

# Respond to Acas consultation on the flexible working Code of Practice

Use this document to respond to our [consultation on the draft Acas Code of Practice on handling requests for flexible working](#), if you're not able to use the [online response form](#).

Please email your response to [consultations@acas.org.uk](mailto:consultations@acas.org.uk).

If you need to submit your response in another way, email [workplacepolicy@acas.org.uk](mailto:workplacepolicy@acas.org.uk) to request an alternative format.

To make your submission as helpful as possible to Acas, please:

- read the [draft Code](#) and the [consultation document](#) in full before responding
- keep your response concise and to the point – we suggest a limit of 500 words for each question

Consultation closes: 11:59pm on 6 September 2023

## Section A: Your details

A1. Your name (required):

Paul Watkins

A2. Your email address (required):

paul.watkins@mail.nasuwt.org.uk

A3. In what capacity are you responding to this consultation?  
(required)

- Employer
- Employer representative organisation, employer association or industry association
- Trade union or other employee representative organisation
- Other organisation – please describe: \_\_\_\_\_
- Individual sharing my personal views and experiences
- Individual sharing my professional views, for example a HR or legal professional
- Other individual – please describe: \_\_\_\_\_

## Section B: About your organisation

Please complete section B if you're responding as an employer or on behalf of an organisation. Else go to section C.

B1. Your organisation's name (required):

NASUWT – The Teachers' Union

B2. If you are an employer, or responding on behalf of an employer, how many people does your organisation employ?

Note: This is the number of people working in the whole organisation.

- 0 to 9
- 10 to 49
- 50 to 249
- More than 250
- Don't know

B2. How would you classify your organisation?

- Mainly seeking to make a profit
- A public sector organisation
- A social enterprise
- A charity or voluntary sector organisation
- Don't know

## Section C: About you

Please complete section C if you're responding as an individual.  
Else go to section D.

To understand the views and experiences of certain groups,  
we'd like to ask some additional questions about your personal  
characteristics.

This will enable us to group your responses with responses  
from people who share the same characteristics. You will not  
be personally identifiable in our analysis and any results we  
publish.

If you are answering on behalf of someone else, please enter  
demographic information of that person.

C1. What is your age?

- 16 to 24
- 25 to 34
- 35 to 44
- 45 to 54
- 55 to 64
- 65 to 74
- 75 or above
- Prefer not to say

C2. What is your sex?

- Male
- Female
- Prefer not to say

C3. Is the gender you identify with the same as your sex registered at birth?

- Yes
- No
- Prefer not to say

If you answered 'no' to C3, please enter your gender identity:

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C4. Where do you live in the UK?

- England
- Scotland
- Wales
- Northern Ireland
- I live outside the UK

C5. What is your ethnic group?

- White – includes British, Northern Irish, Irish, Gypsy, Irish Traveller, Roma or any other white background
- Mixed or multiple ethnic groups – includes white and black

Caribbean, white and black African, white and Asian or any other mixed or multiple ethnic background

- Asian or British Asian – includes Indian, Pakistani, Bangladeshi, Chinese or any other Asian background
- Black, black British, Caribbean, African or any other black background
- Other – includes Arab or any other ethnic group
- Prefer not to say

C6. Do you have caring responsibilities?

- Yes
- No
- Prefer not to say

If you answered 'yes' to C6, who do you care for?

- Children
- Someone else
- Both

C7. Do you have any physical or mental health conditions or illnesses lasting or expected to last 12 months or more?

- Yes
- No
- Prefer not to say

C8. Select the option that best describes your current employment status?

- Employed
- Self-employed
- Unemployed – looking for work
- Unemployed – not looking for work
- Retired
- Other – please specify: \_\_\_\_\_

C9. If you are employed, how many people work for your organisation?

This is the number of people working in the whole organisation, not just your site.

- 0 to 9
- 10 to 49
- 50 to 249
- More than 250
- Don't know

C10. If you are employed, how would you classify your organisation?

- Mainly seeking to make a profit
- A public sector organisation
- A social enterprise
- A charity or voluntary sector organisation
- Don't know

## Section D: Consultation questions

We suggest a limit of 500 words for each question.

### Question 1 of 11

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
- No
- Don't know

Please explain the reasoning for your answer.

Given that the existing Acas Code dates back to 2014, the NASUWT believes that the good practice principles in the Acas Code should be reviewed and reconsidered to take account of changes to the employment landscape that have had a significant impact on the interest in flexible working and changing attitudes towards it.

Indeed, there is a strong, unmet demand for flexible working; 87% of people want to work flexibly, which rises to 92% for young people.



It is therefore disappointing that progress in regards to flexible working has been extremely slow. For example, over the period 2005 to 2017 the share of workers with a flexible-working arrangement, as defined by the Labour Force Survey (LFS), increased from just 23% to 27%.

### **The impact of COVID-19**

The COVID-19 pandemic has clearly had a significant impact on the world of work, including shifting attitudes and approaches to flexible working. For example, statistics suggest that at the height of the first lockdown from March 2020, 47% of the UK workforce was working from home compared with only 11% in 2018.

Furthermore, the pandemic has led to greater recognition of the need for flexibility in order to balance work and other personal commitments, and employers, workers and trade unions have been able to establish what works, which should be appropriately captured in any revised Acas Code, including its good practice principles.

### **The experiences of teachers**

The NASUWT is deeply concerned that, despite the obvious benefits, the uptake of flexible working in education remains low, with many employers refusing requests for flexible working made by teachers.

Despite the crucial role teachers have played during the COVID-19 pandemic, and the emergence of hybrid ways of working, the experiences of being a parent and a teacher suggest that the attitude and approach towards flexible working by schools/colleges is still a cause for concern.

The Union surveyed teachers who were parents in 2020 and discovered that, of the 3,298 teachers who responded, just over two fifths (42%) had asked their employers for flexible working because of their parental responsibilities.

Disappointingly, three in ten teachers (30%) reported that their request to their employer for flexible working was rejected. Of those teachers: almost half (49%) stated that this was because their employer said it would be too difficult to accommodate; well over two fifths (43%) stated that it was because their employer said it would be too disruptive to pupils/staff; under one fifth (18%) stated that it was because their employer said it would be too difficult to recruit extra staff; and 13% stated that it was because their employer said it would be too expensive.

Of even greater concern is the fact that over one in ten teachers (11%) reported that their employer had not provided a reason for refusing their request for flexible working.

Furthermore, just over two thirds of teachers (67%) reported that they were not given the right to appeal the decision by their employer to reject their request for flexible working,

despite this being good practice and recommended in the Acas guidance in relation to flexible working.

This resonates with earlier work undertaken by the NASUWT which showed that a significant proportion of teachers are being denied the right to flexible working by employers, and that too many schools are still resistant to flexible working, specifically part-time working and job share, particularly for those teachers in leadership positions, or with additional responsibilities. Only eight per cent of teachers felt that flexible working requests were encouraged in their workplace.

Disappointingly, the evidence available demonstrates that there are significant barriers to teachers wishing to access flexible working. As a consequence, many teachers, particularly women, have little option but to undertake insecure, intermittent and precarious working as supply teachers through an agency. Many report that, despite the pay and career penalty, it is the only way to combine teaching work with a family life.

The evidence suggests that flexible working is still inaccessible to many workers, due to a range of factors including employer discretion over whether a request is accepted or rejected, employment status, or simply a lack of awareness of flexible working in the workplace.

As such, the NASUWT maintains that good practice principles are important in order to provide much-needed guidance in order to deliver flexible working arrangements that benefit

both worker and employer, rather than the one-sided flexibility which currently exists.

## Question 2 of 11

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
- No
- Don't know

Please explain the reasoning for your answer.

The NASUWT cautiously welcomes the redrafted foreword as outlined by Acas in this consultation, as it reflects the shift in attitudes towards flexible working and seeks to reinforce the positive benefits that flexible working can have in the workplace.

In addition, it is noted that the redrafted foreword recognises that flexible working can take many forms depending on the nature of the work, as well as the importance of seeking to build flexible working into the recruitment process.

Furthermore, the Union welcomes the emphasis on employers being open to all requests, as well as engaging carefully and meaningfully, including proactively offering an appeal with the right to trade union representation.

Nevertheless, the Union believes that the foreword requires a number of further changes in order to promote an even more positive approach to flexible working.

Firstly, it would be helpful if the Acas foreword included a definition of flexible working that is broad enough to enable more workers, including teachers, to access flexible-working arrangements. This should be accompanied by a range of illustrative examples of the various types of flexible working, as well as making it clear that employers should be open to conversations about other types of approaches to working flexibly.

In addition, the foreword proposed by Acas makes no reference to the Equality Act 2010 and the fact that a request for flexible working can relate to a protected characteristic, and, as such, employers must approach such requests accordingly in order to meet the requirements of the Act.

Furthermore, in regards to issues such as disability, employers must, under the Equality Act 2010, ensure that requests for reasonable adjustments are treated accordingly, and not just seen as any other flexible-working request.

In light of the evidence presented above, the NASUWT also believes that the revised foreword should make it clear that serious consideration should be given to some form of flexibility being possible in every job, as opposed to the current wording which states: '*While not every type of flexible*

*working will be suitable for every role and every organisation, flexible working can take many forms.'*

In addition, the Union believes that the Acas foreword should reference the need for employers to be transparent in their approach towards flexible working, including publishing flexible-working policies, so that workers are better placed to make an informed choice. This may even include publication of an annual report on the take-up of family-related and flexible-working policies, together with the number of appeals and outcomes.

Lastly, the Acas foreword should promote the right to representation at all stages of a request, not just those involving a formal request and/or appeal, as trade unions have a vital role to play throughout the *whole* process, including in the creation of flexible working policies that are fit for purpose.

### Question 3 of 11

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

- Yes
- No
- Don't know

If you answered 'yes', which definitions should the Foreword provide?

- A definition of a statutory flexible working request, based on the Employment Rights Act 1996
- A broader definition of flexible working
- Both a definition of a statutory flexible working request and a broader definition of flexible working
- None of the above
- Don't know

Please explain the reasoning for your answer.

As stated previously, the NASUWT believes that the broadest definition of flexible working should be used in order to enable more workers, including teachers, to access flexible-working arrangements.

This would include a statutory definition to provide greater clarity on the meaning of flexible working in legislation, as



well as reinforcing the principle that requests can relate to hours worked and the time required to work and where.

This would be accompanied by a range of illustrative examples of the various types of flexible working, with a brief definition to accompany each one, as well as an acknowledgement that any such list is not exhaustive.

Examples which demonstrate the variety of working arrangements in different roles should assist employers when considering requests.

If you answered 'no' or 'don't know' to question 3, please explain the reasoning for your answer.

## Question 4 of 11

Should the Code provide guidance on 'consulting' with employees about a request?

- Yes  
 No  
 Don't know

Please explain the reasoning for your answer.

Additionally, if you answered 'yes', please outline any other issues the Code or non-statutory guidance should provide guidance on, to help employers and employees understand what is expected during consultation.

The NASUWT believes that any revised Acas Code should clarify the process for consultation in order to avoid any ambiguity around what the process for consultation should look like.

In doing so, this would also provide greater certainty in regards to the expectations for both the worker and the employer.

In addition, if the guidance on consultation is included in the revised Acas Code, then this places greater onus on employers to give this serious consideration when dealing with flexible-working requests.

Furthermore, greater certainty over the process and expectations in respect to consultation would assist in the Employment Tribunal process.

Whilst the Union appreciates the wording proposed in points 12, 13 and 14 can be considered helpful in establishing what consultation should look like, the NASUWT believes that the revised Code should reference the fact that any consultation is fair, including the fact that it is 'informative' and can be subject to an appropriate level of scrutiny, particularly from the employer and their recognised representative (e.g. trade union), as appropriate.

The Union would expect this to include a response from the employer to any alternatives which are the subject of discussion, in order to avoid a situation where these are dismissed out of hand.

On the specifics of the wording, in point 12, there should be reference to the fact that the meeting should be held at a mutually convenient time.

In point 13, the NASUWT believes that reference should be made to the record of the meeting being circulated and agreed with those parties involved, as well as the fact that consideration should be given to reasonable adjustments for those involved, which may include recording the meeting.

In addition, in regards to point 14, the Union is concerned that the current wording implies that the employer is entering

the process with a predetermined decision to reject the request from the worker, when it should be the case that a consultation meeting presents an opportunity to discuss their request, including providing evidence and further information, if required.

Furthermore, the Code should state that alternatives should be developed with the employee, with more than one alternative being explored if necessary.

The Code should also remind employers to ensure that any decision, as a result of consultation, follows the Equality Act 2010.

The Union also notes the absence of any reference to the right to be accompanied during the consultation process described in points 12-14, including by a recognised trade union, and believes that the role of trade unions in the process should be addressed in any revised Code of Practice.

It cannot go unnoticed that consultation is not just limited to consulting the employee and exploring alternatives, as it also includes consulting and seeking to agree the flexible-working policy with recognised trade unions.

It cannot be ignored that the skills and training of the manager in dealing with a flexible-working request are of paramount importance. The NASUWT believes that managers must therefore have the appropriate skills and training in

order to ensure a smooth transition for employees whose request to work flexibly has been accepted.

Given the above, the NASUWT believes that there may be merit in giving consideration to supplementary guidance to assist in the consultation process, including how any such meetings operate and the basis for any such meetings. This could include reference to ensuring employers act in accordance with the Equality Act 2010, including if the request should be reviewed as a reasonable adjustment request.

As such, the Union would welcome the opportunity to discuss the development of any supplementary guidance further with Acas.

## Question 5 of 11

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?

Please include your reasoning.

Whilst there is no requirement for a meeting to take place if an employer plans to accept a request for flexible working, the NASUWT believes that the guidance in the Acas Code represents good practice and enables a discussion to take place on the logistics and practicalities of an accepted request for flexible working.

In the case of teachers, this could prove invaluable in understanding how workload will be managed, such as the agreed expectations involved in a handover for any classes being taught as part of a job share.

It should also enable discussions to take place about how a teacher would keep in touch with developments in a school, as well as detailed discussions on working days and working hours in accordance with the relevant contractual entitlements.

As stated previously, of particular significance are the skills of the manager dealing with the meeting. The NASUWT believes that managers must therefore have the appropriate skills and

training to ensure a smooth transition for an employee whose request to work flexibly has been accepted.

Finally, as noted above, the right to be accompanied at any such meeting, including by a recognised trade union representative, should be included and seen as an example of good practice.

## Question 6 of 11

Should the Code include a section on the protection from detriment and dismissal?

- Yes  
 No  
 Don't know

Please explain the reasoning for your answer.

Flexible working has been seen as the preserve of working mothers looking to accommodate their role as the primary caregiver, but research has highlighted significant levels of discrimination and disadvantage experienced by women who are pregnant or on maternity leave.

Unfortunately, those women who are successful in accessing flexible working are less likely to be promoted, have greater difficulty accessing career development and promotion, and are less likely to be paid as well as their counterparts. This is often because they are less visible within the organisation.

Given this, the NASUWT maintains that it would be beneficial for the revised Acas Code to emphasise and remind workers and employers of the protections from detriment and dismissal.

The Union believes that this would help prevent unfair treatment and encourage those who might be unsure about



whether to submit a flexible-working request due to fear of negative treatment, as it would remind them of their legal protections.

Furthermore, the NASUWT believes that the revised Acas Code of Practice should encourage employers to produce an annual report that includes details of any action plans to tackle issues, such as how the employer intends to tackle the barriers faced by working parents and those wishing to access flexible working.

This should include details of how employers effectively promote and monitor the workforce in regards to flexible working, including issues regarding pay and progression, training and development, and recruitment and retention.

## Question 7 of 11

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

Please include your reasoning.

As referenced already in this consultation, the NASUWT believes that employees should be allowed to be accompanied at *all* meetings, both informal and formal, as well as appeal in respect of a request for flexible working being rejected.

Whilst the content outlined in point 23 of the revised Acas Code is welcomed, the Union maintains that the right to be accompanied, including by a recognised trade union representative, should be referenced and reinforced throughout any revised Acas Code.

In addition, as noted above, it would be helpful if point 23 specifically referenced any '*informal*' and '*formal*' meeting, or, at the very least, emboldened the word '*any*' to emphasise that this is indeed the case.

It cannot go unnoticed that the Post Implementation Review (PIR) of the impact of the Flexible Working Regulations 2014<sup>1</sup> reported that the take-up of flexible working was greater

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<sup>1</sup> [https://www.legislation.gov.uk/ukxi/2014/1398/pdfs/ukxi0d\\_20141398\\_en.pdf](https://www.legislation.gov.uk/ukxi/2014/1398/pdfs/ukxi0d_20141398_en.pdf)

among workplaces where there was a recognised trade union compared with the economy overall.

Trade unions play a vital and important role in the workplace, and, as such, any reference in the revised Acas Code stipulating that trade union representatives or officials can attend meetings is to be welcomed, as this would help raise awareness of the benefits of union representation and encourage workers to engage with their trade union representative prior to submitting a request for flexible working.

In addition, accredited NASUWT Representatives have access to training, as well as advice and guidance that should assist a member in putting together the arguments and evidence for a successful request for flexible working. This is particularly prescient when understanding the vagaries of the education sector in the different devolved administrations in the UK.

A trade union representative can provide a worker with reassurance to take forward a request, think through their options in detail, and help to talk through their concerns.

Furthermore, it is recognised that the employment relationship is not necessarily one where the balance of power between worker and employer is equal, and, as such, trade union representation can help in recalibrating this.

It cannot go unnoticed that trade union representatives are also able to take notes and clarify points, including asking questions, on behalf of a worker during a meeting.

Finally, given that the Government intends to make the right to request flexible working a day one right, the right to being accompanied by a trade union representative or trade union official could be particularly important for a new worker who may feel nervous making a request.

## Question 8 of 11

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

Please include your reasoning.

The NASUWT believes that mirroring the same categories of companion that a worker (e.g. a fellow worker, a trade union representative, or an official employed by a trade union) can bring to a disciplinary and/or grievance meeting should create clarity when dealing with meetings in regards to a request for flexible working.

In addition, it should avoid confusion in respect to the establishment of different categories of companion for different areas of employment law.

As stated previously, accredited trade union representatives, specifically those assisting teachers, will have extensive knowledge and understanding of the flexible-working options available to those working in education, as well as insights into what options operate across the education sector, including on a local, regional and national basis.

In addition, accredited trade union representatives and/or trade union officials can utilise their broader knowledge base

and experiences from elsewhere to work with employers to find agreeable solutions.

In situations where a worker has not previously made a request for flexible working, accredited trade union representatives and/or trade union officials can offer advice and guidance, as well as provide support to the worker.

## Question 9 of 11

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

- Yes
- No
- Don't know

Please explain the reasoning for your answer.

The NASUWT believes that the unfettered ability of employers to refuse a flexible-working request is currently a significant barrier to the uptake of flexible working, specifically for teachers working in education.

Currently, all an employer has to do when considering a request for flexible working is provide one of the eight business reasons as to why the request has been refused, and the evidence presented above suggests that teachers receive very little, if any, information as to why their request was refused.

Furthermore, there is no requirement on the employer to provide any further details or to suggest possible alternatives, a situation which results in more people dropping out of the labour market, specifically women who are forced into an

impossible situation in looking to balance the need to earn a living and care for their children.

In order to remedy this, the NASUWT believes that the revised Acas Code of Practice should place an obligation on employers to provide *all* the substantive information relied upon when refusing a flexible-working request.

The Union believes it is right and proper that an employer's refusal to agree a flexible-working request should be open to scrutiny and challenge, including by someone who has not previously been involved in the request.

The Acas Code should recommend that employers provide written detailed information with evidence to demonstrate why the request is being rejected, as well as suggestions as to what alternative flexible-working options may be available.

This would enable alternatives to be put forward by workers rather than the other way around, particularly given that employers are not always best placed to understand what alternatives are available and which one is best suited to the needs of those making such a request.

In addition, this would ensure that there is genuine negotiation where an informed decision is reached following discussion between the worker and the employer.

Providing additional information would demonstrate that there is a thorough and rigorous process in place, and that the



employer gives serious consideration to requests for flexible working.

The Union is clear that the Code of Practice should be supplemented with an obligation on employers to monitor and evaluate the effectiveness of its flexible-working policy.

Such systems should annually report on the take-up of family-related and flexible-working policies, together with the number of appeals and outcomes, and produce a comprehensive report broken down by workforce composition, particularly those groups with protected characteristics under the Equality Act 2010, as well as contract type.

The Union maintains that any such annual report should be shared with and consulted upon by both the workforce and the recognised trade unions, and include details of any action plans to tackle issues, such as how the employer intends to challenge the barriers faced by working parents and those wishing to access flexible working.

This should include details of how employers effectively promote and monitor the workforce in regards to flexible working, including issues regarding pay and progression, training and development, and recruitment and retention.

## Question 10 of 11

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?

Please include your reasoning.

The NASUWT believes it is best practice and in line with the basic fundamental principles of natural justice that all appeals, regardless of the size of the organisation, should be conducted by someone who has had no previous involvement in dealing with a flexible-working request.

As such, the Union does not understand the distinction made within the revised draft Code of Practice to 'larger organisations', as the principles outlined above should be adopted by *all* organisations.

Indeed, the principles of natural justice draw no such distinction between smaller and larger organisations; instead, they reference the duty to ensure that the matter is decided by someone who is impartial.

The Union maintains that this can only be achieved if an appeal is heard/dealt with by another manager, or any other such person who has had no previous involvement in the process.

Furthermore, the Union believes that any attempt to suggest otherwise risks undermining confidence in the system, as well as undermining workers who seek to challenge decisions made by employers, and this is a situation that is unacceptable.

Given the points outlined above, the Union would want the current wording in point 22 of the revised Acas Code of Practice amended to remove reference to 'where possible', as the NASUWT believes that the fundamental principles of natural justice must *always* be possible.

## Question 11 of 11

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

- Yes  
 No  
 Don't know

Please explain the reasoning for your answer.

Due to the potential overlapping between flexible working and the right to request a predictable pattern of work, the NASUWT believes that the revised draft Acas Code of Practice should include a section about the right to request a predictable work pattern.

If you answered 'yes' to question 11, do you believe that paragraphs 27 to 29 in the draft Code provide sufficiently clear guidance on the interaction between the 2 rights?

- Yes  
 No  
 Don't know

Please explain the reasoning for your answer.

The NASUWT has concerns about the current wording in the draft revised Acas Code of Conduct, as it could result in a situation where a flexible-working request is considered instead to be a request for a predictable work pattern.

This could result in a situation where a worker loses access to their entitlements under a flexible-working request, including the right to make a flexible-working request from day one, as well as the right to be consulted if the employer is rejecting the request for flexible working.

Given the significance of these two changes, the Union is concerned that denying these to some workers could put them at a significant disadvantage.

As such, the NASUWT believes that this section warrants further consideration in order to ensure that it is fit for purpose and aligns accordingly once the consultation on the Code for the right to request a predictable work pattern has been published.

## Send your response

Please email your response to [consultations@acas.org.uk](mailto:consultations@acas.org.uk)

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