



## **Flexible Working Code of Conduct**

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Submission to Acas

**Chartered Institute of Personnel and Development (CIPD)**

**September 2023**



*Championing better  
work and working lives*

## **Background**

The CIPD is the professional body for HR and people development. The not-for-profit organisation champions better work and working lives and has been setting the benchmark for excellence in people and organisation development for more than 100 years. It has 155,000 members across the world, provides thought leadership through independent research on the world of work, and offers professional training and accreditation for those working in HR and learning and development.

Public policy at the CIPD draws on our extensive research and thought leadership, practical advice and guidance, along with the experience and expertise of our diverse membership, to inform and shape debate, government policy and legislation for the benefit of employees and employers, to improve best practice in the workplace, to promote high standards of work and to represent the interests of our members at the highest level.

To help with our response, we conducted a focus group of CIPD members to explore the consultation questions in more detail. This group was held virtually with representatives from the North of England, London and South of England. We have referenced some of their feedback throughout the document.

The CIPD's response to the Flexible Working Code of Conduct consultation also references our wider research and guidance into flexible working. We have provided links to these through footnotes throughout the document.

## **Our response**

### **Q.1 In addition to updating the Code to reflect changes to the law, should Acas also reconsider the overall good practice principles in the Code?**

Yes.

The world of work has changed considerably since 2014, with shifting employee and employer attitudes towards flexible working and progress being made in organisations offering a range of flexible working patterns. It makes sense therefore to reflect these developments and changes in the good practice principles outlined in the Code.

Our focus group participants were particularly keen to ensure that the good practice principles emphasised that discussions around flexible working should start as soon as possible – i.e. during the recruitment process to avoid any differing expectations and to support overall transparency.

### **Q.2 Does the Foreword to the Code strike the right tone in encouraging an open-minded approach to flexible working, with a focus on what may be possible?**

Yes.

The Foreword creates a positive tone around the possibilities of flexible working by outlining the benefits to both employers and employees across a range of sectors, occupations and organisation sizes.

Our focus group participants felt the tone of the Foreword is well balanced between striking the need to support flexible working and making it seem like a good thing for organisations and something that won't be too onerous. They also felt it helps to reiterate good practice, as you can't assume that everyone will be aware of this and that it will be particularly helpful for managers new into roles.

The Foreword also highlights that not every type of flexible working will be suitable for every role but there are a variety of flexible working options that can be considered. To

further support this point, it would be helpful to include in the Foreword a range of examples of flexible working to support employers' understanding which can still vary. For instance, for some individuals and organisations post-pandemic, flexible working has become synonymous with remote and hybrid working. However, flexible working constitutes a range of options relating to flexibility in schedule and hours as well as location and also needs to be considered for those in roles where they need to be in the physical workplace. Recent ONS<sup>1</sup> data suggests that around 60% of employees are in roles which require them to be in the physical workspace. Examples of flexible working could include: flexible start and finish times, job-shares, compressed hours, term-time working and flexibility in scheduling shifts and rota's.

The Foreword also discusses the importance of building flexibility into job roles as part of job design and advertising roles as open to talking about flexible working options, wherever possible. As Co-Chairs of the Flexible Working Taskforce we support the importance of both of these areas and have contributed to guidance<sup>2</sup>, alongside other members of the group, relating to these. This can support early discussions with existing and prospective employees about flexible working and also importantly ensure that job roles and patterns are sustainable.

### **Q.3 Do you think that it is helpful to include a definition of 'flexible working' within the Foreword to the Code?**

Yes.

For the purposes of clarity and to aid understanding, it would be helpful to include in the Foreword to the Code both a definition of a statutory flexible working request and a broader definition of flexible working.

Including a definition of a statutory flexible working request can help provide clarity around the right to request process. More specifically it will help distinguish between statutory and non-statutory requests, specifically by highlighting that requests made under the statutory procedure must be for a contractual change in terms and conditions of employment.

Including a broader definition of flexible working which highlights a range of examples can help support understanding of the variety of arrangements that can constitute flexible working. For instance, for some individuals and organisations post-pandemic, flexible working has become synonymous with remote and hybrid working. However, flexible working constitutes a range of options relating to flexibility in schedule and hours as well as location and also importantly needs to be considered for those in roles where they need to be in the physical workplace. Examples could include: flexible start and finish times, job-shares, compressed hours, term-time working and flexibility in scheduling shifts and rota's.

Our focus group participants felt that it might also be beneficial to include some information on the use of trial periods which organisations frequently make use of to assess whether a particular flexible working pattern/ approach might be feasible.

**Q.4. Should the Code provide guidance on ‘consulting’ with employees about a request?**

Yes.

A significant change to the Code relates to the new legal requirement on an employer to consult with an employee before they may refuse a flexible working request.

It is helpful that the draft Code seeks to provide clarity on what 'consultation' should involve by building on the provision within the existing Code that employers should arrange a meeting with the employee after receiving their request.

A new section in the draft Code expands on this to suggest that the employer should arrange a formal meeting with the employee before rejecting the request, during which the parties should consider and explore the potential for any alternative arrangements which may be available and suitable.

These are all useful additions. It is important to include this information directly in the Code so that it reminds employers about the new legal requirement and then provides further clarity on the process of ‘consultation’ which might mean different things to different people and organisations.

Our focus group participants felt that guidance for employers would be helpful around what to say and what not to say as part of the consultation process. They were also in favour of trying to keep the process informal and having early conversations and transparency around flexible working options. Participants also emphasised the importance of ensuring relevance to different sized organisations who are likely to have different resources available.

**Q.5 What is your opinion on the guidance in the Code about offering an employee a meeting, even when the employer plans to accept their request?**

We think it is helpful to offer an employee a meeting even when an employer plans to accept their flexible working request. This can help ensure that any questions an employee or the employer might have are addressed and that the new flexible working arrangement gets off to the best possible start. It would be helpful to include the employee's line manager in this meeting, wherever possible. It might also be helpful to discuss any implications the new flexible working arrangement might have on an individual's roles and responsibilities and the responsibilities of the team overall.

Our focus group participants felt offering a meeting provided a helpful way to map out what was needed and discuss other considerations such as team development and staying in touch. As one participant put it "having the meeting opens the door to further conversations."

**Q.6 Should the Code include a section on the protection from detriment and dismissal?**

Yes.

We believe it is important to cite the Employment Rights Act 1996 protections for employees from detriment and dismissal in the Code. We support Acas' view that referencing such protections within this wider update will help to increase awareness of these protections and of employers' responsibilities. It is likely that following the reforms to legislation, organisations will see an increase in flexible working requests. In fact, our own survey data<sup>3</sup> suggests that two-fifths (40%) of organisations have seen an increase in requests for flexible working following the pandemic.

It is important that employers treat those requesting and working in a flexible working arrangement fairly and are fully aware of their responsibilities in relation to the Employment Rights Act 1996. As Acas already suggest, including this in the Code may help some employees to feel more confident to make a flexible working request. Currently CIPD data<sup>4</sup> suggests only 47% of employees would feel comfortable requesting a formal flexible working pattern (with 28% feeling uncomfortable).

Our focus group participants also felt that this would help employees feel more confident making a request but were mindful of ensuring the tone of the Code was positive so felt this shouldn't be referenced upfront in the Foreword section.

**Q.7 What are the advantages and disadvantages of the Code recommending that employees should be allowed to be accompanied at meetings to discuss flexible working?**

## **Advantages**

It can be helpful for employees to be accompanied at meetings, if they choose to, to discuss flexible working. It can help employees to feel confident in making the request in the first place and can also support the discussion in the meeting around suitable flexible working arrangements.

## **Disadvantages**

However, including this in the Code might cause some confusion on the part of employees and employers because employees have no legal right to be accompanied at meetings held to discuss flexible working requests. It would be important therefore to clearly spell out that this isn't a legal requirement but rather constitutes good practice and should be supported where possible.

### **Q.8 What is your opinion on the Code recommending the same categories of companion as those that are allowed in discipline and grievance meetings?**

In the updated draft Code, the definition of companion has been broadened to include a trade union representative or an official employed by a trade union. This mirrors the categories of companion allowed in discipline and grievance meetings where a statutory right of accompaniment does apply.

There are advantages and disadvantages to this approach. The advantage is that this provides consistency between Acas Codes regarding the companions allowed at different types of formal meetings which can be helpful.

However, there is a risk, by aligning practice in a statutory and non-statutory Code that this could cause some confusion on the part of employees and employers.

Our focus group participants were cautious about broadening the definition of a companion to include a trade union representative or an official employed by a trade union. They recognised that they can be helpful if someone has additional needs or if there is a difficult conversation to be discussed. However, they also felt that this can result in an overly-formal situation than might be needed. The preference was to discuss things informally and bring in a trade union representative specifically if there is a problem/ challenge. Some practical considerations should also be considered e.g. getting reps in a timely manner can be a challenge and can delay the overall process.

**Q.9 Should the Code recommend that employers provide any additional information as is reasonable to help explain why a request has been rejected?**

Yes.

We believe the Code should recommend, where it is reasonable and possible to do so, that employers provide any additional information to help explain why a request has been rejected. This will be helpful in showing an employee that a request has been properly considered and to enable an informed consideration by the employee of whether they wish to appeal the decision. It might be helpful to include in the Code a definition or overview of what is meant by 'reasonable' in this circumstance.

**Q.10 For larger organisations, what are the advantages and disadvantages of the Code stipulating that, where possible, an appeal should be handled by a manager not previously involved with a request?**

It is good practice to ensure that an appeal is handled by a manager not previously involved with a flexible working request. This will help to provide an employee with confidence that the appeal process will be handled in a fair and impartial manner.

We support this expectation for larger organisations where possible, and recognise as Acas does, that this is likely to be less feasible within smaller and micro businesses. It would be helpful for Acas to link to guidelines here around what constitutes a micro, small and larger organisations so that users of the Code will be completely clear.

**Q.11 Should the Code include a section about the right to request a predictable work pattern if that right is introduced?**

Yes.

It is important for the Code to include a section about the right to request a predictable work pattern, if that right is introduced.

This is important because the right to request flexible working and the right to request a predictable work pattern are interrelated in respect of how many requests an employee may make in any 12-month period as well as rules around not having concurrent requests.

Sections 27-29 in the draft Code are clear and succeed in providing sufficient detail to highlight the overlapping areas, while encouraging users to find further information in the separate Acas Code of Practice on the right to request a predictable work pattern.



However, it might be helpful to include within this a definition of what is meant by a predictable work pattern as this is fairly new terminology and currently awareness of the right to request a predictable work pattern is likely to be low.

## References

1 ONS figures show 40% of people worked from home or hybrid in Jan-Feb 2023 suggesting that for the majority (60%), work takes place in person. <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/characteristicsofhomeworkersgreatbritain/september2022tojanuary2023>

2 [Are you happy to talk flexible working? - Working Families](#)

3 [Flexible and hybrid working practices in 2023 | CIPD](#)

4 [Flexible and hybrid working practices in 2023 | CIPD](#)