



Guidance note: Conciliation in cases that could be the subject of employment tribunal proceedings after 6 April 2009

For many years, Acas had a statutory duty to provide conciliation in certain circumstances on matters that could become the subject of employment tribunal proceedings, before a claim had yet been made. From 6 April 2009, that duty becomes a discretionary power¹. This note describes how Acas intends to respond to requests, or proactively seek, to exercise the power to conciliate in potential employment tribunal claims.

Acas will seek to make conciliation available in any dispute that is otherwise likely to be the subject of an employment tribunal claim, subject to the following considerations.

- One well-established principle of good employment relations is that disputes should be resolved directly by the parties wherever possible. Therefore, Acas will only exercise the power to conciliate where the employer and employee concerned have already made reasonable efforts to resolve the issue(s), for instance by using the organisation's grievance or discipline procedures.
- The purpose of statutory conciliation is to resolve disputes that would otherwise be decided by an employment tribunal. It follows that the power to conciliate should only be exercised where there are grounds to believe that a valid claim is likely to be made. So, the kind of case where conciliation can be offered will be where there is a *prima facie* cause of action at the time of the request; where the potential claimant appears eligible to make the claim (e.g. meets any necessary service qualification); and where there is not already a prior binding agreement to settle the matter.
- Acas' overall remit is to promote the improvement of employment relations. In some circumstances exercising the power to conciliate might conflict with the maintenance of good employment relations in the organisation concerned. For example, where providing conciliation in potential individual rights claims could risk undermining collective and/or other agreements and procedures. In such situations it will generally be inappropriate to provide conciliation.
- From time to time, the volume of potential claims may exceed our capacity to handle them all. If that happens we will have to prioritise cases in which we provide conciliation. In these circumstances Acas will seek to take a proportionate and balanced approach, outlined below, with the aim of investing available resources in those interventions that are most likely to have the greatest impact.

¹ Acas also has a statutory duty to conciliate *after* a claim has been presented to the employment tribunal. This is unaffected by the change mentioned above, and conciliation will continue to be offered in all relevant cases.

1. Early conciliation can often succeed in preserving employment relationships that have not yet broken down permanently, thereby avoiding a great deal of financial and emotional cost to the parties. Acas will make every effort to identify potential claims where such circumstances apply, and will always seek to provide conciliation where it may be of help.
2. In general, the cost to the parties of contesting claims in different jurisdictions is proportionate to the length of the tribunal hearings that would arise if they were not resolved. It follows that when resources are at a premium, conciliation ought to be focused on the type of claims which tend to lead to longer hearings – such as those concerning workplace discrimination – in preference to claims that tribunals can usually dispose of quickly, such as those for unauthorised deductions from wages, breach of contract or disputes over the amount of redundancy or holiday pay.

For the time being we are offering PCC in relation to potential claims in all jurisdiction for which Acas has a statutory conciliation role. This will be kept under review in the light of relevant circumstances, including available resources and the demand for PCC and ET1 conciliation.

3. From time to time, other considerations may also need to be taken into account, such as the comparative time cost of exercising the power to conciliate in different cases, and the likely prospect of resolution if we do so.
4. Although individual claims in the “monetary” jurisdictions are often comparatively straightforward, multiple related cases can be more difficult and time consuming if they reach tribunals, often because they are manifestations of an underlying – or sometimes explicit - collective dispute. In these circumstances the benefits to the parties and the taxpayer of early intervention by a conciliator can be considerable, and Acas will always seek to provide conciliation where it may be of help.

Acas will monitor the impact of this policy and review the criteria for applying the new discretionary power to conciliate in potential claims once it has been in place for six months.