

Making flexible working the default Acas response

30 November 2021

This is the Acas Council response to the [government consultation on making flexible working the default](#).

Our response

Acas welcomes the opportunity to respond to the Department for Business, Energy and Industrial Strategy (BEIS) consultation on making flexible working the default.

Acas is a statutory, non-departmental public body with a duty to improve employment relations in Great Britain (England, Scotland and Wales). From April 2020 to March 2021, Acas handled more than 710,000 calls from individuals and employers to our national helpline, of which around 6,100 related to flexible working. Our website also received a total of nearly 19 million visits from individuals seeking advice and support.

The coronavirus (COVID-19) pandemic has hit businesses particularly hard and as a result, demand for our services has been high. In March 2020 we had 3.4 million unique page views on our website compared to a normal average of 900,000 per month, and our helpline saw significant spikes from around 3,500 calls per day to 15,000 per day.

Acas also provides conciliation in collective disputes (approximately 500 in 2020 to 2021) and runs training sessions on a wide range of workplace-related topics. A considerable amount of Acas's resource, however, is devoted to providing conciliation to parties where an individual is considering bringing a claim to an employment tribunal. From April 2020 to March 2021, we received nearly 115,000 early conciliation notifications, of which almost 300 related to flexible working.

Acas has a [flexible working page](#) linking to our statutory Code of Practice on handling in a reasonable manner requests to work flexibly. The Code is accompanied by non-statutory guidance on:

- making a flexible working request
- responding to a flexible working request

Between April 2020 and March 2021, these have received more than 250,000 unique page views.

Acas's website also includes advice on specific forms of flexible working, namely working from home and hybrid working (developed in consultation with the government's Flexible Working Taskforce). Since their launch in November 2020 and July 2021, they have received nearly 350,000 unique page views. Acas also provides open access and in-house training on hybrid and homeworking.

Our response covers the following areas set out in the consultation:

- making the right to request flexible working a day one right
- requiring the employer to suggest alternatives
- the administrative process underpinning the right to request flexible working
- requesting a temporary arrangement

Making the right to request flexible working a day one right

Flexible working can bring considerable benefits for both employers and employees, including increased productivity, reduced absence, greater work-life balance and a more diverse workforce. Employers and employees across many sectors have experienced these first-hand as a result of working from home or varying other working arrangements during the pandemic. Moving forward, many are seeking to make permanent changes: an [Acas-commissioned poll](#) found that half of employers (55%) expect an increase in staff working from home or remotely part of the week.

As the consultation document highlights, the pandemic has placed renewed focus on the value of flexibility in managing our work and home lives. Removal of the qualifying period could therefore encourage employers to better meet changing employee preferences and help make flexible working practices the norm, rather than the exception. Acas agrees with the proposition in the consultation document that, in anticipation of potential requests, employers could be incentivised to adopt a more proactive approach in exploring flexible working options when designing jobs and undertaking recruitment.

To help shift some of the onus away from individuals to request flexible working, and instead encourage a balanced, collaborative approach between parties, Acas believes that it would be good practice for employers to advertise specific flexible working arrangements within job advertisements, and to clearly express that they encourage such conversations. This transparency could help empower prospective employees to have these discussions upfront and attract a more inclusive range of applicants.

Without wider structural change, however, it is possible that some employers may reject job applicants on the basis of their intention to request flexible working. Individuals in this scenario currently have little recourse unless the refusal of a job offer amounted to discrimination under the Equality Act. The government may therefore wish to consider how this might be addressed.

A day one right to request could also bring some challenges. For example, it may lead to greater administrative costs, in particular, for smaller or micro businesses, as a result of the likely need to respond to an increase in requests.

Further, as the consultation document notes, flexible working uptake continues to be greater amongst female employees. A previous Acas research paper, [Flexible working for parents returning to work: Maintaining career development \(PDF, 397KB, 40 pages\)](#), cites evidence of persistent negative perceptions affecting equal take-up. For example, men were found to be fearful of the risk to their career development opportunities, and many women accepted being overlooked as the price to pay for being able to work flexibly.

An Acas analysis of a sample of helpline calls on flexible working, as summarised in our policy discussion paper [Beyond hybrid: the current state of flexible working](#), noted that the right to request was still largely associated with parents and carers as opposed to all employees, with a small group of employees alleging discrimination on the grounds of sex or pregnancy and maternity discrimination in relation to their requests.

The paper also identifies other underlying barriers to making all forms of flexible working work:

- While the majority of callers were aware of the right to request, there was limited understanding of the statutory procedure, namely what constituted a formal, statutory application. Lack of awareness of employer policies was a contributory factor.
- Concerns around fairness and consistency in decision-making, for example, where business grounds for refusal were unclear or where other colleagues were able to work flexibly. Some perceived there to be a right to 'have' as opposed to a right to 'request', while others presumed that a request would not be granted.

(Based on analysis of 50 calls made to the Acas helpline between April and May 2021. The sample consists of 0.7% of the calls discussing flexible working and 1.3% of all Acas helpline calls during this period. Mirroring the wider trend of Acas helpline users, most of the calls originated from employees or those calling on behalf of employees. Acas helpline users represent a particular population of the labour market consisting of those with concerns or queries about the workplace. The calls summarised cannot be taken as representative of the workforce and flexible working arrangements more broadly.)

A greater cultural shift is therefore critical if flexible working is to be normalised and this includes a cultural shift inside the workplace. Acas considers that further awareness-raising campaigns would be beneficial in increasing clarity of rights and responsibilities, addressing negative attitudes and perceptions – both before an application and when flexible working is in place - and encouraging

availability and uptake of all types of flexible working.

On an organisational level, commitment and support from leaders are fundamental in steering change. Clear policies and regular training can equip managers with the skills and knowledge to respond fairly to requests, but also with the confidence to initiate and have ongoing conversations with employees and relevant representatives to make sure arrangements are suitable for all involved.

Requiring the employer to suggest alternatives

It was evident from several employee callers in our sample of helpline calls that employers had suggested alternatives where original requests could not be accommodated, for example, different shift patterns.

Acas believes that it is good practice to consider alternative working arrangements. We agree that fundamental to this is having an open, two-way dialogue which allows the employer and employee to work together to explore and share ideas about possible options. Focus should be placed on reaching an agreeable solution which works for both the business and the individual.

Importantly too, Acas recognises that there is a broader need to raise awareness of the many different shapes that flexible working can take, beyond the current focus on location flexibility, in order for discussions around different routes and alternatives to be fruitful.

Should employers be required to show that alternatives have been considered when rejecting a request, clarity will be needed on how this would be evidenced in practice. Similarly, any alternative flexible working arrangement(s) set out by the employer should be 'reasonable' as this would minimise the risk of the policy becoming a 'tick-box' exercise. In some circumstances, it may genuinely not be possible for an employer to suggest an alternative. Legislation should allow for such an exemption.

The administrative process underpinning the right to request flexible working

We all experience changes in our personal lives – whether foreseen or not – which might result in the need to work flexibly. Individuals may desire or require different forms of flexible working at different stages. Allowing multiple requests per year could therefore help individuals better manage fluctuating needs, which, in turn, brings wider organisational benefits through, for example, increased productivity, improved staff retention and lower absence rates.

While the proposal would not affect the current ability to make an unlimited number of non-statutory requests, it could give employees more confidence and assurance that their applications must be duly considered by their employer.

While some employers may already deal with informal requests, extending the number of statutory requests could result in additional administrative costs, particularly for smaller businesses. This could further be impacted by any amendments to the employer's timeframe to respond to a request. Changes in these areas should therefore be reasonable and proportionate in order to limit any negative impacts on business resources.

Requesting a temporary arrangement

Acas guidance on making and responding to a flexible working request makes it clear that a flexible working arrangement can be for a defined period of time, and also suggests that employers consider this if a permanent change is not feasible.

Communication of policies complemented by training are some of the basic steps that employers should take to raise awareness of the option to make time-limited requests. An open dialogue between an employer and employee is critical to exploring the options and what could work for both sides. A temporary arrangement may be all that is required depending on individual circumstances, or it may simply be an alternative in order to reach a compromise.

Conclusion

Acas understands that employers and individuals will face a variety of situations when exploring flexible working. There is an important role for clear and simple guidance which can help encourage meaningful discussions and good decision making. Acas therefore stands ready to update our statutory Code of Practice and non-statutory guidance on flexible working to reflect any legal reforms and to further promote best practice. We continue to review the tone and messaging of all our content with the aim of effecting meaningful change across organisations and working lives.

We look forward to continuing our work with the government and the CIPD Flexible Working Taskforce and welcome further collaboration with the government and other stakeholders.