

Call for evidence on non-statutory flexible working Acas response

7 November 2023

This is the Acas Executive response to the [government's call for evidence on non-statutory flexible working](#).

Our response

1. Acas (the Advisory, Conciliation and Arbitration Service) welcomes the opportunity to respond to the government's call for evidence on non-statutory flexible working.
2. Acas is a statutory, non-departmental public body with a duty to improve employment relations in Great Britain. Acas has considerable practical experience of employment relations and of the issues that can be experienced by workers and employers across all areas of employment law and workplace practice. Between April 2022 and March 2023, Acas handled approximately 649,000 calls from individuals and employers to our national helpline, of which nearly 8,000 related to flexible working. Over the same period, our website received 14.4 million visits, of which approximately 300,000 viewed [Acas's flexible working advice pages](#).
3. Acas plays an important role in encouraging and supporting the implementation of flexible working in the workplace, through both our statutory [Code of Practice on statutory flexible working requests](#) (which, as the government is aware, is undergoing revision following [Acas's recent public consultation](#)) and our associated non-statutory guidance. We very much welcome the government's work to develop understanding of non-statutory flexible working and look forward to using any findings the government may share to help develop and improve our guidance for those engaged in, or who may benefit from, such flexible working arrangements agreed through non-statutory requests.
4. Acas recognises that non-statutory flexible working is an important feature of the modern workplace. Notably, following the COVID-19 pandemic, there is now wide recognition of the many ways in which home and working lives intertwine to shape individuals' unique needs in their working arrangements. Insights from interactions with Acas users across our services show that flexible working can support both individual and organisational health and wellbeing, and support the government's view that flexible working can increase staff retention and labour market participation, and can help businesses to stay competitive.
5. While the [government's post-implementation review of the 2014 flexible working regulations in 2021 \(PDF, 874KB\)](#) noted that approximately 4% of employees submit a statutory request for flexible working each year, this call for evidence notes that there is less robust data quantifying the proportion of requests made outside of the statutory framework. Acas notes further that little evidence is available about the different forms which non-statutory flexible working requests and arrangements may take, the factors which influence the use of statutory and non-statutory flexible working, and the associated benefits and challenges for both employers and employees.
6. To help address this evidence gap, Acas has commissioned new case study research exploring flexible working practices in 5 large UK-based organisations across different sectors – a retailer, a local authority, a professional services organisation, an NHS Trust, and a bank. These represent sectors where diverse forms of flexible working are known to be used, including part-time work, flexi-time, and working from home. Through interviews with HR representatives, trade union representatives and individual managers, the research

aims to explore how a diverse range of organisations are using both statutory and non-statutory flexible working routes, and to understand the gains and difficulties experienced in managing these.

Acas case study research: preliminary findings

7. Preliminary findings from our research indicate valuable insights on both variations and similarities in the ways in which non-statutory flexible working manifests in different contexts. In brief:

- all the case study organisations started with the assumption that employees seeking flexible working should make an initial informal approach to their manager
- both regular and ad hoc flexible working arrangements operated within all case study organisations
- data monitoring of flexible working arrangements by organisations was varied, so that the nature and prevalence of requests and arrangements within an organisation were not necessarily captured or visible centrally
- use of the statutory framework was rare and generally reserved for requests seeking a permanent contractual change, or for those which were felt to be more complex or challenging in nature
- some managers perceived the statutory framework to be less easily transferable or responsive to the everyday flexible working needs of their workforce. For example:
 - while a wide range of circumstances could trigger flexible working requests within the case study organisations, parenting and caring needs featured strongly and were experienced as driving more unpredictable demands that managers often found more practical to handle outside of the statutory procedure
 - in the retail organisation, managers needed to juggle shifts to fit in with employees' family demands, so that some changes were arranged in an ad hoc manner with working patterns fluctuating on a daily basis

Challenges to building a clear picture on non-statutory flexible working

8. Early indications from our research also highlight wider challenges in building a coherent and consistent typology around non-statutory forms of flexible working, which will be relevant for the government to consider in developing policy in this area.

9. Firstly, the research finds that some flexible working arrangements may not be conceptualised as 'flexible working' by managers, being regarded rather as simply a necessary part of good business practice to manage and retain staff.

10. Further, our research finds that the use of binary terms such as 'formal' or 'informal' flexible working run the risk of masking, rather than clarifying, the many varied ways in which flexible working arrangements can manifest and change over time.

Such terms can lack precision in that they can be used to describe many different aspects of flexible working, including being used variously to indicate:

- the route to making a request: whether it is a statutory or non-statutory request, or whether the request is or is not made in line with an organisational policy – further, what may begin as a non-statutory (informal) request may become statutory (formal), or indeed vice versa
- the format or documenting of a request: whether a request is made in writing or verbally, and/or whether it is monitored centrally by an organisation as compared to a request that sits only locally with a line manager
- the contractual nature of an arrangement: whether or not there is an express written variation to contract, or an intention for such a change when making the request – however, even where there is no such intention (an 'informal' request in this sense), a (formal) change to the contractual arrangement could nevertheless result in some cases through custom and practice once the arrangement is established
- the frequency of an arrangement: whether a regular or ad hoc occurrence

11. Further challenges in building an accurate picture of non-statutory flexible working are also suggested by a previous Acas analysis of calls to the Acas helpline, as set out in our 2021 discussion paper, [beyond hybrid: the current state of flexible working](#). This identified

limited understanding among callers of whether a given application for flexible working constituted a statutory request or not, impacting awareness of applicable rights and obligations.

12. In considering policy development in this area, Acas therefore recommends that the government pays careful attention to the very wide spectrum and varied interpretation of non-statutory flexible working practices. Policy interventions in this area should be designed with a suitably nuanced understanding of the many ways these requests and arrangements can be conceptualised and operated in practice by different actors and in different settings.

13. Acas will share our full case study research findings with the government in due course. We very much welcome ongoing liaison with Department of Business and Trade officials, and our mutual engagement with other experts through the government's Flexible Working Taskforce. We look forward to continuing to share our practical insights to inform policymaking and to support the delivery of any new policy in this area through our online guidance and wider advisory services.

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