

# Call for evidence on dispute resolution in England and Wales

## Acas response

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This is the Acas Executive response to the [Ministry of Justice's call for evidence on dispute resolution in England and Wales](#).

### Our response

Acas is delighted to contribute to the Ministry of Justice's (MoJ) call for evidence on dispute resolution in England and Wales.

As you know, Acas (Advisory, Conciliation and Arbitration Service) is a statutory, non-departmental public body with a duty to improve employment relations throughout Great Britain. In carrying out this duty Acas offers a number of services including a national helpline which in 2019 to 2020 handled some 800,000 calls from individuals and employers, a website offering guidance and online training (approximately 15 million visits per year) and a range of advisory and collective dispute resolution services.

Of most relevance to MoJ and its current call for evidence, however, is the conciliation services we provide in the context of potential or actual employment tribunal (ET) claims.

### Conciliation in potential or actual employment tribunal claims

For over 40 years now Acas has sought to help resolve workplace disputes before they reach an employment tribunal hearing. Originally this service was provided after a claim had been made to the employment tribunal but since 2014 it is now compulsory in most jurisdictions for potential tribunal claimants to come to Acas first to see if we can help them resolve their case – this is known as early conciliation (EC).

EC is free and engagement in the conciliation process is voluntary. If Acas cannot help the parties reach a settlement, or either party is not interested in reaching a settlement, the individual is free to take their claim onto the tribunal. Over the years we have found this emphasis on voluntarism to be most important as it ensures that the parties 'buy into' the process and feel that they have control over the outcomes. Importantly, the parties are able to make an informed decision about what to do next based on conversations with the conciliator. Acas conciliation is also available after a formal tribunal claim has been submitted, from the point of the claim being submitted, up to and even during the formal hearing.

To give some idea of the volume of cases Acas deals with, in 2020 to 2021 we received nearly 115,000 early conciliation notifications representing around 141,000 individual claimants. Of the approximately 2,000 notifications we receive each week, only around 140 result in an employment tribunal decision; and 1,860 are settled, withdrawn or not progressed. This amounts to only 7% of disputes notified to Acas resulting in an ET hearing. We have a lot more data on the use of Acas's EC services which we would be happy to share with MoJ if that would be helpful.

### The benefits of early conciliation

As you will see, our intervention is highly successful in providing an alternative form of dispute resolution. EC also offers other benefits:

- We know from independent research that the terms of an agreed settlement are much more likely to be complied with than those covered in an employment tribunal order. Parties are also able to resolve their dispute in a confidential and less stressful situation than at a tribunal hearing and the outcomes that are open to them are considerably wider than they are from an employment tribunal. For instance, in many workplace cases a job reference is often what an individual is looking for and this is not available from a tribunal. An [independent evaluation of early conciliation in 2019](#) found that a quarter (27%) of claimants who settled at EC received a reference as part of their agreement whilst a minority (5%) received a letter of explanation or an apology (3%).
- Talking things through with an Acas conciliator can help to resolve any misconceptions the parties may have about the way the law applies or the tests that the employment tribunal will apply to a case. Helping the parties understand those can often break down barriers and help them see what is possible.
- Using EC, for both claimants and employers, can save time – by resolving the issue more quickly and preventing the case from going to tribunal. Claimants also find EC less stressful or traumatic than a tribunal, whilst employers feel the process is cheaper.
- Our research reveals that employers find EC helps them avoid having to deal with a similar case in the future. Following Acas intervention many employers report that their organisations take steps to ensure that procedures already in place are followed in future whilst half review or improve training for managers.
- EC can benefit individuals financially as well as employers. Financial compensation forms part of most EC agreements. More than 8 in 10 claimants who settled at EC (87%) reported a financial settlement, with an average value of £4,246. Crucially, as mentioned earlier, almost all claimants reported actually receiving their payment (94%) following EC compared with only around 70% who receive their award following a tribunal hearing ([Survey of employment tribunal applications: findings from the 2018 survey, BEIS research paper number 2020/007](#)).

It is not only the parties that benefit financially from EC. A recent [independent cost-benefit analysis of Acas service delivery](#) estimated that EC and Acas conciliation in ET applications produced net economic benefits totalling £186 million for the British economy in 2018 to 2019 – providing an overall benefit-cost ratio of 7.2 for the service as a whole.

## Characteristics of parties to early conciliation

In the case of EC, claimants and employers typically have different motivations during the dispute resolution process. Our research shows that although claimants are required to make an EC notification prior to making a tribunal application, most nonetheless report having an openness to actually settling the matter via conciliation. Employers are often the biggest barrier to positive outcomes where they feel there is no case to answer.

When seeking to encourage participation, research shows that the most salient arguments for both audiences have to do with resolving the issue quickly. For some claimants, avoiding a stressful situation is important whilst many employers look to the cost-benefit to the business in terms of time or legal fees.

But, whilst the decision to accept or reject conciliation can be driven by the personal motivations of those involved or the perceived motivations of the other side, the data highlights the importance of quality early contact between Acas and potential service users in helping to drive uptake of the service and in forging strong relationships between the conciliator and user that can lead to a positive service experience.

Research also points to the fact that the user base is diverse and different levels and methods of communication are preferred within it; hence the importance of offering a personalised service where possible, as well as setting clear expectations at an early stage around how the participant-conciliator relationship will work, especially in terms of frequency and method of contact.

## Unrepresented parties

The call for evidence expressed an interest in how unrepresented parties are affected in dispute resolution processes such as mediation and conciliation.

The 2019 evaluation of EC found that whilst the profile of claimants and employers involved in disputes is largely unchanged in recent years, the proportion of claimants and employers using representatives in disputes has shifted. For example, in conciliations post tribunal application the proportion of claimants (56%) and employers (74%) using representation has fallen sharply, though it remains much larger than at the EC stage (38% and 33%, respectively). A key factor behind this appears to be an increase in the proportion of fast track cases reaching this stage compared with 2016 (when the service was previously evaluated and ET fees were in force); as parties in fast track cases are less likely to use representatives.

Such evolutions in the service user base matter because while represented and unrepresented users give very similar positive assessments of the service, their motivations and needs are not always aligned, and their perception of the service provided is not always the same. For instance, unrepresented claimants tend to be most likely to say that they would have preferred more conciliator contact, while unrepresented employers stand out as being less likely to agree that their conciliator was available to them when needed.

Furthermore, while communication preferences are generally shown across the research to be slowly shifting from telephone to email, this shift is most pronounced among (employer) representatives, whose needs and expectations can sometimes differ from unrepresented claimants and employers.

Nuances in needs and perceptions also exist within audiences too. For example, claimant representatives are generally less experienced in dealing with disputes than those representing employers; the former are more likely than the latter to be family members or friends rather than professionals and so they may sometimes require more support from conciliators.

It is however interesting that research repeatedly suggests that Acas plays a significant role in driving positive outcomes for unrepresented parties. Whether that be in helping the parties to resolve the case or helping them understand the options open to them.

## Acas conciliators

The call for evidence asks about dispute resolution workforces and how standards are monitored and maintained.

Acas's conciliators are all civil servants recruited for their aptitude for the work and trained to ensure high levels of knowledge and skill. The training they receive is formal, and module based. It starts with less complex jurisdictions and basic skills over 8 weeks then some practice, both observed and alone for a period of 6 to 12 months followed by complex jurisdictional knowledge and advanced skills. During the first 2 years, training is ongoing in a both formal and less formal setting. Following this time, continuous professional development is the approach for both knowledge and skills enhancement. Many of our conciliators have completed postgraduate certificates in employment relations and dispute resolution working alongside the University of Greenwich whilst some are legally trained though this is not a requirement for the role.

All of Acas's conciliators have a wide understanding of other sources of support and advice that parties may find useful when they are in dispute such as Citizens Advice or equality specialists or local legal support services. We find that appropriate signposting can be useful for individuals to feel they are getting all of the information that they need, even at the risk of duplication, as this process helps them understand what is possible in their case and help them decide on next steps.

The standards of Acas's conciliation are maintained through observation and case checking of all conciliators between 6 and 12 times per year.

## Technology and early conciliation

The use of technology to help with conciliation is something we keep under active consideration. In 2014 we developed an online notification form for parties to tell us about their dispute (EC). The form is the main point of entry to the service and over the years we have been able to develop the content and the way the form is presented to users to ensure we are able to deliver the conciliation service in the best way possible for the user and remove any duplication of effort.

Acas also operates a Microsoft case management system. During development of the system we have been able to reduce the amount of administrative work connected with conciliation and focus on resolving cases. We are currently in the middle of a piece of work which looks to enhance the use of technology to remove remaining administratively heavy processes and identify efficiencies that can be gained through automation and artificial intelligence. This is to ensure that we give the parties in dispute access to high quality content which is relevant to their dispute and therefore parties have a greater understanding of the law and the process and the conciliator can focus them on resolving the issue. We are also testing the benefits of automation of work allocation which will mean some administrative resource can be repurposed into conciliation roles.

The use of technology in our EC work does however have its limitations. For instance, we have been unable to find a technical solution that is able to replicate the discussion on complex areas of law between an individual and a neutral third party such as a conciliator. We have also identified that there could be a reduced number of cases resolved if online options were offered as parties may exchange information in a 'raw form' which would mean positions become more entrenched and less able to be settled later by a conciliator.

## Conclusion

We hope that the information contained in this submission is of interest to MoJ in its investigation of dispute resolution in England and Wales. As you will see, Acas has considerable experience in the field of alternative dispute resolution and we would be happy to discuss our work and its impact on parties and other stakeholders further if that would be of help.

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