

Inside this issue of Acas' Employment Relations Matters

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Employment Relations Matters appears every quarter and is distributed free of charge by email. Copies can also be downloaded from www.acas.org.uk

Employment Relations Matters is intended to provide accessible articles, focussing in particular on Acas' experience working with and helping managers, employees and their representatives in the world of work.

Features are normally written by members of the Acas strategy unit and there are regular contributions from colleagues in the research and evaluation section. From time to time they may be commissioned or submitted externally.

We welcome your comments and opinions. These should be addressed to the Editor, John Purcell – jpurcell@acas.org.uk

The views expressed in Employment Relations Matters are those of the Editor and not the Acas Council.

Protecting vulnerable workers

In response to our article on vulnerable workers in the previous issue of Employment Relations Matters (Issue 8 Spring 2007) the Minister for Employment Relations, Pat McFadden, suggested we might like to publish a article on actions the Department for Business, Enterprise and Regulatory Reform (BERR) is taking to protect such workers.

Pat McFadden, Employment Relations Minister, talks about the steps the Government is taking to protect vulnerable workers from rogue employers and the role of the Vulnerable Worker Enforcement Forum in cracking down on abuses of workplace rights.

How can we better protect the most vulnerable workers? This is a critical issue being addressed by my Department's Employment Relations Team. The Vulnerable Worker Enforcement Forum is a key initiative for the Department for Business, Enterprise and Regulatory Reform (BERR).

Over the last ten years this Government has brought in a series of rights to improve conditions for all workers, but especially for the most vulnerable workers. While most workers have benefited from initiatives like the National Minimum Wage, rights for part-time workers, statutory holidays and better health and safety, there are still some who are not getting the protection they should.

BERR is intent on creating a more dynamic, flexible and competitive economy. Protecting workers' rights and helping good employers comply with the law is an essential part of this commitment. Good employers suffer unfairly when others cut corners.

A number of recent announcements underline our determination to crack down on rogue employers and ensure that employment rights are respected. The budget for enforcing the National Minimum Wage has been increased by 50% from April this year and we are doubling the number of employment agency inspectors. In addition, measures in the forthcoming Employment Law Simplification Bill will increase the penalties that can be imposed on non-compliant employers, ensure that workers underpaid the minimum wage get fair arrears and strengthen the enforcement bodies' investigatory powers.

We have also established the Vulnerable Workers Forum, which I chair. It brings together experts from front line unions, business, enforcement agencies and the Citizens Advice Bureau, to look at evidence about the nature and the extent of abuse of employment rights and to identify the best way to protect the vulnerable in the workforce.

The Forum wants to establish whether abuses are being tackled effectively through existing enforcement and support mechanisms or whether improvements and new approaches are needed to raise compliance.

It is already addressing key issues such as whether more can be done

to encourage vulnerable workers to report problems. This will involve tackling confusion about *where* to report problems and addressing the “fear factor” where workers can be too worried about the consequences to complain. It is also looking at what more the enforcement agencies can do to share intelligence about the rogues because employers infringing one set of regulations are more likely to be infringing others.

The Forum’s work will be informed by two pilot projects in London and Birmingham, which were established in partnership with a number of organisations including Acas, the TUC and Marketing Birmingham. Cleaners, security guards, caretakers and housekeeping staff working in building services as well as workers in hotels and restaurants are the sectors being targeted by the pilots. They are intended to identify how we can help vulnerable

workers and their employers better understand their rights and access the help, advice and information that’s out there.

It is important that any changes brought about as a result of the Forum’s recommendations do not increase the burden of regulation for good employers who already obey the law and treat their workforce properly. We want to develop a coordinated approach towards employers who fail to comply with legislation and to help them comply with and understand the law.

The Forum will be looking for evidence of rogue employers who are ignoring UK law and mistreating their workers. Any evidence gathered will be considered alongside evidence from unions and employers and the experiences of our front line enforcement agencies and will be used to inform Government policy on

vulnerable workers. (Evidence can be emailed to vulnerable.workers@berr.gsi.gov.uk).

This Government has put in place a fair framework of core workplace rights, including the right to a minimum wage, a right to four weeks’ (20 days) paid leave, (increased to 24 days on 1 October 2007 and 28 days from 1 April 2009) and the right not to be forced to work more than 48 hours a week on average.

The challenge now is to ensure that all workers – particularly vulnerable workers – benefit from those rights and I want to make sure that if abuses do occur, they are dealt with as soon as possible. By bringing together employers, unions and the enforcement agencies, we can assess the adequacy of the enforcement framework and identify possible improvements that support both workers and good employers.

The Acas Helpline: Findings from the 2007 User Survey

The Acas telephone helpline provides free, confidential and impartial advice on a wide range of employment relations issues (broadly classified by Acas into 32 categories) to both businesses and employees. Currently in its fifth year of operation as a national service, the helpline is staffed by c.100 advisers, spread across Acas’ eleven regional offices. Over the last three years the number of calls to the helpline has increased by around 10% a year, although for much of 2006/07 the rising volume of calls made did not translate into an increase of calls answered (advisers answering c.840,000 calls during 2006/07, compared with c.910,000 in 2005/06).

Customer feedback is gathered biennially; most recently during January-March 2007, when the Institute for Employment Studies (IES) – an independent research and consultancy organisation – conducted the most comprehensive satisfaction survey of callers to date. As well as suggesting that the service continues to be valued by employers, employees and third-party callers, the findings of the survey – which yielded a response rate of 46% (1,822 callers) – are also indicative of wider impacts on the workplace.

About callers

Acas helpline advisers are expected to deal with an increasing range of employment law queries which are often diverse and complex. In terms of main subject areas of calls, the following differences between types of caller were found to be significant:

- Employers – who constituted one-third of respondents – were most likely to enquire about discipline, dismissal and grievance (30%) and absence, sickness and stress (11%).

- Nearly half of survey respondents (45%) called the helpline as either current (39%) or former employees. These callers were most likely to enquire about redundancy, lay-offs and business transfers (21%).
- Those calling on behalf of employers/employees (one in five callers) were more likely to enquire about maternity, paternity and adoption (15%) and holidays and working time (11%).

Caller satisfaction

Acas' overall satisfaction ratings have always been amongst the best in the public sector, not least with regard to the helpline, where a performance target sets a challenging 95% of customers being either satisfied or very satisfied with the service. In the event, this target was missed by one percentage point; 94% of callers registering overall satisfaction. However, most callers said they were very likely/likely to recommend the service to a friend or colleague (95%), and almost all said they would use the service again if they had other enquires relating to employment issues (97%). Asked how many times in the last 12 months they had used the helpline, the average response increased from 3.0 calls per person in 2005, to 3.69 calls per person in this year's survey.

The efficacy of information provided

As well as monitoring customer satisfaction, Acas is expected to verify that the advice provided by the helpline has an impact on the workplace. A Key Performance Indicator (KPI) was included in Acas' Service Level Agreement with HM Treasury and the Department for Business, Enterprise and Regulatory Reform. The KPI measures 'the percentage of callers who were able to take clear action following their call'. Acas' target is 70%.

In the event, this figure was exceeded considerably, with 87% of respondents confirming that the information provided had helped them to decide what to do next – an eight percentage point improvement since the previous survey. Similarly, nine in ten callers found their call 'valuable'; almost as many (88%) agreeing that the information provided had 'answered their enquiry in full'. Interestingly, results were higher for:

- callers without an HR specialist in their workplace
- respondents in very small organisations (with one to four employees); and
- callers who managed to speak to someone at a first attempt – The satisfaction of these groups of callers is something of a recurring theme throughout the research.

Following the call to the Acas helpline

Following their call, more than one in four callers reported discussing the problem with management (or with their employees if they called as an employer) and nearly one in five respondents reported that they had applied or planned to apply changes recommended by Acas. Moreover, nearly half of all employers reported that their call to the helpline had motivated them to update or improve existing policies. In all, 45% of employers also agreed that their call had motivated them to implement new policy/policies. For both these aspects, it is worth noting that employers reporting higher 'motivational impact' were those without an HR specialist at their workplace.

ET claim decision-making

Another dimension of the Acas helpline's impact on the UK workplace is its bearing on callers' Employment Tribunal (ET) claim decision-making. Respondents who called as employees were therefore asked whether they had been considering making a claim beforehand. Almost a quarter (23%) of all current as well as former employees confirmed that they had indeed been considering making a claim. In the event, just over one in ten employees (13%) subsequently reported having actually gone on to make an ET claim, with 14%

eventually deciding against this action.

Crucially, for more than two thirds of employees, calling the helpline was said to have been an influential factor in helping them reach their ET claim decision. Moreover, of those employees already considering making an ET claim prior to calling the helpline, proportionately more indicated that their call had been important in helping them decide against making a claim (90%) than said their call had been important in helping them decide to make a claim (84%).

When the helpline's impact on averting ET claims was calculated – based both on the numbers from this survey and call volumes for 2006 – the figures showed that approximately 16,000 prospective claimants were deciding against pursuing an ET claim on the strength of the information provided by the helpline per annum (a full breakdown of this impact calculation is contained in an appendix to the report).

Factors shaping satisfaction: What scope for improvement?

Taken en bloc, the most satisfied groups of callers seemed to be those without an HR specialist at their workplace and respondents who work in very small organisations (with one to four employees). Indeed, these two groups registered consistently higher satisfaction levels with almost all aspects of their call – the obvious link being that smaller organisations are less likely to have an HR/personnel specialist. Here, the findings seem to indicate that the Acas helpline may be compensating for the lack of an HR function in these very small workplaces, and therefore callers from these organisations find the helpline particularly valuable. Certainly, callers responding to the survey



were predominantly from smaller individual workplaces – 63% of respondents' workplaces employing fewer than 50 employees.

Another determinant factor in shaping respondents' wider attitudes towards the service was their ability to speak to an adviser on their first call; failure to get through immediately having had a significant detrimental knock-on

effect on callers' overall satisfaction and on the likelihood of their recommending the service to friends or work colleagues. The reverse was also true, callers who said they had managed to get through at a first attempt reporting consistently more positive views across the full spectrum of satisfaction and attitudinal questions asked in the survey. In order for future surveys to report even higher levels of caller

satisfaction in general – and better 'motivational impact' on employers in particular – it was therefore suggested by IES that Acas might consider reducing the length of time it takes callers to speak to an adviser at a first attempt.

To view *Acas helpline survey 2007* visit www.acas.org.uk/researchpapers

Race discrimination claims: unrepresented claimants' and employers' views on the Acas individual conciliation service

Research has shown that race discrimination cases are less likely than claims under other statutory jurisdictions, including other forms of discrimination, to result in agreed settlements and that parties' satisfaction – especially where they are unrepresented – tends to be significantly lower in this category of claim. As part of its wider evaluation programme of the individual conciliation service, Acas commissioned research to explore the experiences and views of unrepresented employees and employers who had been engaged in race discrimination claims. We wanted to gain a better appreciation of why disparities in satisfaction occur, and to establish whether improvements could be achieved by modifying conciliation practices in some or all such claims.

The research was carried out by the Policy Studies Institute in February and March 2007 from claims that had been closed in 2006. In depth interviews were carried out with 30 claimants and 10 employers. The claimants were a mixture of men and women, from a range of ethnic backgrounds and ages and located across the private, public and voluntary sectors. The employers were also from a range of sectors and most were large organisations.

Race discrimination in the workplace

The circumstances that led claimants to raise a race discrimination claim were wide-ranging. There were many accounts of overt discrimination involving verbal abuse and physical assaults; some claimants told the researchers they had endured abuse over several years.

There were also accounts of less visible forms of discrimination. Some claimants felt that they were

being treated differently from their colleagues or believed that well-earned promotion had been blocked.

Isolated incidents could sometimes appear insignificant at the time. This made it hard for some claimants to articulate experiences they had tolerated which, months or years later, they now perceived as unfair treatment.

Some claimants described a workplace culture that appeared to perpetuate negative and outdated stereotypes of ethnic minority groups. This could perhaps explain the fact that some employers perceived that alleged incidents of race discrimination are a 'normal' occurrence in the workplace, not something requiring serious attention.

A recurring theme in claimant narratives was their own anxiety about making a complaint in the workplace and drawing it to the attention of managers. Fears of

being labelled a troublemaker, of losing their job or damaging future employment prospects give some indication of why patterns of racially discriminatory behaviour might persist over a long period of time or why specific incidents may go unreported.

Grievance procedures

Most claimants had used the internal grievance process in an effort to resolve problems but were unhappy with their employer's procedures. A variety of negative perceptions were reported including:

- the system being weak and insufficiently proactive
- the process lacking transparency
- procedures that were too informal and not felt to induce trust
- procedures that were too rigid and failed to accommodate the needs of staff whose first language was not English.

Some claimants alleged that their employers failed to respond to grievances until they had submitted a tribunal claim. In some cases, the claimants felt that the problems they were experiencing got worse as a result of raising a grievance and that this amounted to deliberate victimisation.

All but one of the employers in the study had grievance procedures in place, often complex systems with many stages to follow. Tribunal claims often highlighted deficiencies in the procedures and even when procedures were robust, complicated cases could make them difficult to implement. Some employers had also found it difficult to engage line managers of staff involved in cases because of an unwillingness to cooperate. Others followed procedures to the letter but still found themselves facing a claim.

Raising a claim

Some of the employers in the study felt that race discrimination claims were an 'opportunistic' way for the employee to seek compensation, often following dismissal for alleged legitimate performance issues and presented themselves rather than the claimants as the victim in race discrimination cases. Some cited instances whereby claimants documented incidents in their tribunal claims which they had not mentioned when working for the employer.

The claimants in the study felt strongly they had experienced race discrimination and the majority were no longer with their employer because of dismissal, resignation or 'walking off the job'. Reasons for submitting a claim included frustration with the failings of their employer's grievance procedure and a sense that the only remaining way to achieve justice was by taking their case to the employment tribunal.

Claimants were aggrieved and upset and many were angry at how they felt they had been treated. Some claimed that they were motivated by a desire to take a stand in the context of recurring instances of race discrimination at work that were going unchallenged, while others were motivated by a desire for retribution and wanted their day in court. While many were convinced of the strength of their case, others felt that their claim would be hard to prove and were particularly anxious at the prospect of dealing with their (ex-) employer's legal advisers.

Advice and representation

The larger employers in the study tended to have a large HR function which took on the majority of the work for tribunal claims and used solicitors and lawyers to draw up agreements and check paperwork. They were generally positive about self-representation. The smaller employers tended to have less experience of tribunal claims and have fewer financial and human resources available. They were more frustrated by the tribunal procedure, feeling that they faced considerable financial costs in defending themselves against a claim even if the Employment Tribunal found in their favour.

Claimants' perceptions of representation were shaped by their previous experience and knowledge of the tribunal system, the advice available to them, and their confidence and mental health at that time. For the majority, self-representation was not a positive choice; they had wanted representation but were disappointed and frustrated when they discovered they could not afford it. As a result many of them formed the view that the tribunal system was weighted against them. A large proportion of claimants felt that they were in a

disadvantageous position culturally and linguistically, and because of this and their limited legal knowledge they felt that self-representation had negatively affected the outcome of their case. For a small number, however, especially those satisfied with the outcome of their case, the experience of self-representation had given them confidence and enabled them to take control of a difficult situation.

The role of Acas and the experience of individual conciliation

Most employers were familiar with Acas, whereas few claimants had heard of Acas prior to making a claim. This had implications for their expectations of the conciliation service and not all claimants fully grasped the nature of the conciliator's role. Most contact was by phone, although a few cases had involved face-to-face meetings. Many of the claimants and employers in the study who had not been involved in a face-to-face meeting as part of the conciliation process would have liked the opportunity of doing so.

Conciliator roles and styles of individual conciliation

The research showed that race discrimination claims are frequently raised in a climate of hostility, fear and bitterness between the parties, with the majority of claimants and some employers in the study feeling frustrated in trying to secure representation and access to justice. Some claimants were unhappy with Acas' neutral role, questioning the suitability of this in their circumstances or perceiving the conciliator to be on the side of the employer. This was often because claimants were not clear about Acas' statutory function. The way in which conciliators handled substantive



intervention, particularly at the point where they discussed the strengths and weaknesses of the case also had an influence on parties' perceptions of the service. Claimants and employers wanted conciliators to draw out positive features of their case as well as the negatives. For claimants, this was particularly important in initial discussions.

The knowledge, experience and efficiency of conciliators contributed to perceptions of conciliator competence, which in turn served as a key factor in achieving a good relationship between the parties and Acas. With some exceptions this was more important than the gender, ethnic background or age of the conciliator. The amount of time that conciliators could spend with the parties responding to their needs and the quality of the relationship that they established in terms of trust, empathy and rapport were also key drivers in determining whether or not parties were satisfied or dissatisfied with the IC service, especially for claimants. When the parties felt conciliators listened to them, acknowledged and responded to their experiences, even when they were not happy with the outcome of their case, they had positive views of the conciliation experience.

The impact of race discrimination claims and satisfaction with Acas

The research suggests that the style of conciliation is particularly important because of the severe impact on many claimants of their experiences. Conciliators are dealing with people who may be feeling shocked, upset, bitter and mistrustful or depressed. Generally, they want

'justice', although not all are able to articulate what that would mean in practice and few are aware of what the law can actually do for them. Whilst most of the claimants had agreed to accept settlements, the research showed there was considerable dissatisfaction with case outcomes and many felt that the financial compensation they received was inadequate for what they had been through. Claimants dissatisfied with the outcome of their case often expressed dissatisfaction with Acas, but this was less likely if the claimants felt they had a positive relationship with the conciliator and that the conciliator had done their best for them. This further illustrates the widespread lack of understanding among parties – especially claimants – about the impartial role which the conciliator is obliged to play in the process. Claimants who felt the conciliator had pressurised them to settle expressed disappointment with the Acas service, a finding which highlights the importance of empathy in the conciliation role.

Employers better understood the role of Acas and were less likely to be critical of it, although some expressed the belief that the Employment Tribunal system in general was weighted against them.

Conclusions and policy implications

The satisfaction gap in unrepresented claimants' views on the Acas individual conciliation service is in part shaped by workplace contexts whose dynamics are beyond the scope of individual conciliators to fundamentally alter.

Many race discrimination claimants are also particularly in need of social support in the aftermath of pursuing claims, at a time when their experience of the process often leaves them wondering who to trust. Again, it is not within Acas' remit to meet that need if it arises.

However, the relationship between the conciliator and the parties is not only crucial to their satisfaction with the conciliation service, but can also affect their perceptions of their whole experience in relation to the claim. Providing an intensive and responsive service that prioritises the parties' needs for contact with the conciliator can raise the likelihood of satisfaction with the system as a whole, and this research suggests that this effect may be independent of case outcomes.

Awareness and training for all levels of management have a role in strategies for preventing race discrimination. Conciliators are also well placed to signpost employers to the kind of support that can contribute to organisational change.

This piece of research comes at a particularly opportune time, as Acas is presently reviewing the training and working practices associated with conciliation in the light of various current and anticipated developments. The findings provide a rich source of information to inform decisions on policy, practices and priorities as we go forward.

For more information visit www.acas.org.uk/researchpapers

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We inform

We answer your questions, give you the facts you need and talk through your options. You can then make informed decisions. Contact us to keep on top of what employment rights legislation means in practice – before it gets on top of you. Call our helpline **08457 47 47 47** or visit our website **www.acas.org.uk**.

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