needs of your business can change and not every hybrid arrangement is a success. When introducing changes for workers it is sensible to have an initial trial period and an express right to require the employee to revert to workplace working at the end of that period. It is also advisable to retain the right to terminate a homeworking or hybrid working arrangement in certain circumstances and subject to a period of prior notice within the employment contract.

**“Working from home can sometimes mean that employees suffer from being ‘out of sight, out of mind’.”**

information about the flexible working options that are available. Appropriate training should also be given to the recruiting managers and virtual interviews are to be encouraged to maximise accessibility for all candidates.

The Chartered Institute of Personnel and Development (CIPD) has recently published practical guidance for the government's flexible working taskforce. Their tips include: provision of training according to a candidate's experience of remote working; helping new workers to structure their work to separate the workplace and home; building in social connection as soon as possible; providing a buddy for new starters to go to for support, and; ensuring that new starters have all the technology equipment and access to systems they need to work effectively from their first day.