Acas response to DIUS consultation on the right to request time to train for employees in England

Acas welcome the opportunity to respond to DIUS’ proposal on a new right to request time to train for employees in England. This proposal has particular resonance for Acas for two main reasons.

- The link between skills in people management and productivity
- Experience of dealing with flexible working legislation

People management skills-a broader perspective

The consultation paper rightly says that ‘poor relative skills contribute to the productivity gap’. However, people management, mediation, conflict resolution and negotiation skills are repeatedly left out of the debate on skills despite being crucial when making the link with productivity. At the June meeting of the All Parliamentary Group on Management, one of the key points made by guest speaker Chris Humphries, UKCES (UK Commission for Employment and Skills) was that Leitch was wrong in a key aspect of his report, namely that the skills base necessarily improves productivity and competitiveness. Skills are a necessary factor in improving productivity, argued Humphries, but they alone are not sufficient. Companies need business strategies, leadership and management that utilise those skills to raise their game.

Acas strongly supports this view. It is only when newly acquired skills in literacy, numeracy, IT etc. are brought in alongside enhanced people management skills that the real long term benefits of an improvement in skills that increase innovation and improve productivity can be realised.

Good management skills, for example, having open dialogue with staff, providing feedback on their performance, and having difficult conversations about attendance etc, are essential for a number of important reasons:

- where managers are trained in good people management they are more likely to have an awareness of the benefits involved in gaining employee commitment to their job and their employer, building effective teams and providing the means for learning new and better ways of working. This includes upskilling the workforce and supporting employees in their development, and helping to enhance their career prospects;

- managers have a key role in motivating and encouraging discretionary effort, something that is vital for improving employee engagement, performance and enhanced service delivery;
more generally, effective management has the ability to create a positive working environment that will encourage newly trained employees to stay with the organisation and thereby protect the investment the organisation has made in their training.

But management skills are also crucial to deal with fall out when things go wrong. Managers need the ability to, for example:

- provide support to poor performing and low skilled employees so that they can develop and improve;
- manage a team when members are away on training courses (or for any other reason);
- deal with conflict resulting from tensions created by increased workload for periods where colleagues are absent;
- deal with resentment within teams caused by employees who haven’t got the time off to train.

If teams are not well managed, and new training opportunities not dealt with fairly and sensitively then any benefits of upskilling are likely to be counteracted by poor employee relations, increased sickness absence, turnover and low level conflict.

The economic benefits of good employment relations- research evidence

There is now a growing body of research that shows some tentative links between good employment relations and improved productivity. Studies have shown, for example, how high levels of trust and cooperation, a prerequisite for workforce commitment, act as a mediating factor in the relationship between workplace practices and business performance (see for example Ashton & Sung, 2001\(^1\)); and, the relationship between employee satisfaction, engagement and business outcomes (see for example Harter et al, 2002\(^2\)).

Acas’ advisory and training work is at the centre of the broader high performance workplace debate. And we have gone on to quantify our own contribution to economic benefits of good employment relations. An Acas commissioned independent study by the National Institute of Economic and Social Research (NIESR) written by Pamela Meadows, found that the work of Acas generated almost £800 million of benefits a year across UK business, employees and the economy.

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\(^1\) Ashton DN, Sung J. Supporting workplace learning for High Performance working, ILO, 2002.

Much of these benefits result from Acas’ work resolving industrial disputes, and individual employment tribunal claims that occur when there has been a serious breakdown in employment relations. The remainder is associated with Acas’ preventative role, of which a significant proportion (£90 million), stems from open access training and advisory work where our advisers provide in-depth support and bespoke training for organisations.

The long term
The long term benefits of good employment relations are succinctly made by Meadows, who states: ‘In the longer term there are likely to be dynamic impacts on the whole economy from the existence of more productive and harmonious workplaces, both through the potential it offers for a more relaxed macroeconomic policy and through a greater level of confidence among investors, both domestic and international, in the UK as a place in which to risk their money. This higher investment in turn offers the potential for a higher growth rate.’

People management and employee relations need to be given greater weight by Government in future guidance accompanying any new legislation and in awareness-raising campaigns.

What Acas is already doing
Acas has considerable experience in providing advisory and training services that help employers engage and deal with requests fairly in both procedural and substantive terms. We have developed the Model Workplace guidance to actively support and promote leadership and management good practice, employee engagement, and workforce development. These critical drivers for productivity, sustainability and business growth are also key features that underpin existing quality standards such as IiP and Business Excellence.

As part of our ongoing work to develop new ways to support workplaces in moving the skills agenda forward we are developing the Acas Model Workplace as a diagnostic tool for employers that will help them consider their practices holistically. The intention is to deliver it in partnership with another organisation.

Comments on proposals
Coverage for Scotland and Wales

Among the objectives set out in the consultation document are those to:

- ‘Ensure that our nation’s employers and our economy as a whole can compete in a global age.’
- ‘A prosperous future for our economy, and just one for our society’.
Such aspirational aims seem at odds with the intention to limit the proposed legislation to England. The right to request flexible working, by contrast, applies to England, Scotland and Wales.

**Help for small businesses - 2.10 (f)**
Acas welcomes proposals relating to small businesses. They can find it more difficult to finance workplace innovation that has goals beyond the immediate needs of the business. We would stress, however, that such incentives under Train to Gain should include access to training on employee engagement and workforce development.

**Right to request model**
We agree that the right to request flexible working is a feasible model upon which to base the new right to request training. We would like to clarify some of the current aspects of the existing legislation, and to highlight some potential differences in terms of impact.

*Right to accompaniment 4.16*

The consultation paper proposes an unrestricted right to accompaniment. This differs from the right contained in the right to request flexible working where accompaniment is explicitly limited to a companion, defined as someone who is a worker employed by the same employer, which could include a trade union representative. We would question whether the current proposal to open up representation is a wise one. It could in exceptional circumstances allow the early involvement of solicitors at what we understand is intended to be a relatively informal process between the employer and employee.

*Will applicants have the right of appeal? 4.22*

The use of the word ‘appeal’ here is confusing. Yes, employees should have the right of appeal to their employer. However it is technically incorrect to say that employees can then ‘appeal’ to an employment tribunal. Where employees believe that there has been an infringement of their employment rights they have the right to make a claim to an employment tribunal. If they dispute the judgement of that tribunal they can then appeal against it. It would be helpful if the wording on this could be clarified.

*Acas conciliation and the arbitration scheme*

We strongly believe that it would be helpful if this proposed new employment right was also to be a conciliation jurisdiction, and believe that there would be merit in it being a right to which the Acas arbitration scheme might apply.

The flexible working legislation provides the alternative option to take the case to binding independent arbitration. Employees can take this route if
they have made claim to an employment tribunal, or could make a claim, in relation to the Right to Request Flexible Working.

As with virtually all individual employment rights claims, Acas has a legal duty under S18 of the Employment Tribunals Act 1996 to endeavour to promote the settlement of flexible working claims without the need for them to be determined by a tribunal. That duty can be triggered by a request for conciliation from one or both parties before a claim is lodged at the Tribunal, or by receipt of a copy of the claim from the Tribunal after it has been accepted. Either way, the Acas conciliator has no role in deciding the outcome of the case; nor indeed any power to compel the parties to discuss the matter with him or her at all.

The conciliator’s role is simply to attempt to facilitate a voluntary settlement of the claim. In flexible working cases, one avenue for doing so is for the parties to enter into an agreement, brokered by the conciliator, to refer the claim to arbitration under the statutory scheme mentioned above rather than having it decided by the Tribunal. Arbitration can only proceed with both parties’ written consent.

If the case is referred, the arbitrator (who is not an Acas employee but an independent person drawn from a panel maintained by Acas) has the power to give a binding decision against which there is no general right of appeal. [The parties can, in certain circumstances, enter into a private compromise agreement to refer the matter to arbitration.]

It is true that only a small number of claims have been determined via this scheme. However, the additional benefits of having a statutory arbitration scheme for time to train –as with any other jurisdiction- are simply that this offers the parties an alternative to having the case determined by the Tribunal.

**Impact (4.2)**

We would question whether the estimated figures in this section are realistic - in particular the assumption that a similar proportion of requests for time to train will be granted as compared with those for flexible working.

As stated in the consultation document, around 22 million employees in England may be eligible, a far higher number than those eligible for the right to request flexible working. The number of requests will be far higher, but they may also be far more varied in terms of the time off arrangements that employees seek. Our experience of the right to request flexible working is that one of the problems faced by employers is the conflict of demands created by multiple requests. The employer cannot grant all requests for flexible working because of the demands of the business, but it can be difficult to decide between two employees who both appear to have a legitimate case. The employer may accept one request and then have to turn down a future request because there is no capacity within the business to deal with further staff flexibility. With greater eligibility to request time to train there are likely to be more...
situations where the employer has difficult choices to make. And indeed the consultation acknowledges this to a degree in para 4.18.

**Business reasons for rejecting requests 4.18**

Paragraph 4.18 states that agreeing to one request does not mean that an employer has to agree to the next one. We would certainly not disagree with this, but would stress that any new legislation or accompanying guidance must strongly communicate the need for clear and transparent procedures to guard against employers simply agreeing to the first request that comes along, and rejecting subsequent requests that may have a far stronger business case behind them. Not to have clear criteria that ensure that only requests that benefit both individual and organisation and establish a link with organisational business strategy could lay employers open to subsequent discrimination claims.

The potential impact described above reinforces the need both to ensure that training in people management skills is widely available, and that bodies such as Acas, are provided with adequate additional resources to deal with both increased employment tribunal claims, and workplace conflict more generally where managers are unable to allow employees the time off requested.

It would have been helpful if paragraph 4.29 of the consultation document had gone on to estimate how many of the 25% (100,000) of employer refusals will result in an actual or potential employment tribunal claim. If just 10% of refusals are challenged by employees, Acas would have to handle an additional 10,000 (ET1 or non ET1 Pre Conciliation Claims) claims per year. This would necessitate an additional 30 to 40 staff. The potential need for additional resources must to be factored into any impact assessment and appropriate funding made available in advance of new legislation being introduced.

**Timing**

There is no explicit reference to time limits for dealing with applications and we therefore assume that the framework that applies to the right to request flexible working will apply to train off to train requests.

**Age (Chapter 5)**

We appreciate that the needs of young people need to be addressed but older workers should be given equal emphasis particularly in the light of Age Discrimination legislation and the need for people to work longer and the trend away from early retirement.