

## Royal College of Nursing response to ACAS consultation on the flexible working Code of Practice

### 1. About the Royal College of Nursing

With a membership of over half a million registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the UK and the largest professional union of nursing staff in the world. RCN members work in a variety of hospital and community settings in the NHS and the independent sector. The RCN promotes patient and nursing interests on a wide range of issues by working closely with the Government, the UK parliaments and other national and European political institutions, trade unions, professional bodies and voluntary organisations.

### 2. Consultation responses

- 2.1. The RCN agrees that in addition to updating the Code to reflect changes to the law, ACAS should also reconsider the overall good practice principles in the Code. The RCN believes that good practice principles need to be stated explicitly in their own section of the new Code. To include:
  - 2.1.1. Enabling employee to be accompanied by their trade union representative or colleague; notes of all meetings regarding flexible working requests to be taken and shared with all parties.
  - 2.1.2. Outcomes to give clear and detailed explanation if a request is to be refused – only listing the 8 reasons listed in the ERA 1996 is not acceptable.
  - 2.1.3. Requests should not be refused without explicit consideration of alternative options; timeframes in which applications will be considered.
  - 2.1.4. Reasonable timeframes in which any appeals should be heard.
- 2.2. The RCN agrees that the foreword to the Code strikes the right tone in encouraging an open-minded approach to flexible working, with a focus on what may be possible. The RCN believes the foreword emphasises the potential advantages of being open to flexible work patterns and the advantages of dialogue and clear communication of the reasons for a refusal.
- 2.3. The RCN agrees that it is helpful to include a definition of ‘flexible working’ within the foreword to the Code. The RCN believes both a definition of a statutory flexible working request and a broader definition of flexible working should be included. Further, ACAS guidance and Codes of practice

are seen as good practice standards for employers both large and small. Being clear about which legislation is relevant, as well as including broader examples of what happens in practice can help employers with their decision making, especially for smaller employers who do not have ready access to HR support. Also helps trade union representatives in using the Code to assist cases for their members.

- 2.4. The RCN agrees that the Code should provide guidance on ‘consulting’ with employees about a request. The RCN believes “Consultation/consulting” – will inevitably be interpreted in different ways by different employers. Giving employers clear guidance about what the Code expects consultation to look like will lead to a better experience and outcome for applicants.
- 2.5. The RCN’s opinion on the guidance in the Code about offering an employee a meeting, even when the employer plans to accept their request is that a dedicated meeting is beneficial, even if the employer intends to accept the flexible working request. Further, it gives all sides an opportunity to confirm arrangements, answer any additional questions, discuss any minor changes and to document the meeting as part of the process.
- 2.6. The RCN agrees that the Code should include a section on the protection from detriment and dismissal. The RCN believes it is always better to include the information so that employers are clear about their responsibilities. This also helps applicants and their representatives when presenting appeals and gives employees more confidence to make a flexible working request.
- 2.7. From a trade union perspective there are minimal disadvantages to allowing employees to be accompanied either by their local trade union representative, a trade union officer, or a work colleague. We would suggest that the same level of accompaniment which is already provided for in discipline and grievance processes should be extended to flexible working requests. It gives employees more confidence to ask about bringing a representative and a basis to query an employer who refuses.
- 2.8. The RCN agrees that the Code should recommend that employers provide any additional information as is reasonable to help explain why a request has been rejected. Without making this part of the Code we would be concerned that less scrupulous employers would simply list the reasons given in the ERA without any detail specific to the employee’s request or the business’s specific circumstances. The more information the employer is required to share to explain the reason for rejecting a request, the more likely they are to give proper consideration to an individual’s request.

- 2.9. The RCN believes that there are advantages to the Code stipulating that, where possible, an appeal should be handled by a manager not previously involved with a request. Larger organisations should be more than able to ensure a fair and impartial process by involving a manager at appeal stage who has no prior involvement in the request. This would bring better trust in the process for staff and should be a positive action which any good employer would be happy to undertake.
- 2.10. The RCN agrees the Code should include a section about the right to request a predictable work pattern if that right is introduced. For any worker in a role which requires shift work and/or 24/7 working, the right to request a predictable work pattern is extremely important both for recruitment and retention purposes. The majority of people who work either currently have or will have in the future, child care or elderly care responsibilities which mean that predictable working patterns will be vital. There is a subtle difference between a predictable work pattern and a flexible working request – flexible working may mean that someone continues to work in an unpredictable pattern e.g., works fewer hours, or only during term time, whereas a predictable pattern may mean that someone works full time hours, but e.g., always the same hours each day, always the same hours but only on weekdays, no night shifts. So, it is important to explain the difference and to keep the 2 forms of request in separate sections.
- 2.11. The RCN believes that paragraphs 27 to 29 in the draft Code provide sufficiently clear guidance on the interaction between the 2 rights. This belief is based upon consideration that it is not clear enough about the difference between the 2 rights. Some employers will combine both into one process and there are differences between the 2 which need to be explained.

[End]