An Introduction to The Right to Request Flexible Working

Autumn 2026

1. Introduction

1.1 The evolution of the right to request flexible working:

a) The statutory right to request flexible working originally came into force on 6 April 2003 and was fairly restricted: amongst other qualifying criteria, an employee could only make such a request in order to care for either a child up to a certain age or an adult with particular needs. The employee and the employer also had to adhere to a prescriptive statutory procedure for making and considering the request, with specified time limits within which meetings had to take place and the outcome of those meetings be notified to the employee.

b) As from June 2014 a revised scheme for requesting flexible working was implemented which was available to all employees with at least 26 weeks' continuous employment and which allowed requests for flexible working to be made for any reason, rather than being limited to caring needs. Under the revised 2014 scheme:

- The procedure to be followed was far less prescriptive than before;
- The employer had to deal with the request in a reasonable manner and had three months in which to decide whether to grant it or not (which period could be extended by agreement);
- The employer could only refuse a request for one (or more) of eight potential reasons set out in the legislation;
- Only one request could be made in any 12 month period; and
- The employee had the right to complain to an Employment Tribunal if the employer committed one or more breaches of the procedure.

c) Significant changes were made to the right to request flexible working as from 6 April 2024:

- Employees now have a “day one” right to make a request for flexible working, rather than having to wait until they’ve accrued at least 26 weeks continuous employment;

- The employer has a two-month decision period (which can be extended by agreement) within which to decide whether to grant the request and notify the employee of the decision, rather than the previous three months;

- The employee can now make two formal requests for flexible working in any 12-month period, as compared with the previous limit of one formal request per 12 months; and

- Where an employer cannot accommodate the employee's original request for flexible working, it's under an obligation to consult with the employee in an attempt to reach a suitable compromise.

d) However, various aspects of the statutory right to request procedure remain unchanged since 6 April:

- The employer must still deal with the request in a reasonable manner;
- The same eight potential reasons for rejecting a request remain available to the employer; and
- The employee retains the right to complain to an Employment Tribunal in the event of the employer committing one or more breaches of the procedure.

e) This guidance note explains the right to request flexible working scheme which has been in operation since 6 April 2024 and is up to date as at **mid-August 2026**. It also explains the proposed changes to the right to request flexible working under the Employment Rights Act 2025, which changes are scheduled to be implemented during 2027.

1.2 **Statutory provisions**:

The statutory scheme covering the right to request flexible working is set out in Part VIIIA of the Employment Rights Act 1996 ('ERA') (as amended), together with the Flexible Working Regulations 2014 (the Flexible Working Regulations) (as amended).

1.3 **Acas statutory Code of Practice**:

a) Since 6 April 2024, the revised right to request flexible working scheme has been supported by an Acas statutory Code of Practice: 'Code of Practice on requests for flexible working' (the Code of Practice). The Code of Practice provides guidance for employers and employees on their legal rights, responsibilities and good practice in making and handling statutory requests for flexible working. When deciding complaints brought with respect to the statutory scheme, Employment Tribunals must take the Code of Practice into account where relevant. This note includes guidance from the Code of Practice.

b) The Foreword to the Code of Practice (which doesn't form part of the statutory Code itself) comments that not every type of flexible working will be suitable for every role and every organisation and it suggests that the starting position should be to consider what may be possible. It also suggests that:

- To support early and constructive conversations with existing and prospective employees, where possible and appropriate, employers should build flexibility into job roles when designing jobs and should advertise during recruitment that they are open to discussing flexible working options;

- Business leaders and line managers play an important role in creating a positive culture around flexible working in their organisations. Managers should be trained to handle requests fairly and reasonably and to comply with their additional duties under the Equality Act 2010;

- Meetings about requests should be approached with an open mind. This includes jointly exploring alternatives where the original request cannot be accepted;

- Allowing an employee to be accompanied at a meeting to discuss a request can give employees confidence to make requests and can support both parties to find a mutually agreeable solution; and

- Where a request is rejected, clear communication about the reasoning, and impartial handling of any appeal, can help establish understanding and trust that the request has been handled reasonably.

1.4 **Acas non-statutory guidance**:

In addition to the Acas Code of Practice, the statutory right to request flexible working scheme is also supported by the following Acas resources (which are also cross-referred to throughout this guidance note where relevant):

- A flexible working website page which includes its guidance: 'Statutory flexible working requests – what flexible working is'; and

- 'The right to request flexible working: an Acas guide (June 2014)' (the Archived Acas Guide). This guide was archived in 2018 but it contained greater detail than the current Acas guidance and so, where the law remains unchanged from the 2014 scheme, reference is made to it where appropriate.

1.5 It's important for employees to understand that the statutory right to request flexible working does not create a right to work flexibly or part-time; instead, it provides a framework through which a request to work flexibly must be considered.

2. Who can make a request for flexible working?

2.1 There are certain limitations on who can make a statutory request for flexible working:

- A statutory request can only be made by an employee (section 80F(1), ERA 1996);
- Only two formal requests under the statutory scheme may be made in any 12-month period. In this regard:
  - Once an employee has made an application to their employer then they will not be able to make a further application while the first is still proceeding) (section 80F(4), ERA 1996);
  - There is nothing to stop an employee making unformal requests for flexible working in addition to any formal requests;
- Requests cannot be made by agency workers, with the exception of those returning to work from a period of parental leave (section 80F(8), ERA 1996). (In addition, members of the armed forces are excluded, albeit that they do have limited rights to request flexible working under different legislation (as explained below)).

Each of these criteria are considered below.

2.2 **A request can only be made by an employee**:

Only employees can make a request for flexible working under the statutory scheme (section 80F(1), ERA 1996):

- Subject to meeting the other criteria, the right applies to fixed-term employees and those employees who already work under a flexible work pattern;
- The right does not apply to self-employed contractors, consultants or agency workers.

2.3 **Limits on requests under the statutory procedure**:

a) An employee who wishes to make a request for flexible working under the statutory procedure:

- May make two applications to the same employer during any period of 12 months;
- Will not, however, once they have made an application to their employer, be able to make a further application to the same employer while the first application is proceeding*

  (Section 80F(4), ERA 1996).

b) For these purposes:

- An application will be “proceeding” during any of the following periods:
  - the period beginning when the application is made, and ending when the application is concluded;
  - any period beginning when an appeal against a decision to refuse the application is brought, and ending when the appeal is concluded;
  - any period beginning when, in accordance with section 80G(1C)(b), the decision period for an application or appeal is extended with retrospective effect, and ending when the application or appeal is concluded.

    (Section 80F(4A), ERA 1996)

- An application or appeal will be “concluded” when any of the following events occur:
  - a decision is made by the employer about the application or appeal under section 80G;
  - the application or appeal is withdrawn;
  - an outcome is mutually agreed; or
  - the statutory two-month period for deciding the application ends ends without a decision being reached, the request being withdrawal or an outcome agreed.

    (Section 80F(4B), ERA 1996).

*(Paragraph 7 of the Code of Practice explains that an application for flexible working continues to be live during any appeal or any extension to the statutory two-month decision period that an employer and employee may have agreed).

c) A flexible working application is taken as being made on the day that it’s received (and various timelines apply depending on how the request is submitted (e.g. in person, by email or by post).

d) As mentioned above, and regardless of the number of requests permitted by the statutory scheme, there is nothing to prevent an employee from making additional informal requests and a refusal of such a request without appropriate consideration by the employer could give rise to claims separate from the statutory flexible working scheme, e.g. a claim for discrimination.

2.4 **People who are excluded from the right to request flexible working**:

a) Agency workers:

Agency workers are specifically excluded from the statutory right to request flexible working, with the exception of those returning to work from a period of parental leave under regulations under section 76 of ERA 1996 (section 80F(8), ERA 1996).

b) Armed forces:

The statutory right to request flexible working scheme does not apply to members of the armed forces although separate legislation, namely The Armed Forces (Flexible Working) Act 2018, does enable regular members of the armed forces to request to work part-time for a temporary period and to temporarily limit "geographical separation" from their home base.

3. What kind of change can be applied for?

3.1 An eligible employee may request a change to their employment terms if the change relates to:

- their hours of work;
- the times when they are required to work; and/or
- a change to their place of work (as between their home and any of the employer's workplaces) (Section 80F(1), ERA 1996).

3.2 These three categories enable a wide range of possible work patterns and the scope of the legislation effectively includes applications for part-time working, full-time working (if currently part-time), annualised hours, compressed hours, flexi-time, home working, hybrid working, job-sharing, shift-working, staggered hours and term-time working: there are very few limits as to what the employee could request by way of variation.

3.3 Requesting temporary changes:

Whilst the right to request flexible working is generally viewed as a right to request a permanent change to an employee's terms and conditions, there is no prohibition on an employee requesting a temporary change although, in making such a request, they will need to state the duration of the desired change. The archived Acas guidance also suggests that where the employee is looking for an informal change for a short period, e.g. to cope with a bereavement or to pursue a short course of study, the employer may wish to consider agreeing that they may revert back to their previous terms at the end of a fixed period or after a specified event.

4. The right to request procedure:

Over time the Government has sought to make the statutory procedure for making flexible working requests less prescriptive and this trend has continued with the changes which were brought in on 6 April 2024.

4.1 How does an employee make a request?

a) An employee's request must be in writing and state that it is a statutory request for flexible working. It must include:

- The date of the request (so that the two-month consideration period can be calculated);
- The change that the employee is seeking and when they wish the change to take effect; and
- A statement about whether the employee has previously made a flexible working request and, if so, when.

(Section 80F(2), ERA 1996 and regulation 4, Flexible Working Regulations).

b) The Code of Practice (paragraph 5) recommends that employers should make clear to their employees the information that must be included in any statutory request for flexible working.

c) Beyond the statutory requirements, it's likely to assist the employee if they provide as much information as possible about the change being sought, the circumstances that have led to their request and how they believe that the changes being sought can be accommodated. This will facilitate the employer giving proper consideration to the request and, if it is unable to accommodate the request in full, the employer may be able to identify a suitable alternative solution.

d) Similarly, where an employee knows that they are making a request that relates to protection under the Equality Act 2010, e.g. because the desired change would amount to a disability-related reasonable adjustment, it will be helpful for them to state this. Given the possibility that an employee may not understand when the Equality Act applies to their request, it may be helpful for the employer to cross-refer to its Diversity, Equity and Inclusion policy or make specific reference to childcare, religious requirements or adjustments required for a disability, in its flexible working policy.

4.2 **How should an employer deal with a request?**

a) An employer who receives a flexible working request under the statutory scheme must:

- Deal with it in a reasonable manner;
- Consult with the employee before refusing the request;
- Notify the employee of its decision (including any appeal outcome) within the two-month decision period - which may be extended by agreement; and

- Only refuse a request on one or more of certain prescribed grounds, namely:
  - the burden of additional costs;
  - the detrimental effect on ability to meet customer demand;
  - an inability to reorganise work among existing staff;

- an inability to recruit additional staff;
- a detrimental impact on quality;
- a detrimental impact on performance;
- insufficiency of work during the periods the employee proposes to work; or
- planned structural changes to the employer's business.

(Section 80G(1), ERA 1996)

Each of these elements is explained below and please see **Appendix 1** for a flowchart which summarises the procedure.

b) The Code of Practice (paragraph 10) comments that in handling a request, and any information that the employee discloses as part of that request, employers must not discriminate unlawfully against the employee in relation to any of the protected characteristics set out in the Equality Act 2010. Paragraph 11 pf the Code of Practice further comments that if an employee seeks a reasonable adjustment for their disability through a request for flexible working, the employer must consider this in line with its legal obligations under the Equality Act 2010. The legal obligation to make reasonable adjustments is separate to the legal obligation to consider a request for flexible working.

c) Deal with requests in a reasonable manner:

i) There is no statutory definition of what it is to deal with a request in a reasonable manner. The Code of Practice suggests (at paragraph 8) that it "should include carefully assessing the effect of the requested change for both the employer and the employee, such as the potential benefits or other impacts of accepting or rejecting it".

ii) The Code of Practice goes on to make recommendations as to how an employer should deal with an employee's request. Following these would demonstrate reasonableness on the employer's part. In summary:

- Where the employer cannot accept the employee's written request in full then it must consult with the employee before making its decision. The employer should organise a timely consultation meeting, preferably attended in person or remotely by video conference call;

- The employer should allow the employee to be accompanied at a consultation meeting;

- The content of a consultation meeting, and the manner in which it is conducted, should enable a reasonable discussion and consideration of the employee's request. This includes considering the use of trial periods in appropriate circumstances;

- The decision reached after a consultation meeting should be confirmed in writing without unreasonable delay;

- The refusal of a request should clearly explain the business reason(s) together with any additional information which is reasonable to help explain the decision;

- The employer should allow the employee to appeal against the refusal of a request and to be accompanied at an appeal meeting; and

- The decision reached after an appeal meeting should be confirmed in writing without unreasonable delay.

Each of these elements is considered below.

d) Consult with the employee before refusing a request:

i) Unless the employer decides to agree to the employee's written request in full, the employer must consult the employee before deciding whether to refuse their request. The Code of Practice suggests (at paragraphs 12 & 13) that the employer should invite the employee to a consultation meeting to discuss the request and that a consultation meeting can help ensure that all the relevant information is understood before a decision is made (and, where appropriate, clarification can be sought as to whether a request concerns a reasonable adjustment for a disability). The employee should be allowed to be accompanied at the consultation meeting.

ii) The employer should give the employee advance notice of the time and place of the consultation meeting which should:

- Be held without unreasonable delay, subject to both parties having reasonable time to prepare for the discussion while taking account of the two-month period for deciding a request, including any appeal;

- Be held privately, either in person or remotely via online video conferencing or, where neither of those are possible, via telephone call;

- Be conducted by a person with sufficient authority to make a decision.

(Paragraphs 14, 15 and 18 of the Code of Practice)

iii) The employer's arrangements for a consultation meeting should provide a reasonable opportunity for the employee to attend. If the employee, without good reason, fails to attend both the first consultation meeting arranged by the employer and also a further re-arranged consultation meeting then the employer will be entitled to treat the request as having been withdrawn. If the employer does consider the request withdrawn then it must inform the employee of this in writing (section 80G(1D), ERA 1996 and paragraphs 34 to 36 Code of Practice).

[Section 9(5) of the Employment Rights Act 2025 will provide that regulations may set out the steps that an employer must follow to comply with the requirement to consult with the employee before refusing a request for flexible working. In a consultation which was published on 5 February 2026, the Government sought views on a proposed "light touch" process that employers will be required to follow when they are unable to accept a statutory flexible working request].

iv) *Allow the employee to be accompanied*: the Code of Practice (paragraphs 31 to 33) suggests that, while there is no statutory right of accompaniment at meetings to discuss a request for flexible working:

- Allowing an employee to be accompanied is good practice (which can give employees confidence to make requests and support the parties in finding a mutually agreeable solution);
- The employer should inform the employee prior to the meeting that they may request a companion;
- Where an employee makes a reasonable request to be accompanied at any meeting, the employer should allow them to be accompanied by a fellow worker, a trade union representative, or an official employed by a trade union; and
- What is a reasonable request will depend on the circumstances of each individual case. A request to be accompanied does not have to be made in writing or within a certain timeframe. An employee should consider how to make their request clear, for example, by providing the name of their companion and advising the employer whether they are a fellow worker or trade union official or representative. An employee should also provide enough time for the employer to deal with the companion's attendance.

The Acas guidance, 'Statutory flexible working requests', suggests that in some circumstances it might be reasonable for the employee to ask to bring someone else, e.g. where a disabled employee is asking for flexible working, an employer could allow a support worker, or someone with knowledge of the employee's disability, to attend as a companion.
The Archived Acas Guide suggested that the employee should be told that they can be accompanied sufficiently in advance of a meeting to enable them to arrange the attendance of their companion. It also suggested that allowing employees to be accompanied may assist employers in considering applications by certain employees, e.g. where English is not their first language, where being accompanied may be a reasonable adjustment for a disabled employee or for employees who lack confidence.

v) *Discussion at the consultation meeting*: the Code of Practice (paragraphs 16 & 17) recommends that the content of a consultation meeting, and the way in which it is conducted, should enable a reasonable discussion and consideration of the employee's request, explaining that it will usually be helpful to discuss the potential benefits or other impacts of accepting or rejecting the request,

and any practical considerations involved in implementing the request. If the original request cannot be accepted in full then the employer and employee should discuss whether it is possible to secure some of the benefits sought by the original request, e.g. whether:

- Any potential modifications to the original request, or any alternative flexible working options, are available and suitable for both parties; and/or
- Whether a trial period may be appropriate to assess the feasibility of an arrangement.

A written record of the meeting, which provides an accurate reflection of the discussion, should be kept (paragraph 19 Code of Practice). In discussing the employee's request, the employer should ensure that the employee is fully aware of the impact of the change on their terms of employment, in particular if the change might result in a reduction in salary, bonus or pension entitlement. If the changes would have an impact on the employee's benefits (such as their pension) then it may be appropriate to suggest that the employee seeks advice on the impact of the changes from the appropriate benefit provider.

e) Notify the employee of its decision (including any appeal outcome) within the two-month decision period:

i) The Code of Practice (paragraph 20) suggests that, once the employer has made a decision about the request, it should confirm the decision in writing without unreasonable delay, taking into account the statutory two-month period for deciding requests - including any appeal.

ii) *Outcome of the consultation meeting*: as a result of the consultation meeting, the employer will do one of the following:

- Accept the employee's original request;
- Propose a trial period of the employee's request, following which the employer may accept the employee's request, refuse the request for one of the permitted reasons or propose an alternative as the result of the experience of the trial period and further discussion with the employee;
- Reject the request because the employee was not eligible to make it or refuse it for one or more of the applicable business reasons without making any alternative proposal; or
- Refuse the employee's original request for one of the permitted reasons but, in light of discussion between the parties, confirm an alternative proposal, possibly subject to a trial period.

iii) *The decision period*: the employer must notify the employee of the decision, including the decision on any appeal, within the decision period (section 80G(1)(aa) and 80G(1A), ERA 1996). The decision period is either of the following:

- Two months beginning with the date on which the employee's request is made*; or
- Such longer period as the parties may agree (Section 80G(1B), ERA 1996).

*(An employee's request is taken to be made on the day on which it is received).

An agreement to extend the decision period in any particular case may be made either:

- Before the original decision period ends; or
- With retrospective effect, within the three months beginning with the day after that on which the original decision period came to an end (Section 80G(1C), ERA 1996).

Whilst there is no legal requirement for the extension agreement to be recorded in writing, the Code of Practice recommends this (at paragraph 37) and it would be good practice to do so. Furthermore, an extension of the decision period needs to be addressed directly and agreed by the parties: it won't be implied by a Court because, for example, the parties arranged an appeal hearing to take place after the end of the decision period (but without addressing the extension of the decision period itself). Specific agreement to the period of the extension is needed to avoid confusion.

iv) *Trial periods*: the statutory scheme for flexible working requests does not provide for, or regulate, trial periods, although there appears to be nothing to prevent the parties agreeing to one.

The Code of Practice (paragraph 17) suggests that, where an employee's request cannot be accepted in full, the employer and employee should discuss whether it is possible to secure some of the benefits sought whether by way of modification of the request, or by any alternative flexible working options. A trial period may be appropriate to assess the feasibility of an arrangement. The Archived Acas Guide suggested that an employer might want to use a trial period, rather than refusing a request, where it was unsure whether the requested arrangements were sustainable in its business or was uncertain about the possible impact on other employees' requests for flexible working. It would be good practice to set review points when the parties could discuss how the new arrangements were working and consider any necessary adjustments.

An employee cannot insist on a trial under the statutory provisions, although in appropriate cases they may be able to argue that an employer should have offered a trial period as part of dealing reasonably with their request. The length of any trial period should be no longer than required to make a reasonable assessment of the proposed new flexible working arrangements.

It would be sensible for the parties to agree an extension to the decision period where, taking account of the trial period and the possibility of an appeal if the employer considers the trial to have been unsuccessful, more than two months will be required for the employer to notify a final decision to the employee.

f) Accepting the request:

i) If the employer accepts the employee's flexible working request then the new work pattern will be a contractual variation to the employee's employment and will be permanent, unless otherwise agreed. Thus once the new working pattern has been agreed, any further change (including a change back to the original working pattern) will be a contractual variation and will require agreement. Any unilateral change to the contractual terms imposed by the employer will be a breach of contract (in the absence of a contractual power for the employer to do so). In addition, if the employee has moved to a part-time working arrangement then the employer will need to consider the additional statutory protection against less favourable treatment of part-time employees.

ii) The employer is obliged to issue a "section 4 statement": a written statement of changes to the employee's terms and conditions that have been provided in accordance with section 1, within one month of the changes taking effect (section 4, ERA 1996). Beyond the legal requirement to provide a section 4 statement, it's good practice for the employer to either issue a new contract setting out the terms as finally agreed or at least to produce a letter setting out the terms and expressly amending the contract accordingly with effect from a stated date. The Code of Practice suggests that:

- The employer should confirm the details of the agreed arrangement in writing without unreasonable delay, taking into account the statutory two-month period for deciding requests including any appeal (paragraph 21);
- The written decision should offer the employee an opportunity for a discussion to clarify any further information that may be helpful in implementing the agreed arrangement. This might include, for example, agreeing dates to review how the arrangement is working (paragraph 22); and
- The employer and employee may mutually agree that such a discussion is not necessary but, if one takes place, an accurate written record of the discussion should be retained (paragraph 23).

iii) It would be good practice for the employer to review the new working pattern with the employee to ensure that it is working as expected and meeting the needs and expectations of both parties. It's possible that practical issues will arise in the initial period when the new work pattern is put into practice and it therefore may be sensible to test the new working pattern using a trial period before a final decision is made.

g) Rejecting or refusing a request on one or more of the prescribed grounds:

i) A request may only be refused on either eligibility grounds or for one or more of the prescribed statutory reasons, as explained below.

ii) *Rejection of application on eligibility grounds*:

In principle, the request may be refused if either the employee is not eligible or else the employee fails to comply with the technical elements of procedure. However, even if the employee fails to meet the eligibility criteria, or else has made a technical error when making the request, it would still be advisable for the employer to properly consider the request and, where relevant, reject it on one or more of the statutory grounds (please see below) after giving the request serious consideration, rather than simply rejecting the application. This approach should help guard against both the employer making a mistake about the lack of eligibility and also the risk that the employee may have alternative statutory protection (e.g. under discrimination law). In any event, if the request is technically flawed then the employer should consider explaining this to the employee and suggesting that they re-submit a valid request. (The limit on making two requests within a 12-month period will not apply where a request is technically invalid).

iii) *Refusing a request for a prescribed reason*:

The legislation recognises that an employer may have entirely legitimate business reasons why it cannot accommodate a flexible working request. There are eight specific grounds for rejecting a request (which have remained the same since the statutory right to request flexible working first came into force on 6 April 2003 and which can be found in section 80G(1)(b), ERA 1996). One or more of these grounds may be relied on as a reason(s) for refusal:

- **The burden of additional costs**: in considering this reason, employers should ensure that they consider the less obvious savings that might be made by a proposed flexible working arrangement, such as a reduction in overheads from homeworking, better coverage of service or increased outputs. The archived Acas Guide gives the following example:

    - Jane and Liam are two managers who apply for a post together as a proposed job-share. Both have the skills and experience needed but want to balance work with outside interests. In line with the organisation's policy of considering all vacancies suitable for flexible working, the employer seriously considers their request. Both Jane and Liam want to work three days a week and while the employer is happy to appoint he is unable to afford the increased payroll costs. The employer discusses alternative working patterns around 2.5 days each with Jane and Liam, but they are not prepared to change their pattern. In the light of this and an inability to compromise, the employer turns down the request for flexible working (page 8, Archived Acas Guide);

- **Detrimental effect on ability to meet customer demand**: an employer might consider using a trial period to assess the impact on the business of a flexible working arrangement. The archived Acas Guide gives the following example:

- A small estate agency receives a request from Raj to work compressed hours. Working four longer days and freeing up Thursdays would allow him to undertake a course of part-time study. The employer is concerned that Raj will not be available to deal with pressing time-dependent issues from his customers concerning sales progress on a Thursday. It fears losing sales and attracting complaints because of Raj's absence and is inclined to refuse the request on the ground of adverse impact on customer demand. However, the employer values Raj and wants to retain him. Raj and the employer agree to extend the two-month period for considering a request under the "right to request" to trial the arrangement for ten weeks (the length of the first of three course modules). It transpires that, rather than complain, some customers report their satisfaction at being able to deal with Raj outside normal office hours on four days of the week. The office secretary has successfully handled routine matters in his absence and in practice Raj has been willing to be contacted by phone about the few urgent issues that arose. After the successful trial the employer agrees to Raj's request for compressed hours to cover the period of the remaining two study modules (page 11, Archived Acas Guide);

- **An inability to reorganise work among existing staff**: an employer should consider the cost of recruiting additional staff against the potential cost of losing the existing member of staff making the request. An employer should also consider talking to the team about any reorganisation of work where this would be appropriate before coming to a decision. The archived Acas Guide gives the following example:

  - Jack is an employee at a charity giving debt advice to the public. He has a full caseload of clients. Jack wants to reduce his hours to pursue his hobby and puts a request to his boss. Jack's employer considers the workload of other staff as well as likely future demand. The employer weighs up whether work can be redistributed, but as Jack has particular language skills that colleagues do not have, sharing his work would be very difficult. The employer considers that agreeing to the request would place unreasonable pressures on other staff and therefore reluctantly turns it down. The process does however make the employer consider what options the charity would have on language skills if Jack decided to leave (page 9, Archived Acas Guide);

- **Inability to recruit additional staff**: again an employer should consider the cost of recruiting additional staff against the potential cost of losing the existing member of staff making the request. The archived Acas Guide gives the following example:

  - Steve works as a bus driver and his shifts include working until 2.00am on Fridays and Saturdays. The rest of the week the shift ends at 10.00pm. Steve asks to work shifts that don't include the 2.00am finish to improve his family life. He is happy to work till 10.00pm. The employer considers the request and explores whether

other colleagues would be happy to do the late shift but they would not. The employer then finds that it is unable to recruit new staff to cover these hours and so therefore turns down Steve's request (page 9, Archived Acas Guide);

- **Detrimental impact on quality**: employers should look carefully at the skills and potential of other employees when considering this reason because, with training, many staff can acquire new skills. The archived Acas Guide gives the following example:

    - A&B Autos is a small garage servicing executive cars. An experienced mechanic wants to reduce her hours and asks under the right to request flexible working. The other mechanics are still quite new and are "learning the trade" and the employer is concerned that the garage will be unable to tackle some of the more difficult repairs to the quality standards demanded by customers. The employer decides therefore to turn the request down but also offers to reconsider the request six months later after a programme of training to up-skill the other mechanics. Subsequently the success of the training programme allows the employer to approve the reconsidered request (page 10, Archived Acas Guide);

- **Detrimental impact on performance**: the performance under consideration here can mean that of the individual, the team or the whole organisation. The archived Acas Guide gives the following example:

    - Julie has been promoted to manage a team of office-based staff where there have been problems of absenteeism, bullying and low performance. She was recruited to rebuild and motivate the team. Julie makes a request to work flexibly from home. The employer considers the request but, at least for the next 12 months, decides that Julie should be visible and sitting with the team to tackle inappropriate behaviour when it occurs and to deal with work issues immediately. The employer considers that Julie working at home would prevent the problems affecting the team being addressed effectively and speedily and so turns the request down (page 12, Archived Acas Guide);

- **Insufficiency of work during the periods the employee proposes to work**: this reason could apply where the availability of work during the suggested periods is inadequate. The archived Acas Guide gives the following example:

    - Colin works in a call centre dealing with US calls. He asks to change his hours to start at 6.00 am every day. The employer looks at the call pattern and decides there is inadequate demand at this time, and that agreeing the request would reduce cover at peak times and so turns the request down (page 12, Archived Acas Guide); and

- **Planned structural changes** (e.g. where an employer intends to reorganise or change its business and considers that the flexible working changes may not fit with these plans). If

the employer has plans to make such changes then it's good practice to share these with the workforce because doing so could help the employer see opportunities through flexible working to make the business more effective. The archived Acas Guide gives the following example:

- Mira is a fast-order cook in a small café. She currently works 8.00 am to 5.00 pm and wants to start later at 10.00 am and finish at 7.00 pm when the café closes. While this seems entirely reasonable for the business, Mira is told that the café will shortly be opening earlier at 6.00 am and closing at 5.00 pm to better match customer demand. The employer therefore turns down the request from Mira (page 13, Archived Acas Guide).

iv) In selecting the ground(s) for refusal the wording of the statute suggests that the test is a subjective one on the part of the employer. If the employer considers that one or more of the grounds applies, then the test is satisfied. The test does not appear to require the employer's decision to be reasonable. It would therefore appear that, assuming one of the eight reasons is given, an employee could only challenge the employer's decision if the employer's view is based on incorrect facts. However, the archived Acas Guidance suggested that the employer's consideration of requests should be objective.

v) There is no statutory requirement to include a "sufficient explanation" as to why a particular ground applies. However, the Code of Practice suggests that when an employer refuses an employee's request, the employer's the written decision should clearly explain the business reason(s) and "set out any additional information which is reasonable to help explain the decision" (paragraph 24). The Acas guidance, 'Statutory flexible working requests', suggests that this information could include:

- The steps the employer took to investigate whether it could accept the request;
- Any practical aspects of the job that prevented the employer accepting the request;
- Any alternative options which the employer considered;
- Any data the employer used to help it make its decision (for example, staffing levels or recruitment costs);
- Any health and safety considerations related to the request.

Previously, the Archived Acas Guide suggested that employers should consider whether an explanation would be both beneficial to the employee and support its decision, particularly in the event that the employee wished to appeal or if the employee challenged the employer's decision by bringing tribunal proceedings, e.g. for sex discrimination.

vi) As explained later, Section 9(3) to (4) of the Employment Rights Act 2025 will:

- Introduce a test of reasonableness so that an employer will only be able to refuse an application on one or more of the prescribed grounds if it is reasonable to do so; and

- Require that notification of the employer's decision will have to set out the ground(s) relied on and explain why the employer considers that it is reasonable to refuse the application on that ground or those grounds.

A consultation published on 5 February 2026, Make Work Pay: improving access to flexible working, confirmed that the new reasonableness test has a different statutory basis to other tests used in employment law. It will be considered against the existing eight business reasons for rejecting a flexible working request.

h) Refusing the request but proposing an alternative:

In some cases, following consultation with the employee and despite being unable to accept the employee's original request, the employer can propose an alternative working pattern. This may be because:

- The parties have been able to agree an alternative working pattern or have agreed one in principle subject to a trial period;

- While consensus was not reached during the consultation meeting, the employer can propose an alternative working pattern for further discussion and, if appropriate, a trial period.

Therefore, in advising the employee of the refusal of their original request and advising the employee of their right to appeal the refusal, the employer can confirm the position that was reached after the consultation.

h) Appeals:

i) The legislation does not expressly require an employer to allow an employee to appeal against the rejection of their flexible working request. However, the Code of Practice suggests (at paragraph 25) that employees should be allowed to do so as a matter of good practice and a right of appeal is likely to be regarded by an Employment Tribunal as an essential part of dealing with a flexible working request in a reasonable manner, as required by section 80G(1) of ERA 1996.

ii) The Acas guidance, 'Statutory flexible working requests', suggests that giving employees the option to appeal is part of a reasonable procedure and that an appeal provides an opportunity for:

- The employee to raise any concerns or share any new information;
- The employer to review and change their decision if necessary; and
- An outcome to be found that suits both the employee and employer.

iii) There are no prescribed grounds of appeal and so an employee can appeal either the decision itself or the application of the reason relied on and may raise any other relevant point at the appeal hearing. The Code of Practice suggests that where an employee wishes to appeal, they should submit written reasons for their appeal (for example, that there is new information they wish to be considered, or they believe the employer has not handled their request in a reasonable manner) (paragraph 26).

iv) On receipt of an appeal, an employer should arrange an appeal meeting without unreasonable delay following similar steps to those for a consultation meeting (paragraph 27 Code of Practice). If possible, the appeal should be heard by someone who was not previously involved in the process (which approach is recommended in paragraph 27 of the Acas Code of Practice on Disciplinary and Grievance Procedures). It is echoed by the Code of Practice which provides that an appeal should be dealt with impartially, the person holding the appeal meeting should have sufficient authority to make a decision and, wherever possible, it should be handled by a manager who has not previously been involved in considering the request (paragraph 28). The Code of Practice also suggests that a written record of the appeal meeting should be kept which provides an accurate reflection of the discussion that has taken place (paragraph 30).

v) As with the initial decision, the outcome of an appeal should be given to the employee in writing, be dated and, where the appeal is refused, state the statutory ground relied on. The Code of Practice (paragraph 29) suggests that the employer "should make clear what has been decided and why" and ensure the decision is provided without unreasonable delay (taking account of the two-month decision period and any extension).

4.3 **Withdrawing requests and treating requests as withdrawn:**

a) An employee can withdraw a request for flexible working at any time after it has been made. They will still be able to make a further request under the statutory scheme within 12 months of the date of their initial request.

b) An employer will be entitled to notify an employee that it has decided to treat the employee's conduct as a withdrawal of the employee's flexible working request where either of the following apply:

- The employee, without good reason, has failed to attend the first and second meetings arranged by the employer to discuss the employee's request;
- The employer has allowed the employee to appeal against the rejection of their request, or to make a further appeal, and the employee, without good reason, fails to attend both the first and second appeal meetings arranged by the employer (section 80G(1D), ERA 1996).

There is no statutory definition of what amounts to a "good reason" and this is not covered by Acas. Employment Tribunals are likely to take a common-sense approach to this issue.

c) The Code of Practice notes that an employer's arrangements for a consultation or an appeal meeting should provide a reasonable opportunity for the employee to attend and that, where this has been done, if the employee fails to attend both the meeting and a rearranged meeting without a good reason, the employer may consider the request withdrawn (paragraph 35).

d) The archived Acas Guide suggests that the employer should find out and consider the reasons for the employee failing to attend both meetings before reaching any decision to close their request. The employer must notify the employee of the decision and should do so in writing..

4.4 **Dealing with several requests at the same time**:

a) An employer may receive requests for flexible working from more than one employee at the same time. In these circumstances, the Acas guidance, 'Statutory flexible working requests', suggests that an employer should handle them fairly by:

- Considering each request in the order they are received;
- Following the same procedure for each request;
- Looking at what is possible, rather than matching previous decisions; and
- Not prioritising requests based on people's personal situations other than when someone is requesting a reasonable adjustment related to their disability.

b) The Acas guidance also suggests that where an employer receives multiple requests for a similar change and is unable to accept all the requests, it should talk to each employee about alternative options and try to find a compromise. Where it is not possible to reach a solution that works for everyone, the employer should consider each request separately, in the order they were received. It gives the following examples:

- An employee requests to change their start and finish times to finish work at 3pm each day. A few days later another employee requests to change their finish time to 3pm to care for their children. If the employer cannot accommodate both requests, it should talk to each employee to try and find a compromise. If a compromise cannot be agreed, the employer should consider the requests in the order it received them. It should not prioritise the second request based on the employee's personal circumstances;

- Two employees make flexible working requests to have Fridays off. The employer can only accommodate one employee being off on Fridays. It should talk to each employee separately to discuss alternative options and try to find a compromise. If a compromise cannot be reached, the employer should consider each request in the order it received them.

c) The archived Acas Guide made the following comments:

- When an employer receives more than one request, it is not required to make value judgments about the most deserving request. It will need to look at each request on its merits in the context of its business;

- Requests should be considered in the order in which they are received. It may be possible to grant all of them. However, before making a decision the employer will need to consider the impact on its business of doing so. The employer will also need to remember, having accepted the first request, to take account of the changes that this will make to the business context when looking at the next request;

- Alternatively, the employer might want to have a discussion with the employees who have made requests to see whether, with some adjustment or compromise by all of them, each can be accommodated. If this does not provide a solution then the employer may want to consider the position of those members of its workforce that already work flexibly and consider whether with some adjustment or compromise on their part (should they be willing to vary their arrangements) everyone can be accommodated;

- Where a compromise is not possible and the employer is unable to distinguish between the requests, it could consider some form of random selection with the agreement of the employees involved. It would be good practice to make this approach known from the outset in the employer's flexible working policy.

d) The overriding requirement is for the employer to deal with a request for flexible working in a reasonable manner. It will be important for the employer to maintain a consistent approach to dealing with individual requests when it receives more than one request at the same time. Where the employer is trying to facilitate several requests, it will need to take account of any particular features of a flexible working request, such as caring obligations or accommodating a disability, that may limit the employee's ability to vary the working arrangements which they have requested.

e) Despite the suggestion that employers need not make value judgments about requests and that they deal with them in the order in which they are received, it is almost inevitable (and prudent) that employers will prioritise requests from employees who may have additional protection, in the form of being able to bring a discrimination claim, if their request is rejected.

5. **Informal requests for flexible working:**

5.1 In practice, many staff make informal approaches to their employer, perhaps via their line manager or HR department, about the possibility of changing their working patterns, either temporarily or permanently. There is nothing to stop any member of staff asking their employer to vary their working pattern.

5.2 This means that employers need to be mindful not only of the statutory right to request flexible working but also requests from those not covered by the scheme. Employers should be consistent

in their assessment of requests, particularly if they receive a number of requests from people in the same team or department.

5.3 Employers would be well advised to adopt a flexible working policy to facilitate a consistent approach, as explained below. Equally, line managers should be supportive and encourage the pursuit of requests in accordance with the employer's procedures: a discouraging attitude could increase the likelihood of an employee making a discrimination claim and reduce the chance of the employer successfully defending such a claim.

6. Flexible working policies:

6.1 Employers are likely to be greatly assisted in avoiding the type of problems which have been described previously if they adopt a flexible working policy which ensures that all requests are treated fairly and consistently. More importantly, from a positive commercial and morale perspective, the adoption of a transparent policy is likely to streamline the request procedure and ensure that managers and staff understand the relevant factors when deciding each request.

6.2 The archived Acas Guide suggests that a flexible working policy should:

a) Explain how employees should make a request, including who the request should be made to and what should be covered by the application;

b) Include a statement to the effect that the employer will consider the request and will only reject it for one of the eight business reasons;

c) State who can accompany the employee at any meeting regarding the request;

d) Explain what arrangements are in place to deal with appeals; and

e) Set out the time limits for dealing with requests.

7. Complaints and remedies:

7.1 Procedural failings by the employer:

a) An employee who has made an application under the statutory procedure may bring a claim on the basis that:

- The employer failed to deal with their application in a reasonable manner;
- The employer refused the request without consulting the employee;
- The employer failed to notify the employee of the decision on their request within the decision period;

- The employer rejected the application for a reason other than one of the eight statutory grounds;
- The employer's decision to reject the application was based on incorrect facts; and/or
- The employer treated the application as withdrawn but neither of the grounds entitling the employer to do so applied. (Section 80H(1), ERA 1996).

b) A claim cannot be brought on the first four of the above grounds until either:

- The employer has notified the employee of the decision on the request; or
- The decision period applicable to the request, including any agreed extension to that period, comes to an end (sections 80H(3) and (3B), ERA 1996).

c) A claim arising out of an employer's treatment of an application as being withdrawn can be brought as soon as a notice to that effect is given to the employee (section 80H(3C), ERA 1996).

d) If an employer allows an employee to appeal a decision to reject an application, the "decision on the application" referred to in section 80H is a reference to the decision on the appeal or, if more than one appeal is allowed, the decision on the final appeal (section 80H(3A), ERA 1996).

7.2 **Approach of the Tribunal**:

a) A tribunal in a claim under section 80H of ERA 1996 cannot question the commercial rationale or business reasons behind an employer's decision to refuse a request. Neither can a tribunal substitute its own decision as to whether the request should or should not have been granted. Instead, the tribunal's role is restricted to:

- Reviewing the procedure followed by the employer;
- Considering whether the request was taken seriously;
- Considering whether the decision was based on correct facts; and
- Considering whether the reason given falls within the permitted grounds stated in section 80G of ERA 1996.

(It's previously been suggested that the statutory right to request flexible working lacks teeth because tribunals can only scrutinise employers' decisions to a limited extent and can only make very low awards of compensation. While redress under the statutory scheme remains limited, this fails to take into account the interrelationship between flexible working requests and other forms of statutory protection, in particular discrimination, as explained below).

b) However, the Tribunal's role is probably broader than may first appear: in *Commotion Ltd v Rutty* [2005], the EAT held that there was not "a shred of evidence that proper enquiry and proper investigation" was carried out when dealing with the request and stated that as an employee is entitled to present a complaint that the decision to reject their application for flexible working was based on incorrect facts, it must follow that the tribunal is entitled to investigate the evidence to see whether the decision was indeed based on incorrect facts…

> "…In doing so, the Tribunal are entitled to enquire into what would have been the effect of granting the application. Could it have been coped with without disruption? What did other staff feel about it? Could they make up the time? and matters of that type…if the tribunal were to look at such matters in order to test whether the assertion made by the employer was factually correct, that would not be any misuse of their powers and they would not be committing an error of law."

c) More recently, in *Wilson v Financial Conduct Authority* [2023], the Employment Tribunal dismissed Miss Wilson's claim that the FCA had rejected her flexible working request on incorrect facts, namely that working entirely from home would have a detrimental impact on quality and performance. Miss Wilson was a senior manager with responsibility for 14 members of staff. She started working from home shortly before the COVID-19 pandemic. Following the end of the pandemic the FCA developed a policy which mandated 40% office attendance. The tribunal found that Miss Wilson's line manager had genuinely considered the merits of the application (unlike management in the *Rutty* case) and that Miss Wilson's role as a senior manager was an important context since, in the tribunal's judgment, that fed into the test of the performance and quality to be expected from a postholder's work. The line manager had taken account of Miss Wilson's strong performance to date and acknowledged that much of her work could be done remotely. However, she considered that working remotely would have a detrimental impact on the quality and performance of work such as welcoming new staff, internal training and supervision, the need for a visible presence in the office to provide structured or informal advice and support to team members as well as in-person attendance at certain meetings and conferences. She had not pursued a "compromise" solution (of 10% or 20% attendance) because Miss Wilson had indicated that was not acceptable.

7.3 **Time limits for claims**:

a) Subject to an extension of time under the rules on early conciliation*, a claim under section 80H of ERA 1996 for breach of the right to request regime by an employer must be presented to a tribunal:

- within three months** of the relevant date, which is the first date on which the employee became entitled to bring a claim; or
- within such further period as the tribunal considers reasonable where it is satisfied that it was not possible to bring a claim in the initial three-month period (section 80H(5), ERA 1996).

*b) Claims under section 80H of ERA 1996 are covered by the rules on Acas early conciliation (EC): no claim can be submitted to a tribunal without an EC certificate confirming that the case was referred to Acas and that the EC process has come to an end. If it was the claimant who first referred the dispute to Acas then there will be an extension of time for submitting a claim. (Time stops running when the claimant contacts Acas, and starts again when the claimant receives an EC certificate. At that point, if the time remaining would be less than a month, it is automatically increased to one month).

**c) The time limits for bringing employment tribunal claims are expected to be increased from three months to six months in October 2026 under changes being implemented by the Employment Rights Act 2025.

7.4 **Remedies**:

Where a tribunal upholds a claim under section 80H of ERA 1996, it must make a declaration to that effect and may make either or both of:

- An order for reconsideration of the request. If it does this then the date of the tribunal's order will be treated as the date of the request;
- An award of compensation to be paid by the employer to the employee, of such amount as the tribunal considers just and equitable, up to the permitted maximum (which is eight weeks' pay, but to which a statutory cap on a week's pay applies)

(Section 80I, ERA 1996).

7.5 **Right not to suffer a detriment**:

a) Section 47E of the Employment Rights Act 1996 provides that an employee has the right not to suffer a detriment short of dismissal if the reason for the employer's actions is because:

- The employee made, or proposed to make, a flexible working request; or
- The employee brought a claim for procedural failings by the employer with regard to their request.

b) A detriment claim should be submitted to an employment tribunal within three months starting with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them. The time limits for bringing employment tribunal claims are again expected to be increased from three months to six months in October 2026. (These claims are covered by the rules on Acas early conciliation). The tribunal may extend time where it was "not reasonably practicable" to present the claim in time and where necessary to facilitate early conciliation. Where a claim is upheld, the tribunal may make an award of compensation the amount of which shall be such as the tribunal considers just and

equitable in all the circumstances having regard to the infringement to which the complaint relates and any loss suffered by the claimant which is attributable to the act or failure to act.

7.6 **Automatic unfair dismissal**:

a) Section 104C of ERA 1996 provides that it shall be automatically unfair to dismiss an employee if the reason, or principal reason, for dismissal is one of the following:

- The employee made, or proposed to make, an application for flexible working; or
- The employee brought proceedings for procedural failings by the employer with regard to their request, or alleged the existence of any circumstance which would constitute a ground for bringing proceedings.

There is no qualifying period of service for an employee to bring such a claim.

b) An employee may also bring a claim for automatic unfair dismissal under section 104 of ERA 1996 on the basis that they have been dismissed for asserting their statutory right to request flexible working. This will apply where the reason or principal reason for the dismissal is one of the following:

- The employee brought proceedings against the employer to enforce a right which is a relevant statutory right;
- The employee alleged that the employer had infringed a right which is a relevant statutory right.

As long as the claim to the right and that it has been infringed is made in good faith, it is immaterial whether or not the employee in fact had the statutory right to request flexible working or whether or not that right has been infringed.

7.7 **Acas flexible working arbitration scheme**:

a) On 6 April 2003, the Acas arbitration scheme for unfair dismissal claims was extended to cover claims under the statutory right to request flexible working.

b) The process of arbitration is intended to be quicker, cheaper and less formal than pursuing a claim through an employment tribunal. The result can be appealed on limited grounds through Acas, but is intended to be final, thereby avoiding any further litigation. Both parties must agree to arbitration under the scheme, although the scheme is not available if there is any issue other than a complaint of unfair dismissal or a breach of the right to request flexible working.

c) Since the rejection of a flexible working request may in some cases result in a claim of direct or indirect discrimination which cannot be dealt with under the Acas arbitration scheme, its potential use is limited. However, if the complaint is limited to a procedural issue then this route may be advantageous to both parties.

8. **The Impact of Equality Legislation on flexible working requests:**

8.1 Some eligible employees may make a request for flexible working for reasons which, if their request is unreasonably refused, give them a claim under the statutory flexible working provisions as described above. In addition, other employees may have further statutory protection which the employer will need to be mindful of when considering their request for flexible working. Typically, these requests will be made by employees who are seeking to vary their working hours in accordance with childcare commitments (possibly on the return from maternity leave), religious requirements (such as not wanting to work on the Sabbath or being allowed time off to pray or attend worship) or who are seeking adjustments because they are disabled.

8.2 The Equality Act 2010 sets out the discrimination legislation which, amongst other 'protected characteristics', covers sex, race, disability, sexual orientation, religion or belief and age. The Equality Act prohibits various forms of discrimination, including:

- Direct discrimination;
- Indirect discrimination;
- Discrimination arising from disability; and
- A failure to comply with the duty to make reasonable adjustments to overcome workplace barriers experienced by disabled people.

In support of the Equality Act, the Equality and Human Rights Commission ('ECHR') has published a statutory Codes of Practice on discrimination in employment.

8.3 An employer must avoid unlawful discrimination when making decisions about flexible working requests and the following are examples of potential discrimination claims that might arise in this context:

a) **Direct sex discrimination**:

i) Direct sex discrimination occurs where, because of sex, A treats B less favourably than A treats or would treat other people.

ii) Both men and women can make requests to work flexibly under the statutory provisions. Many employers tend to look more favourably on requests by women than those by men, a practice which could expose the employer to claims of direct sex discrimination by men. If a request to work flexibly is not considered seriously because it comes from a man, when the same request

made by a woman would have been properly considered by the same employer, then a claim of direct sex discrimination would succeed.

iii) This happened in the case of *Walkingshaw v John Martin Group* [2000], where a man who had been denied the right to work part-time following his wife's maternity leave claimed direct discrimination because women in his firm were regularly allowed to work part-time. The archived Acas guide gives the following example:

> Andrew asks for flexible working to care for his children. Although the employer regularly allows women employees flexible working for this reason, he refuses Andrew's request because he is a man and believes childcare is less important to him. This is likely to be direct sex discrimination (page 14, archived Acas Guide).

b) **Indirect sex discrimination**:

i) Indirect discrimination arises where an employer applies a provision, criterion or practice ('PCP') to a job applicant or an existing employee and which is not intended to result in anyone being treated less favourably, but which in practice disadvantages a group of people within the group of job applicants or the existing workforce who share a particular protected characteristic. In this scenario, where the relevant PCP disadvantages an individual within that group, they will have a claim for indirect discrimination unless the employer can objectively justify the application of its PCP.

ii) Courts currently recognise ('take judicial notice of') the fact that women bear a greater burden of childcare responsibilities than men and that this can limit their ability to work certain hours. As such, if a woman submits a request for flexible working for childcare reasons and this request is rejected then she might subsequently claim that the rejection amounts to indirect sex discrimination. For example:

> Linda has childcare responsibilities and asks to work part-time. Her employer responds by saying that her role cannot be performed effectively by a part-timer. Unless her employer can objectively justify this stance, it's likely that Linda is being indirectly discriminated against because of her sex as more women than men are likely to combine paid employment with child caring responsibilities.

iii) As might be expected, the presumption that women are more likely to be disadvantaged in the above scenario has been challenged at various times as men have increasingly taken responsibility for child care in modern society. That said, it seems likely that tribunals will often still be minded to accept that a woman who is required to work full time has been put at a disadvantage compared to her male peers. Even then, however, an employer may be able to show that the full-time working requirement is objectively justified on the facts. A woman in a more senior or highly paid position may face a greater risk that a requirement for consistent attendance over longer hours could be justified by reference to the role she is needed to fulfil within the organisation.

iv) It should also be noted that, as from 1 January 2024, the definition of indirect discrimination in section 19 of the Equality Act has been amended to add a new section 19A which enables claimants without a relevant protected characteristic to continue to bring claims of indirect discrimination where they can show that they have been disadvantaged in substantively the same way as the disadvantaged group who share the relevant protected characteristic. Claimants relying on this new provision can bring a wider range of indirect discrimination claims than has previously been possible as they only need to show that they share substantively the same disadvantage as suffered by those with a particular protected characteristic. For example:

> An employer requires all staff in a particular division to work full-time and won't accommodate any requests to work part-time: a female employee whose request for part-time working is rejected claims that the employer's policy has a disproportionate impact on women, since women in society as a whole bear a greater part of domestic and childcare responsibilities than men and are more likely to want (or need) to work part-time. Unless the employer can objectively justify the need for a full-time worker to do the job, the rejection of the female employee's part-time working request would be indirectly discriminatory.
>
> Assuming that the employer's policy does indeed put women at such a disadvantage, a man who is disadvantaged at work by their childcare responsibilities in the same way as women with childcare responsibilities could potentially bring an indirect sex discrimination claim under section 19A of the Equality Act 2010. If a woman with childcare responsibilities is protected, a man in identical circumstances should be afforded the same rights in law. To hold otherwise is arguably directly discriminatory against men.

v) The key point with indirect sex discrimination claims is that whilst the right to request legislation offers little scope to examine the commercial rationale, in a claim of indirect sex discrimination the reason why the decision has been reached is fundamental to establishing whether the decision can be justified.

c) **Leaving for and returning from maternity leave**:

Requests from employees who are either about to go on or about to return from maternity leave will need to be treated carefully. Employers may already have a specific means for dealing with such requests under a separate maternity procedure. The archived government Flexible Working Guidance, which supported the statutory scheme in force prior to 30 June 2014, advised employees in this situation to think carefully about when to make their request; before they go on maternity leave they might wish to mention an interest in applying to working flexibly on their return and, bearing in mind the time needed to properly consider a request, to make a request in good time before they return. That remains good advice and is also helpful for employers who are also assisted by the right to make "reasonable contact" with employees on maternity leave.

d) **Disability discrimination**:

i) *Making reasonable adjustments to remove barriers for disabled people*:

it may be a reasonable adjustment for an employer to allow a disabled person to work flexibly if this removes a barrier to their being able to do their job effectively. If the change in hours is a reasonable adjustment, an employer must agree to it. (Whether or not the employer would allow a non-disabled person to work flexibly in the particular job is not relevant as the employer is under a duty to make reasonable adjustments and is permitted under the Equality Act to treat a disabled person more favourably than a non-disabled person).

ii) *Avoiding discrimination arising from disability*:

to avoid discrimination arising from disability, an employer must also avoid treating a disabled person unfavourably when making a decision about their working hours or considering their request to work flexibly if the request has been made because of something connected to their disability: in such circumstances the employer will need to be able to objectively justify its decision.

iii) The archived Acas guide gives the following example:

> Gary has been recently diagnosed with Crohns disease, a symptom of which is severe fatigue especially in the mornings. He explains this to his employer who enables Gary to work flexibly with a later start time than his colleagues. This is a reasonable adjustment under the Equality Act 2010 where employers have a duty to make reasonable adjustments (page 13, archived Acas Guide).

e) **Religion or belief discrimination**:

An employee may make a request for flexible working, for example, to change the days on which they work or their working hours, in order to accommodate their religious beliefs and requirements. A rejection of a flexible working request for these reasons may result in a claim for indirect religion or belief discrimination.

f) **Age discrimination**:

There is the potential risk for age discrimination claims to be brought where an employee makes a flexible working request, e.g. to work from home for two days per week, and the employer has a practice of only permitting such requests from older, more senior employees, and rejecting requests from junior employees who tend to be younger. It may be possible to objectively justify this discrimination as a proportionate means of achieving a legitimate aim, which is possible for both direct and indirect age discrimination claims. However, in the context of direct age discrimination, it is only social policy aims that will potentially be legitimate. In indirect discrimination claims, it is sufficient that the aim pursued corresponds to a real business need in order to potentially be legitimate.

g) **Constructive dismissal**:

i) The EAT has confirmed that the rejection of a flexible working request which amounted to indirect sex discrimination was also a fundamental breach of contract entitling the employee to resign and claim constructive dismissal. There must therefore also be a risk that if an employer fails to give any meaningful consideration to a request to work flexibly then there is a risk of a

constructive dismissal claim being brought on the basis of a breach of the implied duty of trust and confidence between the employee and employer.

ii) A failure by an employer to make reasonable adjustments in relation to a person who is disabled may amount to a fundamental breach of the obligation of trust and confidence, thereby entitling the employee to resign and claim constructive dismissal.

9. **Practical guidance: dealing with flexible working requests:**

There are a number of key practical issues which employers need to consider and apply in order to reduce the chances of claims being made against them, and to increase the prospects of successfully defending any claim that is made:

9.1 **Meet the statutory requirements**:

Employers should make sure that they have written procedures in place to ensure that a request is considered promptly and in a reasonable manner and that the employee is notified of the outcome within the two-month decision period. The employer will also need to be ready to deal with those cases where it will not be possible to make a final decision within the decision period. In such circumstances it will be necessary to explain the situation to the employee and to agree (and preferably document) an extension for the procedure to be concluded. Those responsible for operating the procedure should be properly trained.

9.2 **Avoid "technicality" points**:

The outright rejection of a flexible working application because of a flaw in the employee's application is risky for the employer, as explained above. The better approach is simply to inform the employee of the technical fault and advise them to re-submit an amended application, and to thereafter properly consider it. Employees can reasonably expect help and support from the employer in the application process, and an outright rejection on a technical point is unlikely to be looked on favourably either by the employee or by a tribunal. In particular, taking a technical approach to avoid considering an application could simply result in a discrimination claim or, in appropriate circumstances, a constructive dismissal claim.

9.3 **Demonstrate serious consideration of the request**:

a) The employer should consider the new working pattern requested by the employee before meeting with them to discuss it. The potential business issues should be identified, together with ways to mitigate them. This may involve discussing the proposals with the employee's manager and, if relevant, other colleagues. Alternative ways to meet the employee's objectives should be considered if the proposed working pattern cannot be accommodated for sound business reasons. If the employer comes to the meeting showing that they have considered the request seriously it is more likely that the employee will appreciate that their

approach is genuine and feel that engaging in discussions about alternatives, where these are possible, may be productive.

b) The employer should also remember that in answering the request it may be necessary to consider the position under the Equality Act as well. If the response cannot be objectively justified then the fact that the refusal technically conforms to the requirements of the flexible working legislation may not prevent an aggrieved employee from succeeding in a claim for discrimination.

9.4 **Start from a "positive" perspective, seeking to overcome potential issues**:

Tribunals have been critical of employers who appeared to be more concerned to explain why a requested working pattern could not work, rather than investigating how it could be accommodated. Rather than dwelling on minor impediments to a flexible working proposal, an employer could prepare a detailed impact assessment of the adverse consequences of the suggested working pattern and would need to share and discuss such an impact assessment with the employee.

9.5 **Consider alternatives, rather than only the initial request**:

Where the working pattern requested by the employee cannot be accommodated by the employer, it may still be possible to reach an agreement which satisfies both parties. In such situations the employer needs to be particularly wary of an indirect discrimination claim. The wider the options that the employee is willing to consider and therefore the wider the range of options being rejected by the employer, the more difficult an employer may find it to objectively justify the refusal of the request. Alternatively, as a result of considering alternatives and discussing them with the employee, the parties may reach an agreed solution that does not involve a permanent change to the employee's contract..

9.6 **Consider carefully whether a role cannot be performed flexibly and whether (and how) that belief is justifiable**:

a) It is important to consider whether the belief that a role cannot be performed on a flexible basis is due to stereotypes, prejudice or genuine business need. Cost may be an issue, but Tribunals have acknowledged that employers will have to put up with a certain level of cost and inefficiency for the sake of improving family-friendly policies and practices. If an organisation does operate a particular role that simply would not work on a flexible basis then the rejection of a request could be objectively justified, but it would be reasonably unusual.

b) It is important for employers to understand that the test is not simply whether a rejection of a request could reasonably fall within one of the categories listed in section 80G of ERA 1996. The far more important (and potentially costly) questions are whether the rejection of the request could put a particular group at a disadvantage, and if so whether that disadvantage can be objectively justified. The focus of the objective justification test is on whether the

employer's refusal meets a legitimate aim and is proportionate. In particular, this requires the employer to show that there were no less discriminatory ways of achieving its aims.

9.7 **Explain the decision and the reasons fully and clearly**:

While tribunals have been extremely reluctant to go behind the commercial rationale for an employer's decision to reject a request, they remain entitled to find that a rejection has been made on the basis of "incorrect facts", a finding which should be easier to make where the basis of the decision is unexplained. An employee who has received a clear and credible explanation of why their particular request cannot be accepted and, where appropriate, why an alternative cannot be found is more likely to remain an engaged member of the employer's workforce and less likely to challenge the decision by alternative means, such as through a discrimination claim, that might be available to them.

9.8 **Ensure consistency**:

Employers should aim to ensure that flexible working requests are recorded, and preferably processed, in a way that ensures that decisions are made consistently. For larger organisations with a centralised HR function, HR should be involved in ensuring that decisions are considered consistently and that the basis of rejection of any request is also consistent with previous decisions. Where inconsistent decisions are made the employer should explain the inconsistency (for example on the basis that the organisational capacity for flexible working has been reached and that to grant any further requests would undermine the business). This is particularly important where the applicant may be able to rely on some discriminatory distinction between themselves and previous, successful, applicants.

9.9 **Consider relevance of the Acas Code of Practice on Disciplinary and Grievance Procedures**:

While the regime under this Acas Code does not apply to claims concerning the statutory right to request flexible working, if an employee believes that their treatment in relation to a flexible working request amounts to sex discrimination, the Acas Code regime will be relevant. Therefore, employers should consider whether an appeal from the rejection of a flexible working request includes elements which should be treated as allegations of discrimination to which the Acas Code regime will apply.

9.10 **Respond to any questions or allegations about discrimination promptly and properly**:

The inadequate or evasive response to allegations or questions submitted by employees about potential discrimination can change the course of litigation. Although the statutory questionnaire procedure was repealed on 6 April 2014, it was replaced by an informal question and answer regime under which tribunals may look at how the employer has answered questions when making their overall decisions on discrimination claims.

9.11 **Maintain records**:

Underlying the need to respond consistently to flexible working requests and adequately to discrimination questions is the practical need to obtain and keep proper diversity information. Failing to monitor the proportions of different groups within the workforce, thereby failing to adequately record the respective needs and treatment of those groups will inevitably undermine the employer's ability to respond to discrimination questions and, potentially, to defend claims.

10. **Proposed changes under the Employment Rights Act 2025:**

10.1 The Labour Government committed to making flexible working 'the default option' from day one of employment except where it is "not reasonably feasible": the existing day-one right to request flexible working under the statutory scheme will remain, but employers will only be able to rely on one of the statutory reasons to refuse a request for flexible working where it is reasonable to do so, as explained below. While this does not in fact make flexible working the default position from day one (as it will remain a right to request), it will make it harder for an employer to refuse a request and is likely to result in more tribunal claims where a flexible working request is refused, due to the introduction of arguments about the reasonableness of that refusal. That said:

- The Government recognises in its 'Factsheet: Flexible working' that there will be circumstances where businesses will not be able to offer the particular arrangement being requested; and
- No changes have been made to the compensation limit of eight weeks' pay set out in section 80I of the ERA 1996 for a successful claim brought under section 80H, and so it can be argued that the statutory scheme still lacks real teeth.

10.2 The ERA 1996 will be amended by section 9 ERA 2025 so that an employer may only refuse an application for flexible working if both of the following apply:

- The employer considers that the application should be refused on one or more of the existing statutory grounds; and
- It is reasonable for the employer to refuse the application on that ground or those grounds. (section 9(3) ERA 2025)

In addition, if an employer refuses an application, the notification of the decision will have to:

- State the ground or grounds for refusing the application; and
- Explain why the employer considers that it is reasonable to refuse the application on that ground or those grounds (section 9(4) ERA 2025).

10.3 Under the existing rules an employer must not refuse a statutory flexible working application unless it has consulted the employee about it. Section 9(5) of the ERA 2025 will provide that regulations may set out the steps an employer will be required to take in this respect. This may include the steps suggested in the Acas Code of Practice on requests for flexible working, which

include inviting the employee to a meeting to discuss the request (paragraph 12), allowing the employee to be accompanied (paragraph 31) and keeping a written record of the discussion (paragraph 19)

10.4 An employee who has made a statutory request for flexible working will be able to bring a claim in the employment tribunal where they consider that their employer has failed to "act in accordance with" the new requirements.

10.5 **These amendments to the flexible working regime will be implemented in 2027.**

10.6 Consultation on improving access to flexible working:

a) The Government ran a consultation between 5 February and 30 April 2026 on the new process for employers to follow when handling flexible working requests, as well as insights on flexible working practices more broadly. The Government wants to ensure that the new procedure meets the needs of both employers and employees.

b) The consultation confirms that, under the ERA 2025, the Government will introduce a new consultation process that employers must follow when they are unable to accept a statutory flexible working request. This is designed to encourage employers and employees to fully explore viable solutions that work for both, and to try them out. There will be non-statutory guidance to support employers to follow the new process.

c) As mentioned above, the ERA 2025 will introduce a test of reasonableness where an employer refuses a statutory flexible working request. The consultation confirms that this test has a different statutory basis to other tests used in employment law. It will be considered against the existing eight business reasons for rejecting a flexible working request. When the flexible working reforms are finalised, Acas will consider revising its statutory Code of Practice on requests for flexible working to include specific guidance for employers on the new reasonableness test, which would involve a further public consultation. In addition, statutory guidance will be produced to help employers to understand and meet their obligations under the new reasonableness test.

d) The consultation sought views on:

- The impact of the April 2024 reforms that were made to the statutory flexible working framework, including whether they led to changes in the number of requests or to flexible working policies, processes or resources, and how much time is spent on requests that are rejected;

- A proposed new "light touch" process for employers consulting with employees where a request cannot be immediately agreed. The proposed process – which draws on the existing Acas non-statutory guidance - is set out below (references to "could" or "should" indicate a point for guidance as opposed to a legal requirement):

- The employer must meet with the employee making a statutory flexible working request where it is considering rejecting the request. The aim is to consider ways to address challenges with the requested arrangement and explore whether a suitable alternative arrangement could be agreed;

- The meeting must be held without unreasonable delay and must take place within the two-month decision period. In practice, it should happen within six weeks of the request being made;

- The employee must be informed in advance about the context of the meeting to allow them to prepare for it;

- A person with the authority to make a decision about flexible working arrangements (the decision maker) must attend the meeting;

- The decision maker will be required to keep a record of the meeting discussion;

- The meeting must allow for sufficient discussion of the request and any potential alternatives;

- The decision maker must clarify whether the employee would like the proposed request to be considered as a reasonable adjustment in accordance with the Equality Act 2010;

- The decision maker must clearly communicate any challenges they identify with the original request. They must explain why they feel that it would not be feasible to accommodate the request or why the request is not reasonable, referring to the relevant business reason(s);

- The decision maker must consider whether there might be ways to navigate the challenges and accommodate the request (for example, by proposing an alternative start date). If the potential impacts of a new arrangement are unclear, an employer and employee could choose to trial it for a fixed period;

- If the original request cannot be feasibly accommodated, the employer and employee must consider whether there are feasible alternative arrangement(s);

- The employer must record the outcome of the discussion and communicate this with the employee;

- The employer will be required to provide the employee with written notification of the outcome of the meeting (a summary of what was discussed and any conclusions or next steps agreed during the meeting) and the final decision made (whether the request was approved, rejected or an alternative was formally agreed).

- The consultation asked questions about the proposed process, including whether the objective of the consultation meeting is appropriate, how much advance notice should be given, which elements should form part of the meeting and whether the process will take more or less time than current processes; and

- The consultation sought views on the training, resources and support that can help businesses navigate flexible working requests. The consultation sought to understand the sorts of challenges faced by employers when handling statutory flexible working requests, the training and resources provided by employers on handling requests, and the desired format, location and content of additional guidance.

e) Acas published its response to the consultation on 30 April 2026. It broadly welcomes the proposed reforms and supports the core proposals, including the requirement to consult before reaching a decision, as it believes that the proposed steps are simple to understand, consistent with good practice, and largely mirror those already encouraged in the Acas Code of Practice and non-statutory guidance. Acas recommends that the Government include:

- A right for employees to be accompanied to the consultation meeting;

- An internal appeal as part of the required procedural steps;

- Manager training to handle requests fairly and effectively, including where the employee needs reasonable adjustments; and

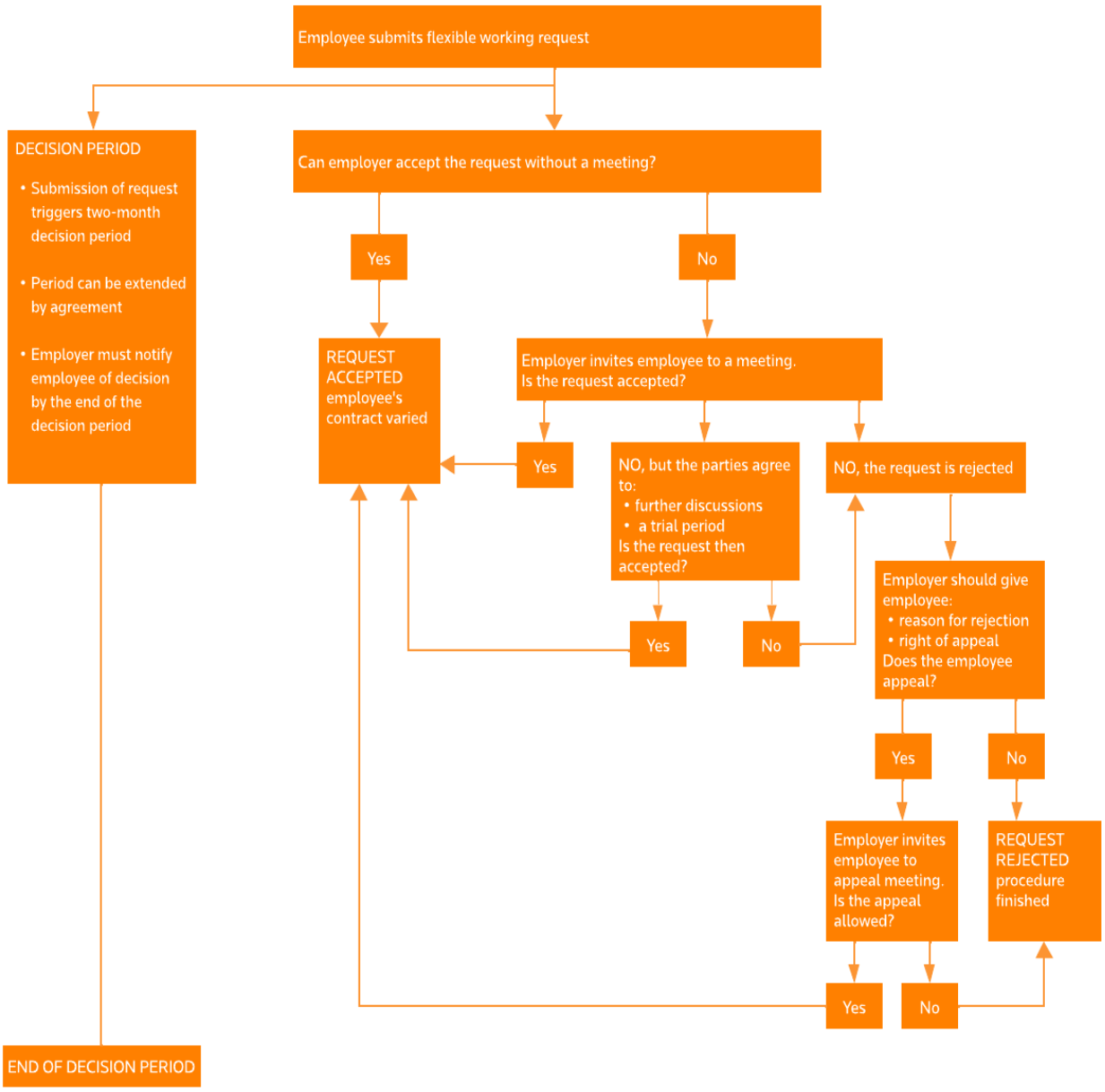
- Encouraging employers to design policies in consultation with trade unions and other employee representatives.

This guidance note has been prepared as a general guide only. It is not a substitute for professional advice which takes account of your specific circumstances and any changes in the law and practice; at the time of the preparation of this note various changes to the relevant provisions may be pending. The subjects covered constantly change and develop. No responsibility can be accepted by the firm or the author for any loss occasioned by any person acting or refraining from acting on the basis of this note. The copyright in this guidance note is owned by Weightmans LLP.

[12.08.26]

Appendix 1 - Flowchart of the statutory procedure

Practical Law
Flowchart: the procedure on statutory requests for flexible working



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