

Acas consultation on the flexible working Code of Practice

TUC response

Consultation response – Acas Code of Practice on flexible working

Introduction

The Trades Union Congress (TUC) is the voice of Britain at work. We represent more than 5.5 million working people in 48 unions across the economy. We campaign for more and better jobs and a better working life for everyone, and we support trade unions to grow and thrive.

Trade unions play a key role in ensuring that the rights and interests of working people are represented and recognised. For example, we advocate the importance of strong collective bargaining rights, appropriate regulation and enforcement to ensure the protection of employment rights, as well as equality of treatment for all, regardless of factors such as race, religion, age, gender, disability, sexuality and access to financial resources.

Acas launched a consultation¹ on the new draft flexible working Code of Practice², closing on 6 September 2023. The draft code is contained as an annex to this responses.

Consultation questions

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? Please explain the reasoning for your answer.

Yes

We believe the good practice principles in the Code should be reconsidered given that the existing Code was published in 2014 and there have been multiple developments in flexible working since then. These developments are as follows.

Learnings from the pandemic

The Covid-19 pandemic has led to an increase in the number of people working from home or other remote locations. TUC analysis of 2021 Q4 data in the Labour Force Survey found that regular homeworking by UK workers had tripled since before the pandemic, rising from 6.8 per cent in 2019, and 12.1 per cent in 2020, to 22.4 per cent in 2021. This means there have been multiple learnings by employers, workers and trade unions on what good and

¹ <https://www.acas.org.uk/about-us/acas-consultations/code-of-practice-flexible-working-requests-2023>

² <https://www.acas.org.uk/about-us/acas-consultations/code-of-practice-flexible-working-requests-2023/draft-code>

poor location-based flexible working looks like which should be reflected in the Code. The 4-day week trial has also taken place which will provide learnings on flexible working.

Popularity of flexible working

It is not clear yet whether the changes during the pandemic will be permanent. However, it seems very likely that the demand for flexible working will remain. TUC research shows more than four out of five (82 per cent) workers in Britain want to work flexibly in the future and more than nine out of ten (91 per cent) of those who worked from home during the pandemic want to spend at least some of the time working remotely. Much of this demand remains unmet implying the need for a more positive approach to requests. TUC polling of dads and partners entitled to paternity leave found that half (53 per cent) who request flexible working don't get some or all of the flexibility they ask for and this is higher for those from lower income households. An NASUWT survey of 3,330 teachers found three in ten teachers (30%) reported that their request to their employer for flexible working was rejected. Ucac also highlighted that teachers often receive zero flexibility outside of holidays to attend important events or deal with emergencies.

The growth in location-based flexibility has also not been matched when looking at hours-based flexibility. TUC research found that while homeworking has increased since the pandemic, other types of flexible working have been left behind. Flexitime (the most popular form of flexible working) only increased from 12.6 per cent in Q4 2019 to 13.5 per cent in Q4 2021, annualised hours declined from 7.8 per cent to 6.2 per cent, as did term time only working from 5.2 per cent to 4.8 per cent. Again, this implies the need for a more positive approach to hours-based flexibility to ensure all workers can benefit from flexible arrangements.

There is now much research demonstrating the benefits of flexible working for both employers and workers, for example to improve work life balance, to tackle underlying issues of the gender and disability pay gaps, to help to address some of the barriers older workers, those experiencing domestic abuse, carers and women experiencing the menopause face in the workplace and to improve productivity, retention and diversify recruitment. However, there is still stigma surrounding and difficulty accessing flexible working. Both employers and workers could therefore benefit from up-to-date good practice guidance.

Growth of insecure work

At the same time, we have seen unchecked growth of insecure work. TUC analysis of official figures shows that by the end of 2022 there were around 3.9 million people in insecure employment. Black and minority ethnic (BME) workers are disproportionately affected by the growth of insecure work. In the last 11 years the proportion of BME workers in insecure employment has risen from 12.2 per cent to 17.8 per cent. Zero hours contracts (ZHC) and contracts with minimal hours are the most egregious example of one-sided flexibility at work and place workers at a disadvantage. In addition to ending the abusive use of exploitative ZHC, we need to see a growth in positive forms of flexible working which remain hard to access. This lack of access to decent flexible work is a reason that some workers turn to insecure employment as this is the only way they can manage their work hours alongside their other commitments. 14 per cent of workers on a ZHC polled by the

TUC in 2021 said the flexibility to care for children or other people was the reason they worked a ZHC and we know anecdotally from teaching and healthcare unions that a lack of flexibility is pushing them out of the profession into supply or agency work with worse terms and conditions. UNISON and Work Foundation survey found that 11 per cent of insecure workers compared to 6 per cent of secure workers felt their job choice was limited due to the availability of care for themselves or another person and 19 per cent compared to 14 per cent felt this due to childcare availability.

Therefore, good practice guidance on flexible working is much needed to help the growth of decent, secure jobs which deliver flexible working arrangements that benefit both worker and employer, rather than the one-sided flexibility we see with insecure employment.

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? Please explain the reasoning for your answer.

Yes

Overall, the foreword strikes a good tone in encouraging an open-minded approach to flexible working, however, we think further changes are required to focus on a positive and lawful approach.

Firstly, the foreword does not mention the Equality Act 2010. Whilst the Code itself focuses on the Employment Rights Act 1996, we believe this is essential given that many flexible working request will relate to a protected characteristic, in particular sex and disability. Therefore, employers must ensure they are meeting the requirements under the Act including associative discrimination which may affect carers. It is also important that employers are not treating reasonable adjustment requests as flexible working requests.

Secondly, instead of stating 'While not every type of flexible working will be suitable for every role and every organisation, flexible working can take many forms' we think it is important to state that whilst not every type of flexible working is possible in every job, some form of flexible working is possible in every job to encourage employers to think about different forms of flexibility in particular in shift based and frontline roles. Examples of different types of flexibility could help to make this point and highlighting the role that flexible working can play in the retention of workers could help employers to see all forms of flexible working in a positive light.

Thirdly, under the point on job roles we would want the foreword to encourage employers to state the different types of flexible working that are available i.e. compressed hours, remote working, when advertising a role, as well as saying they are open to talking about other flexible working options. This provides greater transparency for the applicant and ensures that employees aren't applying for unsuitable roles and employers spending time interviewing them. It may also give current employees greater confidence and information to request flexible working. Research by Timewise found that around 1 in 10 job adverts say the role is open to flexible working, but such wording is treated with scepticism by many flexible jobseekers. The Code should also state if included in a job advert, employers should

then go on to provide the flexibility if desired by the successful candidate. Having the types stated overcomes this barrier but coupled with a statement saying they are open to offering other options leaves room for conversation about other options should the employer not have thought of them. The language could also be changed from "Advertise they are open to talking about" to "open to offering" to make it more proactive.

Fourthly, the first paragraph should make it clear it applies to employees and in addition to helping people understand their rights and responsibilities, the Foreword could also state it is there to promote the benefits of flexible working

Finally, it may be helpful to include a definition of flexible working in the foreword (see answer below for more information).

Question 3 of 11

Do you think that it is helpful to include a definition of 'flexible working' within the Foreword to the Code? If you answered 'yes', which definitions should the Foreword provide? Please explain the reasoning for your answer.

Yes. Both a definition of a statutory flexible working request and a broader definition of flexible working

Providing a statutory definition will provide greater clarity on the meaning of flexible working in legislation and highlights that requests can relate to hours required to work, time required to work and where, as between home and a place of business of their employer, individuals are required to work. The statutory definition does not limit the requests to certain types of flexible working which can constrain employees' options.

However, a broader definition could also include examples of different types of flexible working in different roles and sector. As Labour Force Survey data shows us there hasn't been the same growth in hours or time-based flexibility and shift based work is often seen as hard to accommodate flexible working for example in retail, healthcare, education or hospitality. Therefore, examples which demonstrate the variety of working arrangements and in different roles can help employers to think more positively about requests. These examples could include practices like team rostering which are not traditionally thought of as flexible working options but are used to allow teams to meet staffing needs of an employer, whilst meeting employees' work-life needs or newer forms of flexibility like a 4 day week. Examples of flexible working should also include mutually agreed predictable shift patterns which is often missed out.

A broader definition should also state that location of work could be at a setting that is not home nor the workplace. Welsh government have an aim for 30per cent of the Welsh workforce to work remotely, including in remote work hubs.

Question 4 of 11

Should the Code provide guidance on ‘consulting’ with employees about a request? Please explain the reasoning for your answer.

Yes

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.

Consultation can be an ambiguous term and therefore guidance on what consultation should look like and what an Employment Tribunal would expect to see would provide greater clarity for both employer and employee. The guidance on this should be included in the Code as this is the essential piece of documentation that employers are more likely to read in comparison to supplementary guidance.

We agree with the current wording in points 12 and 13 on what consultation should look like. Other than we believe the meeting should always be held privately rather than wherever possible as confidentiality should be respected at all times.

On point 14, this implies that the employer is entering with the pre-determined decision to reject the request as it stands. Whereas a consultation meeting could be an opportunity for employees to provide evidence and further information on why they believe the request can work and address any points of concern by the employer in the hope of reaching an agreement. Research by BEIS and EHRC found that mums reporting employers' initial reluctance to agree flexible working requests was fairly common and between 24 per cent and 39 per cent of requests were only approved following discussion showing the importance of talking about a request before deciding on rejection. If at the meeting it becomes clear this is not possible, then, as outlined in point 14, alternatives should be discussed. The Code should state that alternatives should be developed with the employee and more than one alternative explored if needed.

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

We could also see benefit to having supplementary guidance or checklist on what should be discussed at a consultation meeting and how meetings should be approached. This should include (but not be limited to) a reminder to employers to ensure they are acting in line with the Equality Act 2010 and if the request should be reviewed as a reasonable adjustment request, as well as the points outlined above. Unions would be happy to support the development of a checklist as many will have guidance for reps and flexible working passports which will contain similar information.

Under point 12 the Code also states that 'The person holding the meeting should have sufficient authority to make a decision.' The Code should also state that the person reviewing the request from the beginning should have sufficient authority to make the decision.

Throughout the Code there are also references to reasonable timeframes including in consultation. Employers should be encouraged to include in policies what the timeframes

are and that they are kept to. This will ensure that employers make a decision within the 2 months and provide greater transparency to employees.

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.

We believe that employers should hold a meeting with employees even if they plan to accept the request. Good communication and understanding between line manager and employee are essential for effective flexible working, which a meeting could enable. Topics for discussion could include things like whether a review period is needed, the process for contractual changes, if amendments to workload are needed, if amendments to team communication are needed e.g. if team meetings are scheduled to take place at a time the person can no longer make, conversations about access to training or if any other changes to team or individual working styles are needed.

This meeting could help counter some of the disadvantages that flexible workers experience, including but not limited to, overwork, isolation and lack of access to progression and development.

FDA research in 2019 found that part-time workers reported receiving no adjustment in their workload and 40 per cent of part-time women felt that flexible working had a negative impact on their career progression/performance weighting.

NASUWT have shared that a meeting like this would be invaluable in understanding how a teacher's workload would be managed for example agreeing any expectations in sharing classes during a job share. A meeting should also enable discussions to take place about how a teacher would keep in touch with developments in school, as well as detailed discussions on working days and working hours in accordance with the relevant contractual entitlements.

Given the detail that such a meeting could enable, we would recommend that the Code suggest that managers have the appropriate skills and training in order to effect a smooth transition for someone once a request to work flexibly has been accepted.

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

The meeting could also be an opportunity to discuss any other options that the employee might not be aware of for example to remind them of any carers policies etc. But also, for example if someone has requested part time but another member has requested a job share, a meeting could help facilitate links between and manage outcomes of multiple requests.

Employers should advise employees ahead of the meeting that the request has been accepted to ensure transparency in the process and put employee's minds at ease. Employers should also let the employee know in advance what will be discussed in the meeting so they can prepare sufficiently and make additional suggestions.

Question 6 of 11

Should the Code include a section on the protection from detriment and dismissal? Please explain the reasoning for your answer.

Yes

Flexible workers experience a high level of disadvantage. BEIS and the EHRC found over half (51 per cent) of pregnant women and new mothers had experienced discrimination or disadvantage as a direct result of having a flexible working request approved. The TUC's own survey of working mums found that 86 per cent of mums who worked flexibly told us they had experienced discrimination and disadvantage as a direct result of this.

Given this, we believe it would be beneficial to remind both employers and employees of their protections from detriment and dismissal. This would help to 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.

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.

We agree with the current wording of the Code under point 23. But believe the Code must be explicit in stating representation should be permitted at all meetings as part of the request, both informal and formal, as well as an appeal in respect of a flexible working and this point should be reinforced throughout the Code.

The PIR of the Flexible Working Regulations 2014 stated that take-up of flexible working was greater among workplaces with a recognised union than the economy overall. The review also stated that employers that reported any employees that were members of a trade union or independent staff association (60 per cent) were more likely to be aware of the extension in eligibility of the right to request flexible working than employers that had no employees that were members of a union (39 per cent).

As we can see unions play an important role in increasing access to and raising awareness of flexible working. The Code stipulating that union reps or officers can attend meetings would help raise awareness of the benefits of union representation and encourage employees to speak to their rep before submitting a request.

A union rep has access to training and guidance on flexible working that individual employees may not. Access to this can support the employee to submit a clear request, a request that is in line with the law and workplace policies and think through all the potential impacts the request may have on the employee and employer.

Union reps can support someone to prepare their request and for the meeting, which is important given that many will feel nervous approaching managers, are not used to making formal requests, may not be familiar with legislation or workplace policies and may be worried about submitting a request due to the stigma still surrounding flexible working.

A TUC survey of working mums found that 31 per cent had not asked for flexible working and 36 per cent had only asked for some of the flexible working they need. More than four in 10 of those who hadn't asked were put off by worries about their employers' negative reaction (42 per cent). A rep can provide an employee with reassurance to take forward a request, think through their options in detail and help to talk through any concerns the person has.

During a meeting a rep can also take notes on behalf of the employee and ask clarifying questions if anything is not clear.

It is essential that companions can be a rep, officer or fellow worker so that those in workplaces without union reps still benefit from this. Employees should be allowed to have companion at all meetings related to a flexible working request including consultation and appeals.

As requests can be made from the first day in the job, this could be particularly important for a new employee making a request where they may feel more nervous or are less aware of workplace policies, which a union rep or colleague could provide support on. Given the day one right request, we think the recommendation for representation should be made stronger in the Code to encourage employers to follow it.

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.

We believe this is appropriate for the employer to allow employees to be accompanied by a fellow worker, a trade union representative, or an official employed by a trade union. Mirroring discipline and grievance meetings creates clarity and less confusion over different categories for different areas of employment law.

Trained trade union representatives will have a good understanding of the flexible working options that will be most suited to particular job roles and environments, as well as what may already be in place across the organisation. Trade union representatives, alongside managers and HR colleagues can support members to find solutions and add an expert perspective.

Where members have not made formal requests before, additional pastoral care and guidance is crucial, and trade union representatives are able to add another source of support.

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? Please explain the reasoning for your answer.

Yes

Employers currently have an almost unfettered ability to turn down a flexible working request, given the breadth of the eight business reasons that can currently be used to justify a refusal. And we know anecdotally that many employees receive little information on why requests are rejected.

As part of the consultation on flexible working in 2021 the TUC and Flex For All partners created an online tool where members of the public could submit a response to the consultation. Based on the 5744 responses received, almost nine in ten (87 per cent) believed that employers can turn down flexible working requests too easily and many reported receiving little information on why requests were rejected.

The CWU reported to us that it is common for members not to even receive a response from their employer. Usdaw, echoed these comments telling us that employers see the right to request model as a vehicle to say no rather than enabling flexible working. An NASUWT survey of teachers found that one in ten teachers (11 per cent) reported that their employer had not provided a reason for refusing their request for flexible working.

Providing additional information to help explain why a request has been rejected would help to demonstrate a thorough review of the request has taken place and to build trust in the process. Trust in the process will also encourage people to make requests in the first place. The 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. For example, if an inability to recruit additional staff' is cited as a reason for rejecting a request, employers should demonstrate they have sought, but failed, to recruit appropriate additional staff.

Providing information on the reasons for rejection could also reduce the number of appeals submitted and avoid employees submitting future flexible working requests that don't address the concerns that the employer has.

Also there may be workplace specific context and reason for why a flexible working request has been rejected that could be shared with the employee for example NSEAD told us that the need for specialist teachers may be a reason.

The Code should also recommend that employers monitor the flexible working requests received and acceptance and rejection rates, including demographic information, to help understand if they have a culture that supports flexible working. Data can also reveal potential patterns of discrimination for example if certain groups are less likely to make a request or more likely to have requests rejected. A study using data from Understanding Society, the UK Household Longitudinal Survey, found that almost a third of fathers believed flexible working arrangements that reduce working hours are unavailable to them, compared with one in 10 mothers.

The Code should also recommend that employers put in systems to monitor the retention and progression rates of those staff working flexibly, as well as pay, access to training and development and on recruitment. Such monitoring would support employers to understand the barriers workers face and deliver transparent, equal and fair access to flexible working given the high levels of discrimination and disadvantage that flexible workers face. The Code should also recommend employers then produce an action plan that includes details on how to tackle such issues and how the employer intends to tackle barriers to flexible working.

The NHS Terms and Conditions handbook, section 33 provides an example of how flexible working reporting works in practice.

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.

We believe best practice is that all employers, regardless of size of organisation, should be required to have appeals conducted by a person not previously involved with a request to ensure impartiality and build employee trust in the process. Ideally this should be a manager but in small organisations where this is not possible it could be someone else, but they should be suitably qualified and with the appropriate authority to make a decision. Employees should also have the option to be accompanied at an appeal by a companion in line with point 23. If the Code does stipulate that this is only larger organisations, a definition of larger should be provided as organisations with over 50 employees and 'where possible' should be removed as large organisations should have capacity to meet this. We have defined larger as 50 as this reflects the TUC calls on gender pay gap reporting.

We agree that it is appropriate for the Code to set out, as it does in point 20, the reasons why someone may appeal for example if there is new information.

Question 11 of 11

Should the Code include a section about the right to request a predictable work pattern if that right is introduced? Please explain the reasoning for your answer.

Yes

Given the overlapping nature of the right to request a predictable work pattern and flexible working we believe there should be a section on it in the Code as there is considerable chance of confusion.

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? Please explain the reasoning for your answer.

No

We disagree with the current suggestion in the Code. Improved predictability for example a set shift pattern in order to attend medical appointments or collect children from school is a very common flexible working request in healthcare, retail and other sectors. We are concerned about the current language in the Code: 'Where the purpose of a request is to improve predictability, employees and employers may wish to follow the procedure for requesting a predictable work pattern, as set out in that Acas Code.' This could encourage employers to treat these requests as a predictable work pattern request, meaning employees would lose rights. Specifically, the right to request a predictable work pattern is granted after 26 weeks service as opposed to day 1 and there is no right to consultation if the request is to be rejected under predictable work pattern requests. These are two significant changes in the right to request flexible working and denying these to some employees significantly undermines the impact of the legislation.

Should the Private Members Bill on predictable work patterns gain royal assent as it currently stands, we believe that requests from employees in relation to hours, time or location of work should as default be treated as flexible working requests not predictable work pattern requests, and this should be stated in the Code.

It is hard to comment further on this section until the consultation on the Code for right to request a predictable work pattern is published.

Annex I: Draft: This Code of Practice is in draft form for public consultation.

Foreword

The Acas statutory Code of Practice on handling requests for flexible working is set out in paragraphs 1 to 29 below. It is designed to support employers, employees and their representatives to understand their rights and responsibilities regarding the statutory right to request flexible working in the Employment Rights Act 1996.

Under the Employment Rights Act 1996, flexible working requests are requests for a change to an employee's contractual terms and conditions relating to their hours, times or place of work. The Code does not apply to other requests for flexible working where employees are not exercising their statutory right to request, though the processes it describes may be of use to employers in handling non-statutory requests as well.

Investment in flexible working can bring benefits to employers and employees, irrespective of sector, occupation, or workplace size. It can enable people to better balance their working lives alongside personal responsibilities and preferences, and can improve routes into employment for individuals. Providing greater flexibility can help employers address labour and skills shortages and can lead to more diverse and inclusive workplaces.

While not every type of flexible working will be suitable for every role and every organisation, flexible working can take many forms. Where possible and appropriate, employers should seek to build flexibility into job roles as part of their job design and recruitment processes, and advertise that they are open to talking about flexible working options. This can support early and constructive conversations with existing and prospective employees about options to work flexibly.

Welcoming and being open to all requests can help give employees the confidence to come forward with requests and help achieve the best outcome for everyone.

Consultation meetings about requests should be approached with an open mind to discuss what may be suitable. Meetings are an opportunity to listen carefully and engage meaningfully with each other so that a fully informed, evidence-based decision can be made. Employers must accept requests unless there is a genuine business reason not to, as specified in the Employment Rights Act and set out in paragraph 15 of the Code. The default position should not be to reject requests.

Where a request cannot be accepted, the reasons for the decision should be clearly explained to the employee. Clear communication helps maintain trust that a request has been handled reasonably. Further, being proactive in offering an appeal provides the opportunity for individuals to present any new information or raise any concerns relating to the way their request has been handled.

If an employee makes a reasonable request to be accompanied at any meeting to discuss a flexible working request, the employer should allow them to be accompanied by a fellow worker, a trade union representative, or an official employed by a trade union. This can be helpful in supporting both parties to find a mutually agreeable solution.

The Code is issued under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992 and was laid before both Houses of Parliament on [date to be confirmed]. It comes into effect by order of the Secretary of State on [date to be confirmed] and replaces the Code issued in 2014.

A failure to follow the Code does not, in itself, make a person or organisation liable to legal proceedings. However, employment tribunals will take the Code into account when considering relevant cases.

Further guidance on flexible working which accompanies this Code is provided on the Acas website.

Notes

'Must' and 'should'

Throughout this Code the word 'should' is used to indicate what Acas considers to be good employment practice, rather than legal requirements. The word 'must' is used to indicate where something is a legal requirement.

The Code of Practice

Introduction

1. This Code provides guidance to employers and employees on the statutory right to request flexible working as set out in the Employment Rights Act 1996.
2. Having a clear policy and procedure for handling statutory requests for flexible working can be helpful in setting out the different stages and requirements so that everyone knows what is to be expected.
3. The guidance in this Code will be taken into account by employment tribunals when considering relevant cases.

Handling requests in a reasonable manner

The statutory right to request flexible working

4. Every employee has a statutory right to request flexible working under the Employment Rights Act 1996 and regulations made under it. The statutory right applies from the first day of employment.
5. A request must be in writing and must include:
 - the date of the request
 - a statement that it is a statutory request for flexible working
 - the change to working conditions the employee is seeking
 - the date on which the employee would like the change to come into effect
 - if and when the employee has made a previous request for flexible working

The request should also state:

- if and when the employee has made a previous request for a predictable work pattern

An employer's procedure should make clear to their employees that the above information is to be included in any statutory request for flexible working.

6. An employee may make two statutory requests for flexible working within any 12-month period.
7. An employee may have only one live request for flexible working with the same employer at any one time. A request is live unless any of the following apply:
 - a decision on the request has been made by the employer
 - the request is withdrawn
 - an outcome to the request has been mutually agreed by the employer and employee
 - the statutory timeframe to respond to the request has expired without a decision, withdrawal or a mutually agreeable outcome

A request continues to be live during any appeal or any extension to the procedure that an employer and employee have agreed.

Giving consideration to a request for flexible working

8. Every request must be handled in a reasonable manner. This should include carefully assessing the effect of the requested change on the business and on the individual, including the potential benefits and impacts for both parties of accepting or rejecting it.
9. Employers must accept a flexible working request unless there is a genuine business reason not to, as specified in the Employment Rights Act (see paragraph 15). Where there is such a reason, it might be possible to agree a request with modifications, or to agree an alternative proposal that secures some or all of the benefits that the original request sought.
10. In handling a request, employers must not discriminate unlawfully against the employee in relation to any of the protected characteristics set out in the Equality Act 2010.
11. Any requests for a reasonable adjustment related to an employee's disability should be dealt with separately rather than as a flexible working request.

Consulting the employee and exploring alternatives

12. Employers must not reject a request without first consulting the employee. Employers should have a formal meeting with the employee after receiving the request. The meeting should be held without unreasonable delay. The person holding the meeting should have sufficient authority to make a decision.
13. Wherever possible, a consultation meeting should take place in a private place. It can be held in person or remotely via online video conferencing, or where neither of those are possible, via telephone call. In either case, the content of the meeting and the way in which it is conducted should allow a reasonable discussion and consideration of the request. An accurate record of the discussion should be kept in writing.
14. During the consultation meeting, the employer and the employee should carefully consider and discuss any alternative flexible working options that may be available and suitable for both the business and the employee.
15. A decision to reject a request must be for one or more of the following business reasons which are set out in the Employment Rights Act 1996:

the burden of additional costs

- an inability to reorganise work amongst existing staff
- an inability to recruit additional staff
- a detrimental impact on quality
- a detrimental impact on performance
- a detrimental effect on ability to meet customer demand
- insufficient work available for the periods the employee proposes to work
- a planned structural change to the employer's business

16. Even where the employer plans to accept a request, it is good practice to offer the employee a meeting. This can help make sure that all relevant information is understood so that an appropriate arrangement is agreed and implemented well. A discussion can also make clear, for example, whether a request may relate to a reasonable adjustment for an employee's disability and therefore should be dealt with separately.

Communicating the decision on a request

17. Once the employer has made a decision about the request, they must inform the employee of that decision. They should do so in writing without unreasonable delay, making it clear what has been decided and why.
18. If the employer accepts the employee's request, or accepts it with modifications, they should discuss with the employee how and when the changes might best be implemented.
19. If the employer rejects the request, they should provide the employee with a written decision which should clearly set out the business reason(s) (see paragraph 15). The employer should also set out such additional information as is reasonable to help explain the decision. They should allow the employee to appeal the decision and the written decision should explain how the employee may appeal if they wish to do so.

Handling an appeal

20. If an employee wishes to appeal the initial decision about their request, they should let their employer know the grounds for their appeal in writing. For example, if there is new information they wish to be considered, or if they believe the employer has not handled their request in a reasonable manner.
21. If the employer receives an appeal, they should arrange to meet with the employee without unreasonable delay.
22. The appeal should be dealt with impartially. In larger organisations, where possible it should be handled by a manager who has not previously been involved in considering the request. The employee should be informed in writing of the appeal decision without unreasonable delay.

Allowing the employee to be accompanied

23. If an employee makes a reasonable request to be accompanied at any meeting to discuss a flexible working request, the employer should allow them to be accompanied by a fellow worker, a trade union representative, or an official employed by a trade union. The employee should be informed about this prior to the meeting so that they can make a reasonable request to be accompanied if they wish.

Deciding requests within the statutory decision period

24. All requests, including any appeals, must be decided within a period of two months from when the employer first receives the request, unless the employer and employee

agree to extend this period. If an extension is agreed, the employer should confirm this in writing to the employee.

25. If the employer arranges a meeting to discuss the request, including any appeal, and the employee fails to attend both this meeting and a rearranged meeting without a good reason, the employer may consider the request withdrawn. The employer's arrangements for a meeting should provide a reasonable opportunity for the employee to attend. If the employer does consider the request withdrawn, they must inform the employee of this. This should be done in writing.

Protection from detriment and dismissal

26. An employer must not subject an employee to any detriment or dismissal because of any of the following:
- the employee has made or intends to make a request for flexible working
 - the employee has issued legal proceedings against the employer, or has stated that there are circumstances which could constitute a ground for bringing legal proceedings in relation to their right to request flexible working

The statutory right to request a predictable work pattern

27. Employees may have a separate statutory right to request a predictable work pattern under the Employment Rights Act 1996.
28. Where the purpose of a request is to improve predictability, employees and employers may wish to follow the procedure for requesting a predictable work pattern, as set out in that Acas Code. If such a request is made under the statutory right to request flexible working, it will count towards both:
- the limit of two statutory requests for flexible working (see paragraph 6), and
 - the limit of two statutory requests provided for under the right to request a predictable work pattern
29. Employees may have only one live request either for flexible working or for a predictable work pattern with the same employer at any one time.

Read the Acas statutory Code of Practice on handling requests for a predictable work pattern for more information.