

Increasing the use of mediation in the civil justice system

Acas response

4 October 2022

This is the Acas Council response to the [government's consultation on increasing the use of mediation in the civil justice system](#).

Our response

Acas (the Advisory, Conciliation and Arbitration Service) welcomes the opportunity to respond to the government's consultation on the introduction of a requirement to attempt mediation in certain civil court proceedings and proposals for strengthening the oversight of external mediators outside the court service.

As you know from our response to your earlier consultation on dispute resolution in England and Wales, Acas is a statutory, non-departmental public body with a duty to improve employment relations throughout Great Britain. Although we have no direct involvement in mediating civil court claims, Acas does have considerable experience of offering impartial conciliation in employment tribunal cases, and also mediation in both collective and individual workplace disputes. We therefore feel that we have some knowledge and expertise that might be useful to the Ministry of Justice as it takes this issue forward.

Given our non-involvement in civil court mediation we are not in a position to comment on all of the questions posed in your consultation.

We would, however, like to offer some thoughts on questions 1 and 2 (exemptions from mediation); questions 8, 9 and 10 (information and guidance) and question 13 (a national standard).

Question 1 – We propose to introduce automatic referral to mediation for all small claims (generally, those valued under £10,000). Do you think any case types should be exempt from the requirement to attend a mediation appointment? If so, which case types and why?

From our experience of conciliating in employment tribunal cases we have found trying to broker a settlement in cases where the employer is insolvent is particularly difficult. Where an employer is insolvent it is often extremely hard, if not impossible, to find the basis on which a mediated settlement might be based, or where an offer of settlement can be given, and received, with confidence and in good faith. It is also often difficult to find an individual to represent the employer in any mediation. For these reasons we would recommend that consideration is given to exempting cases involving insolvent companies from the requirement for mandatory mediation.

You might also want to think about claims involving government departments, as the requirement to get Treasury approval for any settlements might require planning on the point at which mediation is most likely to be relevant.

Question 2 – Do you think that parties should be able to apply for individual exemptions from the requirement to attend mediation, assessed on a case-by-case basis by a judge? If so, why? And what factors do you think should be taken into consideration?

Acas considers it is reasonable that parties should be able to apply for exemptions from the requirement to attend mediation. Making such an allowance is only prudent as there will inevitably be some situations where mediation may not be appropriate, and it is right that a judge should be able to decide this on a case-by-case basis. The main factor to be taken into account is the ability of the parties to truly take part in the mediation process. So, for instance if one of the parties is especially vulnerable, mediation may not be appropriate. Equally, where a case has involved violence or intimidation, or where discrimination is involved, then again mediation may not be appropriate, even though the parties are not required to meet face to face.

Question 8 – How can we improve the information provided to users about this service?

Question 9 – What options should be available to help people who are vulnerable or have difficulty accessing information, get the guidance they need?

Question 10 – What else do you think we could do to support parties to participate effectively in mediation offered by the Small Claims Mediation Service?

Acas is currently testing, or about to test, a number of new initiatives to improve accessibility to and understanding of our early conciliation service. Amongst other things we are looking at enhancing the service description and notification process for early conciliation, utilising videos to improve information delivery and providing guidance around possible sources for emotional support for users who may find the process stressful. We would be happy to provide more information on any, or all, of these initiatives if the Ministry of Justice would find that helpful.

We are also undertaking an overarching review of our early conciliation service including how it is publicised and made more accessible for vulnerable people, and we would be very willing to share any lessons learnt from this review as soon as the findings are available.

Question 13 – What is your view on the value of a national standard for mediation? Which groups or individuals should be involved in the development of such a standard?

You will know from our response to the consultation on dispute resolution in England and Wales, that Acas ensures all of its conciliators and mediators are trained to a high standard. Public confidence in the skills and knowledge of mediators and conciliators is absolutely crucial to the success of the process, and Acas receives considerable positive feedback on its dispute resolution services. We therefore welcome the government's consideration of a possible national standard for mediation. As you will appreciate, Acas has considerable expertise in the use of both mediation and conciliation, and we would be happy to work with the government and others on any new national standard that may be developed.

Conclusion

We hope that these comments will prove useful in developing your proposal to introduce a new requirement to attempt mediation in certain civil court claims. If there is anything more you feel we can do to help, please do not hesitate to let us know.