

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

Report on a Good Employment Charter  
Consultation Workshop – 1<sup>st</sup> August 2023

## The Greater Manchester Good Employment Charter



The Greater Manchester Good Employment Charter was established in July 2019 as a voluntary membership and assessment scheme that aims to raise employment standards across GM, for all organisations of any size, sector or geography across the City region. Since then the Charter has engaged with over 1,600 employers and recognised over 650 employers as 'Supporters', and 100+ as 'Members' of the Charter. 'Supporters' alone employ over 450,000 employees.

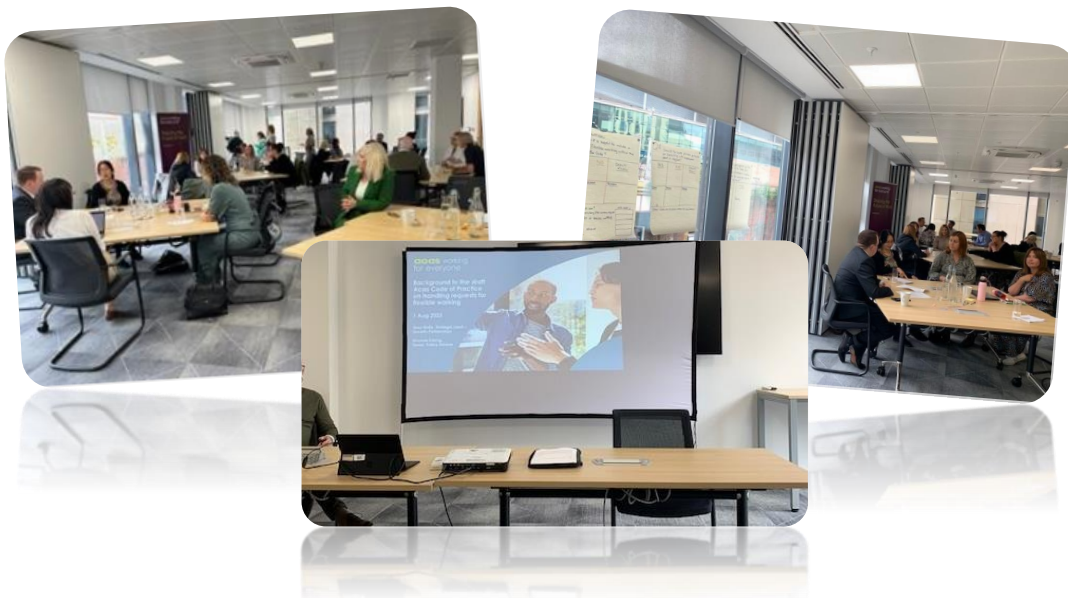


This Report contains the outcomes of a Consultation Event to consider the Acas consultation on the draft Code of Practice on handling requests for flexible working.

### ACAS

ACAS, The Advisory, Conciliation and Arbitration Service is a Crown non-departmental public body of the Government of the United Kingdom. Its purpose is to improve organisations and working life through the promotion and facilitation of strong industrial relations practice. ACAS have been foundational partners of the Greater Manchester Good Employment Charter providing expertise, knowledge and guidance throughout the Charter's development and delivery phases. Terry Duffy, the Northwest Regional Director of ACAS and also a Charter Board Member, together with Simone Cheng, Senior Policy Adviser at ACAS, provided an overview of the proposals contained within the Consultation Document and the importance of flexible work to the good work agenda.

acas working  
for everyone



## The Greater Manchester Good Employment Charter and Flexible Work

The Charter is built around seven characteristics of Good Work. They are:

- The Real Living Wage
- Secure Work
- Flexible Work
- Employee Engagement and Voice
- Fair Recruitment
- Excellent Management
- Health and Wellbeing

The Charter operates at two engagement levels – Supporter and Member. For each Characteristic Supporters must make a commitment and Members must meet assessment criteria.

For Flexible Work the **Charter Supporters** must commit to extending Flexible Work as follows:

*We will give employee the opportunity to work flexibly wherever possible, providing greater equality of opportunity, creating a more diverse and inclusive workplace and helping us make better use of the skills and talents of our workforce.*

**Charter Members** will be expected to provide evidence of enabling a more flexible workforce to access a broad diversity of skills and talent:

Designing jobs which flex wherever possible:

- Where people work (working from home; across different offices; mobile working);
- When people work (flexible start or finish times; annualised flexibility; compressed hours; project-based work; shift work);
- How much people work (part-time; job sharing or job splitting; unpaid leave);

Having a flexible working policy to:

- Encourage flexible working where appropriate and reasonable;
- Give every individual the opportunity regardless of circumstances to request and be considered for flexible working arrangements and for a decision to be reached and communicated to an employee within 28 days of a flexible working request being made;\*
- Consider requests for flexible working from day one of employment;

Regular review of flexible working arrangements;

- Advertising all jobs with clarity on the possibility of job flexibility from the outset.

(\*) A decision may only be delayed beyond the required 28 days when the necessary arrangements (e.g. recruiting new staff) cannot be put in place to allow a positive decision to be made within this timeframe. The decision will only be delayed with the knowledge and consent of the member of staff, and they will be regularly updated on progress. • Advertising all jobs with clarity on the possibility of job flexibility from the outset

The Consultation Workshop was attended by c.25 Charter Supporters and Members as well as key Charter partners and employment lawyers. Participants were invited to the workshop to provide a diverse mix of organisational scale and sectors, with representatives from the private, third and public sectors in attendance.

## **The Consultation Workshop and Feedback**

The full slide deck utilised to facilitate discussion and consultation feedback can be found at the Appendix at the end of this report. The full consultation document can be found at:

[Acas consultation on the draft Code of Practice on handling requests for flexible working | Acas](#)

The Consultation closes: 11:59pm on 6 September 2023.

The Consultation Document sets out 11 questions on different aspects of the Code of Practice. In the workshop, working in groups attendees were asked to consider each question, discuss within their group/table and then record their views on a single flipchart with voting dots and post-it note comments. These could represent individual or consensus views from each group.

The 11 questions considered were:

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?
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?
3. Do you think that it is helpful to include a definition of 'flexible working' within the Foreword to the Code?
4. Should the Code provide guidance on 'consulting' with employees about a request?
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?
6. Should the Code include a section on the protection from detriment and dismissal?
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?
8. What is your opinion on the Code recommending the same categories of companion as those that are allowed in discipline and grievance meetings?
9. Should the Code recommend that employers provide any additional information as is reasonable to help explain why a request has been rejected?
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?
11. Should the Code include a section about the right to request a predictable work pattern if that right is introduced?

## Workshop Response - Question 1

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?*

**100%** of those attending agreed Acas should also reconsider the overall good practice principles in the Code.

The comments collected on why participants believed this was the right thing to do is set out below in a word cloud:



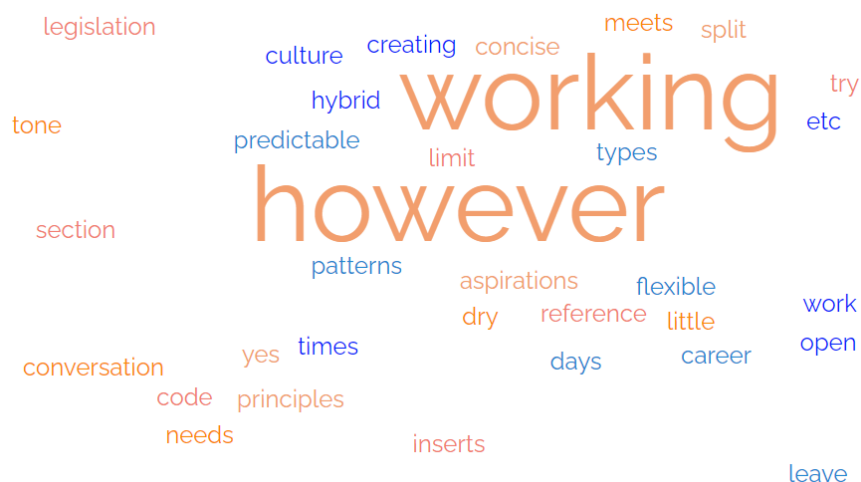
Key elements of commentary suggested this approach would provide consistency, clarity and understanding of the objectives and purpose of the code. It was also suggested that the 'right to switch off' be considered as part of the wider principles.

included the idea that the discussion around flexible work should be held prior to 'day-one'

## Workshop Response - Question 2

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?*

**100%** of those attending agreed that foreword struck the right tone. Word cloud below:

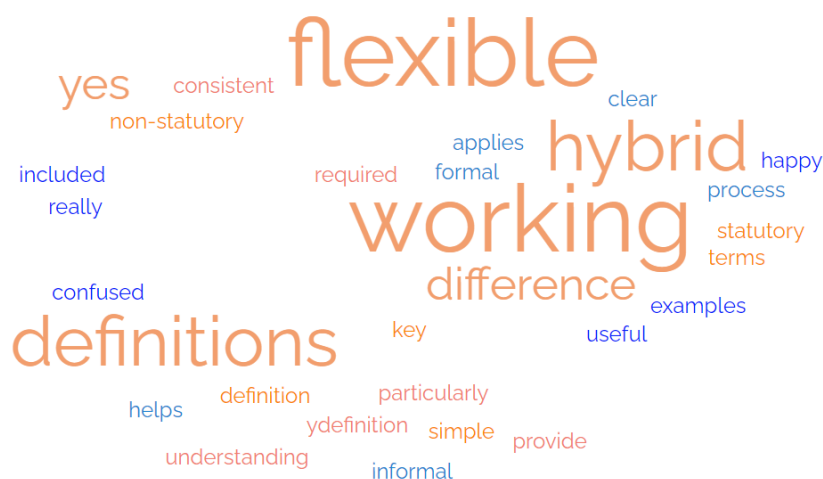


Some discussion focused on whether the tone should be lightened a little with less reference to legislation. However overall, it was felt that it set a constructive tone.

### Workshop Response - Question 3

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

Once again there was little debate in the consultation workshop on this question with **100%** of those attending agreed that it would be helpful to include a definition of 'flexible working'. **100%** of respondents also believed that both a definition of a statutory flexible working request and a broader definition of flexible working should be included. Word cloud of comments:

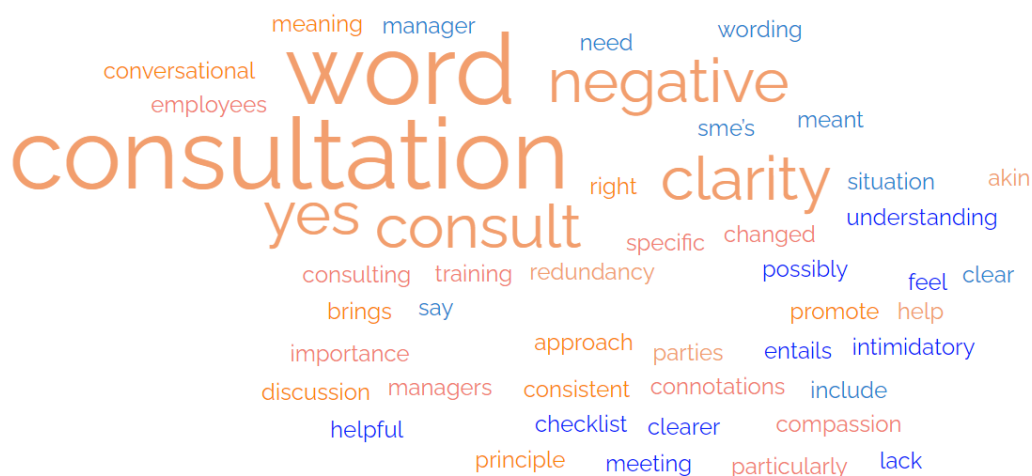


Key in terms of the comments made was the need to clarify the definitions between hybrid and flexible working.

## Workshop Response - Question 4

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

**100%** of those attending agreed that the Code of practice should provide guidance on consulting with employees.



Specific comments included the need to be clear on what is meant by ‘consultation’ in this situation as it was felt the wording can feel intimidating. It was suggested that to make it clearer it could be referred to as a ‘meeting’ rather than a ‘consultation’. It was also suggested that a checklist would be helpful to help promote clarity and a consistent approach.

## Workshop Response - Question 5

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?*

This question split opinion with **93%** suggesting that the meeting would be a good idea and **7%** having reservations.

The reasoning wordcloud for the 93% is below:



This reflects a focus on the health and wellbeing benefits of employer/employee engagement.

On the comments against the suggestion comments included:

- *‘the proposed Guidance makes the process overly formal and burdensome.’*
- *‘Should only be optional and follow up encouraged in usual 1-2-1 meeting – closes the loop.’*
- *‘Employers should be encouraged – in favour of offering but not making this mandatory – might be a waste of time for a full acceptance.’*

## Workshop Response - Question 6

6. *Protection from detriment and dismissal – Should the code include a section on the protection from detriment and dismissal?*

Once again this question split opinion with **82%** suggesting that the code should include the proposed section, **6%** saying it should be included and **12%** returning 'Don'y Know' responses. The reasoning wordcloud for the 82% is below:



On the comments against the suggestion comments included:

*'If it is lawfully declined & appealed, I'm not sure this is necessary. For unfavourable treatment of part-timers, legislation is already in place. Does this make someone with a Flexible Working Request a protected characteristic? How would Tribunals view dismissal (unrelated) after a request. I think this overcomplicates it.'*

Comments uncertain about the suggestion included:

*'I understand the positives – acts as a reminder of wider legislation – e.g., discrimination by association if someone's request is to care reasons, but on the flip side it could put managers off from supporting the request.'*

## **Workshop Response - Question 7**

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	Disadvantages
<ul style="list-style-type: none"><li>• Supports employees that may be emotional, inexperienced etc.</li><li>• Support for employee, provides a range of views/ideas and additional understanding. Good practice</li><li>• Supportive for employees – as particularly managers don't always understand the reasons for flexible working.</li><li>• Brings consistency – good representation developed trust and stronger relationships.</li><li>• Support the consistency in companion rights.</li><li>• Will assist in understanding the effect of the request.</li><li>• Advantage as it could offer contact with unions /workforce – help with an inclusive culture.</li></ul>	<ul style="list-style-type: none"><li>• Adds formality.</li><li>• By-product – indirect costs of union and business costs</li><li>• As a smaller business this would prove difficult as a line manager with no TU reps and I wouldn't want the individual to choose a colleague.</li><li>• Could depend on the rep &amp; negative impacts on timeline.</li><li>• In practice – does its risk making it a more legal process.</li></ul>

## **Workshop Response - Question 8**

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

There was little debate in the consultation workshop on this question with **100%** of those attending agreeing that it would be helpful to use the same categories as allowed in D&G meetings. Comments included:

- I agree that the meetings be treated as flexible working hearings.
- Trade Unions bring added understanding.
- What is 'reasonable'? – Same as disciplinary/grievance in every way? – needs detailed guidance
- Should be the same to ensure consistency – keep it simple.
- Trade union reps can be valuable in these meetings – they are able to have conversations with their members that managers can't.
- Should be the same for consistency and transparency.
- Trade Union reps are experience and help reach agreement – brings the policy in line with D&G

## Workshop Response - Question 9

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

Once again there was consensus with **100%** of those attending in agreement that reasonable additional information be provided.

The wordcloud of reasoning is below:



Essentially, it was felt that providing additional information would lead to better clarity of reasoning and consistency.

## Workshop Response - Question 10

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?

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>• Whilst the appeal should be an unbiased person, they may not know the needs of the role/dept. must have more definitions.</li> <li>• Avoids breakdown of relationship with employee &amp; manager</li> <li>• Another manager is impartial -offers more accountability.</li> <li>• Employee will not view the process as a done deal.</li> <li>• Consistent with other codes</li> <li>• Include definition of 'large' employer – including national or local geography</li> <li>• Need guidance for managers.</li> <li>• Approving one request doesn't mean you are opening the floodgates for everyone else.</li> <li>• Promotes the accountability of the decision maker.</li> <li>• Consistent /standard approach need to be developed.</li> <li>• The Code needs to be clearer on what an appeal is.</li> </ul>	<ul style="list-style-type: none"> <li>• Would they understand the dynamics and workload to be able to make the decision?</li> <li>• Manager may not understand the day-to-day workings.</li> <li>• Resourcing issues – need to define larger orgs.</li> <li>• Could create issues between the employee and original manager.</li> </ul>

## **Workshop Response - Question 11**

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

Given the time available for the workshop, unfortunately, this question did not receive the same level of discussion and consideration as others. A couple of responses are set out below:

**Yes** – encompass it all is one to streamline and simplify the policy.

**Don't Know** – not clear enough at present to include – will confuse more than help.

### **Additional Comments and Questions Included:**

- Should requests relating to disability be considered separately – specific guidance?
- There is a need to make employees fully aware that they are not able to revert to the old ways of working.
- Include a section of trial periods.
- Sector specific guidance – covering predictable 'busy' periods.

**Attendees:****ACAS Flexible Work CoP Consultation - 1st Aug 2023**

<b>NAME</b>	<b>Organisation</b>	<b>NOTES</b>
Adam Haines	Aaron & Partners	Lawyer
Lee Jefcott	Brabners	Lawyer
Dianne Geary	Trafford Council	Public Sector
Liz Knox	Howorth Air tech	Private Sector
Jennifer Yeung	Great Places Housing	Third Sector
Kate Hulley	Belmont Packaging	Private Sector
Craig Carney	Seddon Construction	Private Sector
Louise Brown	Wigan & Leigh College	Public Sector
Emma Griffiths	Growth Company	Third Sector
Mike Wild	Macc	Third Sector
Jonathan Walton	Dakota Hotels	Private Sector
Sandra Hamilton-Green	Dakota Hotels	Private Sector
Nigel Cousin	EY	Private Sector
Helen Porter	Datesand	Private Sector
Raj Jones	Sodexo	Private Sector
Jayne King	Bolton Council	Public Sector
Hannah Barlow	Dunsters Farm	Private Sector
Jackie Pratt	GMICB (NHS)	Public Sector
Clare Rutherford	Bruntwood	Private Sector
Kim Stevenson	Nursery in the Park	Private Sector
Terry Duffy	Facilitator	ACAS
Simone Cheng	Facilitator	ACAS
Ian MacArthur	Facilitator	GMGEC
Carol Halford	Facilitator	GMGEC
Sharon McDonell	Facilitator	GMGEC
Alexia Rhodes	Facilitator	GMGEC
Jenny Bagchi	Facilitator	GMGEC

## APPENDIX – ACAS Introductory slides:



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**Background to the draft  
Acas Code of Practice  
on handling requests for  
flexible working**

**1 Aug 2023**

Terry Duffy, Strategic Lead–  
Growth Partnerships

Simone Cheng,  
Senior Policy Adviser

### Timeline - Updating Acas Code of Practice



20 July 2023	Royal Assent
12 July to 6 Sept 2023	Public consultation (8 weeks)
Sept to Nov 2023	Analysis of responses Acas Council input gathered
Nov 2023	Submit final Code to DBT
Nov to March 2024	Completion of parliamentary stages by DBT
April 2024 (TBC – planned date)	Publication/Code comes into effect

### Timeline - Making flexible working the default



2019	Conservative Party manifesto pledges to "encourage flexible working and consult on making it the default unless employers have good reasons not to." Queen's Speech confirms as key measure of new Employment Bill
2021	DBT launches <a href="#">consultation on 'Making flexible working the default'</a>
2022	Labour MP Yasmin Qureshi introduces Private Member's Bill - <a href="#">Employment Relations (Flexible Working) Bill</a> <a href="#">DBT consultation outcome</a> confirms: <ul style="list-style-type: none"><li>• day 1 right to request (from current 26-week qualifying period)</li><li>• requirement to consult employees, as a means of exploring the available options, before rejecting a request</li><li>• 2 requests in any 12-month period (from current 1)</li><li>• response within 2 months (from current 3)</li><li>• removal of requirement on employee to explain effects of request</li></ul>
2023	Bill receives Royal Assent 20 July 2023
2024	Legislation comes into force

- **A new Foreword** – helping frame the tone for the main body of the Code
  - Affirms the benefits that flexible working can bring
  - Encourages implementation of flexible working where possible
  - Encourages employers to consider flexibility when designing and advertising jobs
  - Emphasis on fostering an environment in which requests are not rejected by default without consideration and meaningful dialogue
- **Updates to reflect legislative changes**
  - Highlights new requirement to consult an employee before employers may reject a request
  - Provides clarity on what 'consultation' should involve
  - Encourages consultation even where employer is intending to accept a request

- **Strengthening and expansion of good practice principles**
  - Accompaniment at meetings- extending the categories of companion
  - Transparency in decisionmaking – communicating clear reasons for a rejection
  - Appeals– encourages proactively offering appeals against decisions to reject
- **Interaction with the right to request a predictable work pattern**
  - To be included should this right come into force at the same time
  - How requests for the two rights are counted
  - Signpost to separate Acas Code on predictable work requests