

## Acas consultation on the draft Code of Practice on handling requests for flexible working

### Introduction

This is the response from the Universities and Colleges Employers Association (UCEA).

UCEA represents the views of higher education institutions (HEIs) across the UK in their capacity as employers. UCEA is a membership body funded by subscriptions from 171 HEIs in the UK. UCEA is the leading voice on employment and reward matters in the UK Higher Education sector. We support our members to be employers of choice through collaboration, advocacy and expert advice.

HEIs are independent employers and determine their own employment policies, often in consultation with recognised trade unions; therefore, there are a variety of HR practices in place in the sector.

Our response is based on views provided by 16 of our member HE employers.

Please note that we do not wish our response to be published. We wish our response to be treated as **confidential**.

### Section A: Review of the existing Code

#### 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.

*UCEA agrees that this is a good opportunity for Acas to review the good practice principles in the Code. The Covid-19 pandemic has brought about changes in way people work, and it is therefore appropriate to review the principles in line with the Code to ensure they remain relevant and consistent. It is also an opportunity to ensure the language used reflects these changes and is user-friendly.*

### Section B: The Foreword

#### A new Foreword and overall messaging

#### 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.

*UCEA agrees that the Foreword strikes the right tone in encouraging an open-minded approach to flexible working. It encourages meaningful discussion between the employer and employee, and the importance of adopting a positive approach to finding a solution which works for both the employer and the employee. The Foreword gives a good explanation of the range of reasons why employees may request flexible working. It highlights the potential benefits of allowing employees to work flexibly, whilst providing guidance for employers on handling requests that they are unable to accept. However, we would like to see clear examples of circumstances where there are restrictions on how much flexibility can be offered by the employer due, for example, to the size of the organisation, the particular circumstances of the individual's team or their type of role. It would also be helpful to include guidance/examples of statutory requests which involve hybrid working arrangements, given that models of hybrid working are still being developed within the Higher Education sector.*

## Definition of flexible working requests

### 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.

*UCEA would like to see a definition of a statutory flexible working request, based on the ERA 1996 included. It is important for employers to be clear on the statutory definition to avoid any misinterpretation of this right. However, this does not preclude other sections of the Code encouraging employers to think more broadly and creatively about alternative flexible arrangements which could work for both sides. Restricting the definition to that stated in the ERA 1996 will also ensure that employees do not confuse the term with other terms such as hybrid and agile working, or other working arrangements that may be agreed more informally. Common examples of statutory and non-statutory requests would be helpful. It would also be useful to make it clear that flexible working requests should not be used to make requests for reasonable adjustments that are related to an employee's disability, which should be dealt with separately under the employer's relevant policy.*

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

## **Section C: Legal terminology**

### **The requirement to consult**

#### **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.

*UCEA agrees that guidance on 'consulting' with employees about a request would be useful, particularly in assisting employers with the drafting of policies on flexible working, and in situations where there is uncertainty over whether the request can be approved. Effective consultation would hopefully encourage employers to engage in appropriate dialogue and explore options and business impact. However, we would suggest that the guidance on consultation should be a framework, allowing some flexibility on the part of the employer, rather than being overly prescriptive.*

*Clear guidance should also be given on carrying out consultation where it is clear that the flexible working request cannot be agreed and there is no alternative – a simple example would be employees requesting home-working for roles which need to be done on campus. We would suggest including bullet points about the sort of questions managers should consider, and emphasising the importance of approaching the consultation with an open*

mind as a recurrent theme throughout the Code. We would also suggest that the Code could provide guidance on the use of trial periods, for example where employers are uncertain of the impact of the flexible working arrangement on the business or where the flexible arrangement is being requested for a longer period (e.g. for more than three months). In addition, given that the new regulations will no longer require the employee to explain in writing what effect the flexible working arrangement would have on the employer, we would suggest that the guidance makes it clear that the consultation is a two-way process and employees should be prepared to discuss this during the consultation meeting, drawing on their personal experience of their role. It would be helpful to remind employers that other forms of support could be explored where the request may have been made by an employee experiencing difficult circumstances.

## Protection from detriment and dismissal

### 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.

*UCEA agrees that a meeting would offer a good opportunity to discuss how the flexible working arrangement will work in practice, and ensure good communication and understanding of the arrangement on both sides. The meeting would enable the manager to understand the full context of the employee's request and to consider other forms of support that could be offered in addition to the flexible working arrangement if necessary. However, we would view such a meeting as discretionary and not mandatory, to be offered to the employee as good practice. We would suggest that the meeting could be offered after formal confirmation of the decision is given to them to ensure that there are no delays in implementing the request.*

### 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.

*UCEA agrees that the Code should include a section on the protection from detriment and dismissal, as drafted. This would be entirely appropriate given that the purpose of the Code is to provide employers, employees and representatives with a clear explanation of the law on the statutory right to request flexible working, as well as good practice advice on handling requests. We suggest that this section could be enhanced by guiding employers towards relevant legal guidance and case law in relation to flexible working requests as it develops in due course.*

## Section D: Procedural guidance within the Code

### Allowing employees to be accompanied

#### 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.

*UCEA agrees that this would be good practice and would provide support for the employee to put forward their case, particularly where the request is being made due to difficult circumstances or the outcome would have significant consequences for the individual (e.g. an impact on personal family circumstances). However, it could lead to delays in meetings taking place due to the unavailability of the chosen companion and clear guidance would need to be given on this point; for example, if the employee is unable to attend on the date proposed, another date within five days should be suggested.*

#### 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.

*UCEA agrees that allowing the same categories of companion would be good practice and provide consistency with the right to be accompanied across other procedures. It would make this procedural step easier to remember. However, employers would need to be aware that this may lead to requests for increased facility time from trade union representatives due to an increased workload.*

### Communicating the decision

#### 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.

UCEA agrees that the Code should recommend that employers provide any additional information as is reasonable to explain why a request has been rejected. This would provide transparency regarding how the decision was arrived at and would provide reassurance to the employee that the request has been properly considered. It may help to reduce the number of appeals that the employer receives and guide the employee in any future requests they may make. However, it should be made clear in the Code that providing additional information over and above the statutory grounds for refusal is discretionary on the part of the employer.

## Handling an appeal

### 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.

#### **Advantages:**

- *It would provide consistency with other appeal processes such as disciplinaries and grievances which operate in a similar way.*
- *It would help to ensure impartiality and objectivity, which will be important to show should the employer be required to defend a claim.*
- *It would be helpful for the request to be considered by someone with a different perspective and experience.*

#### **Disadvantages:**

- *The manager may not have a sufficient understanding of the work of the employee or business area, and therefore may not fully appreciate the reason for a request being rejected. This could be improved by the manager liaising with the employee's manager to understand the practicalities involved but this would have time/resource implications. An alternative would be for a more senior manager in the same department/business area to carry out the appeal wherever possible.*
- *It may add complexity to the process for some organisations.*

## **Section E: The statutory right to request a predictable work pattern**

### 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.

*UCEA is unable to comment fully at this stage, as we would need to have sight of the new regulations, if introduced, in order to provide a considered response to this question. Further details of the new regulations are needed to determine how the two separate rights would operate in relation to each other. However, whether or not a section about the right to request a predictable work pattern is included in this Code, the likely complexity of the right to request a predictable work pattern suggest that a separate Code to provide guidance on this new legislation would be beneficial to employers.*