

# Research Paper

Acas conciliation in collective employment disputes

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## GLOSSARY OF TERMS

To ensure a common understanding of the terms used in this report, an explanation of some is presented below, to help clarify the analysis used.

**Representatives** – Lead management and employee representatives involved in the conciliation, who were interviewed in the customer survey. These contacts were provided by Acas conciliators.

**Employee representative** – This term is used to describe the lead individual on the employee side of the dispute, who was interviewed during the customer survey. It can apply to anyone representing employees, including trade union officers and those involved in worker representative bodies.

**Key Driver Analysis** – This method, developed by Ipsos MORI and used on the 2006-7 evaluation of Acas collective conciliation, combines several statistical techniques to allow us to find out which of a large range of factors has the most impact upon customer satisfaction and case outcome. It takes into account both factors outside of the conciliator's control (situational factors/case characteristics) and those the conciliator can control (behaviours and techniques). For more details see Appendix 2.

**Matched cases** – This is where a customer survey interview was achieved with both a management and an employee representative on the same case. Analysis of these cases allows us to compare different perspectives on the same situation and so to gain the most accurate picture of facts relating to a case.

**Mean scores** – On some issues, respondents were asked questions about satisfaction, importance, agreement etc. using a scale of 1–5 or 1–7. For example, 'on a scale of 1–7, where 1 is very dissatisfied and 7 is very satisfied, how satisfied were you with...?' This enables us to find the average answer of all respondents, to show the overall view on the 7-point scale. This allows easy comparisons of responses to different questions that have the same scale – for example, satisfaction with the outcome of the case, and satisfaction with the service.

**Net scores** – 'Net good' is the difference between those who gave a positive and those who gave a negative response. So, for example, where 37% of those from the private sector described the employment relationship in the organisation as 'good' or 'very good', and 22% described it as 'poor' or 'very poor', this gives a 'net good' of 15%.

**Prompted questions** – These are questions where the interviewer suggests possible answers to the interviewees. For example, 'how much do you agree or disagree with X' or 'which of the following statements best describes your view on X'. The prompt acts as a reminder to the respondent. So, for example, if you ask 'where did you hear of Acas?' and then list each source ('a friend', 'the website', 'a leaflet' etc.) you are likely to get a higher response for each than if you just asked the question without prompts.

**Qualitative research** – This kind of research explores people’s beliefs, experiences, attitudes, behaviour and interactions via methods such as focus groups and in-depth interviews. It is designed to gain an understanding of themes and issues rather than to generate numerical data.

**Unprompted questions** – These are open questions where the interviewer does not suggest any possible answers to the interviewee. For example ‘why did you come to Acas?’ or ‘what would have happened in this situation without Acas?’ Once the respondent has given their answer the interviewer may categorise it into a list of codes on their system straight away or record the full answer and code it later.

## EXECUTIVE SUMMARY

Involving a third party to assist in finding a way forward is one option available to those involved collective employment disputes. The Acas 'collective conciliation' service aims to assist parties in dispute to reach an agreement themselves.

This report provides a wide-ranging evaluation of the conciliation service provided by Acas in collective employment disputes. It draws particularly on research conducted on the 2006–7 period, together with research from previous academic studies to provide an overview of the nature and outcomes of Acas work in this area. The key questions addressed in the report include:

### Who uses Acas collective conciliation and why?

- Almost a third of collective conciliation cases in 2006 occurred in SMEs<sup>1</sup>, although 39% were in very large organisations with more than 1000 members of staff. Three-quarters were in multi-site organisations
- Both public and private sector organisations use Acas collective conciliation. Looking at the sectoral make-up of UK establishments, case levels demonstrate that the service is not disproportionately used by either sector. However, taking into account the number of disputes in each sector, Acas is more likely to be involved in private sector disputes rather than public sector ones.
- In a large majority (68%) of cases, at least one side believed that there was a risk of industrial action if the dispute was not resolved, at the time Acas became involved
- The desire to reach an agreement was the main reason given by both sides for bringing a third party into their dispute. Parties chose to involve Acas either because of previous experience of collective conciliation or other services, because Acas is written into their dispute procedures, or because they saw Acas as independent and impartial.
- Those customers who had also been involved in disputes where they had not sought Acas assistance tended to put this down to parties settling it themselves, or the situation not being serious enough. No one said Acas was too busy to help or that they had a previous negative experience of Acas. Barriers to using Acas among non-users will be investigated in the next phase of the evaluation.

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<sup>1</sup> Organisations with less than 250 employees, according to management responses to the customer survey.

## What conciliator behaviours and techniques lead to successful outcomes and customer satisfaction?

According to the 2006-7 Ipsos MORI analysis of customer responses:

- Conciliator behaviour, rather than the characteristics of the situation they enter into, was the stronger driver of successful conciliation outcomes and customer satisfaction.
- A pro-active attitude towards achieving a settlement by the conciliator, as perceived by the parties involved, was the major driver of *both* customer satisfaction and successful conciliation outcomes.
- Successful case outcomes were also affected by the availability of the conciliator outside meetings, whether they worked outside normal working hours to get a settlement if required, whether they explained the rules and boundaries of conciliation and whether or not they dealt with issues beyond those of the immediate issues in dispute.
- High levels of customer satisfaction with the service were the result of the rapport conciliators built up with the parties, their availability outside of the conciliation meetings and customers perceiving them to be impartial/ neutral.

## How do customers view their conciliation experience?

- **Future use** – The vast majority (87%) of customers said that they would be likely to use or recommend the Acas collective conciliation service. Two thirds (65%) of customers said that they were ‘very likely’ to do this. Of those who were not likely to recommend Acas, almost all said that it was because they would try and resolve it themselves or that it would depend on the circumstances.
- **Satisfaction** – 89% of employee representatives and 82% of managers were satisfied, very satisfied or extremely satisfied<sup>2</sup> with the collective conciliation service they received from Acas. Those who were not satisfied tended to have had particularly entrenched positions at the onset of conciliation and/or to be dissatisfied with the outcome.

## What was the impact of Acas conciliation?

- According to customers, Acas settled or made progress towards a settlement in 90% of cases. Acas’ own data provided by conciliators shows a continuation of the trend identified by Goodman (2005) of an increase in the percentage of cases that were settled or where progress was made. However, recently much of this is due to an increase in the proportion of cases where progress was made rather than in those where actual settlement was achieved.

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<sup>2</sup> A seven point scale was used on this question to allow sufficient variation of responses to enable analysis of factors that led to customer satisfaction.

- In cases *where a settlement was achieved* :
  - Almost all said that the settlement was implemented *in full* when it went back to the organisation (95% managers, 87% employee representatives).
  - 72% of employee representatives and 70% of managers said that conciliation settled the dispute in the long-term. The rest (28% employee representatives and 29% managers) considered that it resolved the dispute in the short-term.
  - There were three common immediate effects of conciliation in cases which resulted in a settlement: first, customers felt that it sped up the resolution of the dispute (88% of employee representatives 83% managers); second, it helped avoid strike action (80% of employee representatives and 59% of managers), and; third, it brought the two sides together on the issues in dispute (82% of employee representatives and 75% of managers).
  - Although not primary aims of conciliation, some conciliation customers reported wider benefits as a result of the agreement. These included improvements in employee morale (51% employee representatives and 28% managers), in working practices (32% employee representatives and 21% managers) and change management (27% employee representatives and 27% managers).
  - Some linked the conciliated settlement to improvements in 'bottom line' indicators such as profitability (17% managers), competitiveness (13% managers) and performance (19% managers).
  
- Where there was no settlement, customers tended to attribute this to the situation rather than to Acas. Only four linked lack of progress to a failure in the Acas conciliation service.

### **What is the impact of the Acas collective conciliation service as a whole?**

- **On the UK economy**<sup>3</sup> – Research into the economic impact of Acas identified that the collective conciliation service alone provides benefits worth £159 million a year to the national economy. It costs £1.6 million a year to run the service, meaning that for every £1 spent on Acas collective conciliation, it generates benefits to the UK economy worth £99.
  
- **On the organisations using the conciliation service** – Looking at all cases (whether settled or not), customers identified the following impacts:
  - It sped up the resolution of the dispute (72% employee representatives and 66% managers).
  - Brought the two sides closer together (66% employee representatives and 57% managers).
  - Helped avoid strike action (66% employee representatives and 52% managers).

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<sup>3</sup> Meadows, P. (2007) *A Review of the Economic Impact of Employment Relations Services Delivered by Acas*, NIESR: London.

## What would have happened without Acas intervention?

Almost a third of customers (31%) said (unprompted<sup>4</sup>) that without Acas there would have been industrial or strike action. 14% said that the dispute would not have been resolved and 11% said it would have taken longer to resolve. Only 8% said that the outcome would have been no different, and 5% that they would have resolved it themselves. In their own words:

*"Our business would have gone into a meltdown. Our relationship with our staff would have been ruined. We would have had a strike on our hands and given our precarious financial position, would have destroyed our business."*

(Management representative, Customer survey)

*"We would have had a total conflict situation where both sides would have been at war and both sides then would have been looking for a win situation instead of a win-win situation. All sides would have also suffered financial loss and security of employment could have been in jeopardy."*

(Employee representative, Customer survey)

*"I think I may have lost my job and that the situation would have escalated out of control."*

(Management representative, Customer survey)

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<sup>4</sup> When asked directly about this later in the questionnaire, 66% of employee representatives and 52% of managers agreed/ strongly agreed that Acas conciliation had helped to avoid industrial action (see Section 9.4).

## 1. INTRODUCTION

Acas conciliators have been helping managers and employee representatives to resolve their collective employment disputes for over 30 years. The service is known within Acas as 'collective conciliation'. In 2007 Acas ran the most wide-ranging evaluation of this service in its history, designed and managed by the Acas Research and Evaluation Section.

The evaluation began with a customer survey of those involved in collective conciliation in 2006, conducted by an independent research company, Ipsos MORI. They investigated the views of the parties involved in specific cases and linked this to data provided by the conciliators themselves on each case. This brought together information on the characteristics of those involved, the dispute, the conciliation itself, the outcome and the impact of the conciliation on the organisation. The key question Ipsos MORI addressed here was:

*What conciliator behaviour and techniques led to successful conciliation outcomes and to customer satisfaction?*

Next, it utilised the extensive experience of conciliation staff to look at what they do to resolve disputes. The evaluation then went on to take a wider view, looking at the impact of the service on organisations and on the national economy.

This report brings together the key findings from each strand of the evaluation and presents them in the context of previous research and academic studies spanning almost 30 years.

## 2. SOURCES OF EVIDENCE

This paper is based upon a range of evidence collected over the last 30 years. Combined, they allow us to:

- Investigate the different perceptions of those involved (management, employee representatives and conciliators);
- Look at the process from start to finish, including the dispute and reasons for coming to conciliation through to the impacts on the organisation and the national economy;
- Look at both individual cases and the service as a whole; combining qualitative and quantitative research methods to present both the wider picture of the service as a whole and a more in-depth understanding of specific issues, and finally;
- Consider the most up-to-date findings within the context of research over several decades.

The sources used are detailed below.

### 2.1 2006–7 evaluation of collective conciliation

This evaluation of the Acas collective conciliation service and combined the following sources of evidence:

- **Customer survey** – An independent telephone survey of the lead management and employee representatives involved in cases during 2006. This survey was conducted by Ipsos MORI. 495 20-minute interviews were achieved (a response rate of 55%). A higher response was obtained from employee representatives (60%) than from management (52%), but the numbers of interviews achieved with each was broadly similar. At least one interview was achieved with a management or employee representative in 377 cases (69% of cases) from the sample.
- **Acas management information (MIS)** – Data collected in the survey was supplemented with data recorded by Acas collective conciliators, so that the evaluation took into account all three perspectives; the management side, the employee side and that of the conciliator. Detailed management information data was available from April 1993 to March 2007 and so this is the time frame used in this report.
- **On-line survey of conciliators** – A detailed on-line survey of all collective conciliators (defined as anyone who had been involved in a case during 2006/7<sup>i</sup>) about their views and experiences of the Acas collective conciliation service. This achieved an 82% response rate (63 conciliators).

More detail on the methods used in this survey can be found in Appendix 1. A glossary of terms used in this report can be found on pp. 2-3, and technical notes are included in the endnotes (denoted by roman numerals).

## 2.2 Previous research

This report presents the most recent evaluation findings in the context of previous research on Acas collective conciliation. The following are referred to in the paper:

- *\*A Review of the Economic Impact of Employment Relations Services Delivered by Acas* by Pam Meadows, NIESR (2007) – Research exploring Acas' six principal service areas and producing an overall cost/benefit estimate of its contribution to the economy. It shows that for every pound spent by Acas across all service areas, over £16 is returned, generating benefits worth almost £800 million a year across UK businesses, employees and the economy.
- *\*Coming to the Table: The role of Acas in collective disputes and improving workplace relationships* by Gill Dix and Sarah Oxenbridge (2004) – This paper investigates the usage and impacts of Acas' collective conciliation and advisory work<sup>5</sup>, examining Acas' role in helping employers and employees to develop strategies for handling conflict and improving workplace effectiveness.
- *Inside the Workplace: Findings from the 2004 Workplace Employment Relations Survey* by Barbara Kersley, Carmen Alpin, John Forth, Alex Bryson, Helen Bewley, Gill Dix and Sarah Oxenbridge (2006, Routledge).
- *\*Public sector disputes and third party intervention* by Susan Corby (2003) – Looking specifically at public sector disputes, this paper focuses on the range of third party interventions, including Acas collective conciliation, used in the public sector.
- *\*Resolving collective disputes at work: User perspectives of Acas collective conciliation services* by Donna Molloy, Robin Legard and Jane Lewis (2003) – Based upon in-depth interviews with trade union full time officials and managers who have used Acas conciliation, this qualitative research paper covers issues such as what they believe makes a good conciliator, features and styles of conciliation and impacts from a customer viewpoint.
- *Acas collective conciliation: A qualitative study of the nature of collective conciliation* by Donna Molloy and Jane Lewis (2002, unpublished) – In-depth interviews with Acas conciliators are analysed in this qualitative Acas research paper. It investigates attitudes towards changes in conciliation, perceptions of outcome and case recording.
- *Acas User Feedback 2002* by BMRB (2002, unpublished) – Bringing together the findings of an Acas postal survey of customers.

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<sup>5</sup>Now known as 'Business and Skills Solutions'. Here, Acas staff provide tailored advice, facilitation, training, or support on a particular work-related problem. Formerly known as 'Workplace Projects', 'Advisory Projects' and 'Advisory Mediation'. For more information see <http://www.acas.org.uk/index.aspx?articleid=2001>

- *2000/1 Survey of Collective Conciliation Customers* by NFO System Three Social Research (2001, unpublished) – Reporting the findings of a survey of Acas collective conciliation customers.
- *Building Bridges and settling differences: Collective conciliation and arbitration under Acas* by John Goodman (2000) – Part of a book celebrating the 25<sup>th</sup> anniversary of Acas<sup>ii</sup>, this paper looks at changes to the collective conciliation service since Acas' establishment.
- *Mediation in industrial disputes in Britain* by Ramsumair Singh (1986, Industrial Relations Journal) – This paper presents Acas collective conciliation in the context of the different types of collective dispute resolution services available.
- *Factors associated with successful labour mediation* by Jean Marie Hiltrop (1989)<sup>iii</sup> – Based upon customer surveys ran in the early 1980s, this paper looks at what leads to successful Acas collective conciliation outcomes.
- *Findings of the Survey of Collective Conciliation* by Jean Marie Hiltrop (1987) – This unpublished paper brings together the findings of an early survey of Acas collective conciliation customers.

Papers marked with \* can be found at [www.acas.org.uk/researchpapers](http://www.acas.org.uk/researchpapers)

### 3. BACKGROUND

#### 3.1 Acas

Established in 1975, the Advisory, Conciliation and Arbitration Service (Acas) is a non-departmental body, with a remit to improve employment relations in the UK. It is governed by an independent council and funded by the Department for Business, Enterprise and Regulatory Reform (BERR). With a network of 12 regional offices, it offers a wide range of services aiming to prevent and resolve workplace disputes, both among individuals and when a problem affects a wider proportion of the workforce. According to the Acas website ([www.acas.org.uk](http://www.acas.org.uk)):

*"We aim to improve organisations and working life through better employment relations. We help with employment relations by supplying up-to-date information, independent advice and high quality training, and working with employers and employees to solve problems and improve performance."*

#### 3.2 What is collective conciliation?

*"[Collective conciliation is] a process where a neutral third party meets the opposing sides and endeavours to help them reduce their differences and so reach agreement."*<sup>6</sup>

Under the terms of the Trade Union and Labour Relations Consolidation Act 1992, in situations where *'a trade dispute exists or is apprehended Acas may, at the request of one or more parties offer its assistance with a view to bringing about a settlement.'* This service is undertaken by the Acas collective conciliation service.

Acas collective conciliators have no powers to enforce a settlement. They are not there to decide who is right and who is wrong, what is fair and what is not. Instead, the emphasis is on the parties reaching an agreement themselves, with the conciliator using reason and persuasion to get parties to reconsider their positions. As one conciliator put it: *"[The parties] must keep ownership of the problem and the solution....we just facilitate problem solving."*<sup>7</sup>

Goodman considers collective conciliation to be an extension of the organisation's own negotiating process that management and employee representatives go through when there is a dispute. He describes collective conciliation as:

*"A voluntary supplement to the parties' established negotiating procedures... collective conciliation is normally characterised as a resumption or continuation of the bargaining process – in effect 'assisted bargaining'. The conciliator's role is to facilitate a voluntary agreement."*

Singh clarifies the difference between collective conciliation and other types of collective dispute resolution. For him, the key difference concerns the role of the

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<sup>6</sup> Lockyer quoted in Singh, R. (1986) 'Mediation in industrial disputes in Britain', *Industrial Relations Journal*

<sup>7</sup> Quote taken from the 2006-7 on-line survey of conciliators.

conciliator. In conciliation the conciliators do not come to a judgement about how to end the dispute, as independent arbiters do in arbitration. Nor do they make recommendations to the parties on the best way forward (mediators do this in collective mediation).

In Acas collective conciliation, conciliators come into the dispute with the agreement of both sides and bring a fresh perspective to the situation. They have no vested interest in the terms of any settlement and they talk to parties separately and together to help them to find the best way forward for the organisation.

### **3.3 What are the objectives of collective conciliation?**

There seems to be a general agreement among conciliators (Molloy and Lewis), customers (Molloy et al, Hiltrop<sup>iv</sup>) and academics (Goodman, Corby, Dix and Oxenbridge) that the primary objective of conciliation is to help parties to reach a settlement. As Acas explains on its website:

*"Our aim is for the sides to reach an agreement they both feel will work. Our involvement may allow them to make progress so that they reach a solution between themselves later on."*

Some conciliators believe, however, that conciliation can also look beyond this. According to Molloy and Lewis:

*"...Conciliators placed varying emphasis on what were described as the secondary or less immediate objectives of collective conciliation. These are to improve relationships and procedures within organisations in order to leave them better equipped to deal with any similar issues that might arise in the future."*

Examples of this include attempting to ensure that by the end of the conciliation the relationship between the two sides is maintained, helping parties to communicate more effectively and finding ways to allow both sides to leave the conciliation without losing face (Molloy and Lewis).

Acas has a service that is specifically designed to assist parties to deal with longer-term improvements to employment relations ('Business and Skills Solutions'<sup>8</sup>). This service aims to help parties prevent disputes in the future. However, at times there can be overlap between this and collective conciliation. In fact, Meadows describes these services as "*two ends of the spectrum of the same activity*".

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<sup>8</sup> Acas staff provide tailored advice, facilitation, training, or support on a particular work-related problem. They deal with a wide range of issues including: communication and consultation, redundancy and notice, contracts and hours, employee engagement, organisational change, disputes and mediation, equality, job evaluation, flexible working and improving employment relations. This service was formerly known as 'Workplace Projects', 'Advisory Projects' and 'Advisory Mediation'. For more information please see: <http://www.acas.org.uk/index.aspx?articleid=2001>

### 3.4 Collective conciliators<sup>9</sup>

Led by a Chief Conciliator, Acas collective conciliators are based in offices across England, Wales and Scotland, and conciliate in both local disputes and those with a national perspective. In 2006-7, 77 Acas staff worked on 913 collective conciliation cases across the UK.

Collective conciliators tend to be experienced staff, with an average of 8 years experience of conducting collective conciliation. At the time of the on-line survey of collective conciliators (March 2007), almost a third (30%) of conciliators had more than 10 years' experience of collective conciliation work, with just 5% (3 individuals) being newer to conciliation work, having less than 1 years' experience.

Some conciliators work purely on collective conciliation cases (10%), but it is more common for conciliators to have a varied role in Acas. For example, as well as their collective conciliation cases they may work with organisations to improve employment relations, train organisations or individuals on employment issues, manage staff or be involved in business development<sup>10</sup>.

In most instances a collective conciliation is handled by a single conciliator. However, according to Acas MIS data for 2006, in around 7% of cases an additional conciliator was also involved, usually for staff development reasons, work-planning or because the case was particularly complex.

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<sup>9</sup> All findings in this section are based upon the March 2007 on-line survey of Acas collective conciliation staff.

<sup>10</sup> For more on Acas services see [www.acas.org.uk](http://www.acas.org.uk)

## 4. WHO USES COLLECTIVE CONCILIATION?

Conciliation is used by a wide range of organisations of different sizes, sectors and industries. Because conciliation is confidential, assumptions can often be made about users of the service based purely upon those few high profile cases that make it into the news. However, as Goodman points out, much of Acas conciliation is in local disputes and few outside the organisation involved may even be aware of it.

### 4.1 Public, private or voluntary sector

Looking at media coverage of Acas collective conciliation, the more high profile, national disputes can often be in large public sector organisations such as the London Underground, the Fire Service or the BBC, giving the impression that collective conciliation is a public sector phenomenon. This perception is supported by trade union membership figures which show much higher levels of membership among public sector workers (58.5% compared to 16.6% in the private sector<sup>v</sup>). However, this view can be challenged. For example Corby claims that conciliation in the public sector is less common than in the private sector, although public sector cases are more likely to have a national dimension, possibly meaning they have a higher profile.

Based upon discussions with senior civil servants, Corby gives four reasons why public sector organisations may be reluctant to use Acas; first, a perceived misunderstanding of the purpose of conciliation among public sector managers and an incorrect belief that the outcome would be decided for them as in arbitration (although it is not clear why this would be more of a problem in the public than the private sector). She states:

*“They equated it with arbitration and handing over the matter to a third party to decide. There was a vicious circle of ignorance, never using it, never having been through it and so there is no trust in the process.”*

Second, Acas is a government agency and although independent, public sector managers or ministers could see it as “an arm of government”. Corby does not mention whether this view extends to employee representatives in the situation. The third reason cited by Corby is ‘a psychological difficulty’ for civil service managers as they would normally be on higher grades than conciliators and not want to take advice from someone more junior. This is backed up by Goodman who claims that the reluctance to use Acas in the public sector is because Acas staff ‘are only civil servants’. Fourth is that conciliators were often members of the Public and Commercial Services Union (PCS) – a major civil service union – and so there were concerns of a potential conflict of interest.

However, initial analysis of Acas case and customer survey data does not support the theory of a particular reluctance among public sector managers to use Acas. In fact this evidence suggests that Acas collective conciliations are not particularly more likely to occur in either the public or private sectors. Taking *employer* definitions of workplace sector from the 2006-7 customer survey, 71% defined themselves as private sector, 24% as public sector and 4% as voluntary sector.

This is in-line with WERS 2004<sup>vi</sup>, which found that 26% of those workplaces which have employee representation (likely to be the primary 'market' for collective conciliation) were in the public sector. Perhaps this is because, as Lowry argues, Acas is involved in local government disputes and it is in central government where there is a resistance to use Acas<sup>11</sup>.

Where this perception may be challenged is that collective disputes are far more common in the public sector. According to WERS 2004, 12% of public sector organisations reported a collective dispute compared to 4% of private sector organisations<sup>vii</sup>.

Looking over a longer period of time, Goodman cites a legacy of 'principled resistance' to collective bargaining, employment relations and to Acas by successive Conservative governments. However, analysis of Acas case data does not point to changes in case-levels in public sector cases since the Labour government came into power in 1997. Consistently since 1993/4, conciliators have reported around 80% of the organisations involved in conciliation cases are from the private sector, and 20% from the public sector (there is no option to allow conciliators to select the voluntary sector).

Some difference between the two main sectors can be seen in the 2006-7 evaluation though. Although we did not specifically ask conciliators<sup>12</sup> whether conciliation work was different depending on which sector the organisation is in, some mentioned it unprompted as a factor that made conciliation difficult:

*"... In public organisations, staff are keen to ensure that they receive fair deals for staff, but in my experience they are also far more likely to take a firm line on the quality of service that they will be able to provide."*

*"Is it in the public sector and therefore has a political context?"*

(Acas collective conciliators, Survey of collective conciliators)

In the customer survey, management representatives from the private sector were more likely to describe the relationship between managers and employees in their organisation as 'good' or 'very good' compared to those from the public sector ('net good'<sup>13</sup> in the private sector was 15%, compared to 3% in the public sector). Managers and employee representatives from the private sector also tended to be more likely to report that 'all or most of the key issues were settled' during collective conciliation rather than just 'progress was made', and more likely to identify positive impacts of conciliation on their organisations (see Section 9.5 on impact). Despite this evidence, it should be noted that sector was not highlighted as a key driver of either conciliation outcome or customer satisfaction in the 2006-7 Ipsos MORI analysis (see Section 7.2).

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<sup>11</sup> Lowry quoted in Goodman, J. (2000) 'Building Bridges and settling differences: Collective conciliation and arbitration under Acas', *Employment Relations in Britain: 25 years of the Advisory, Conciliation and Arbitration Service*, p.49.

<sup>12</sup> Via the on-line survey of conciliators.

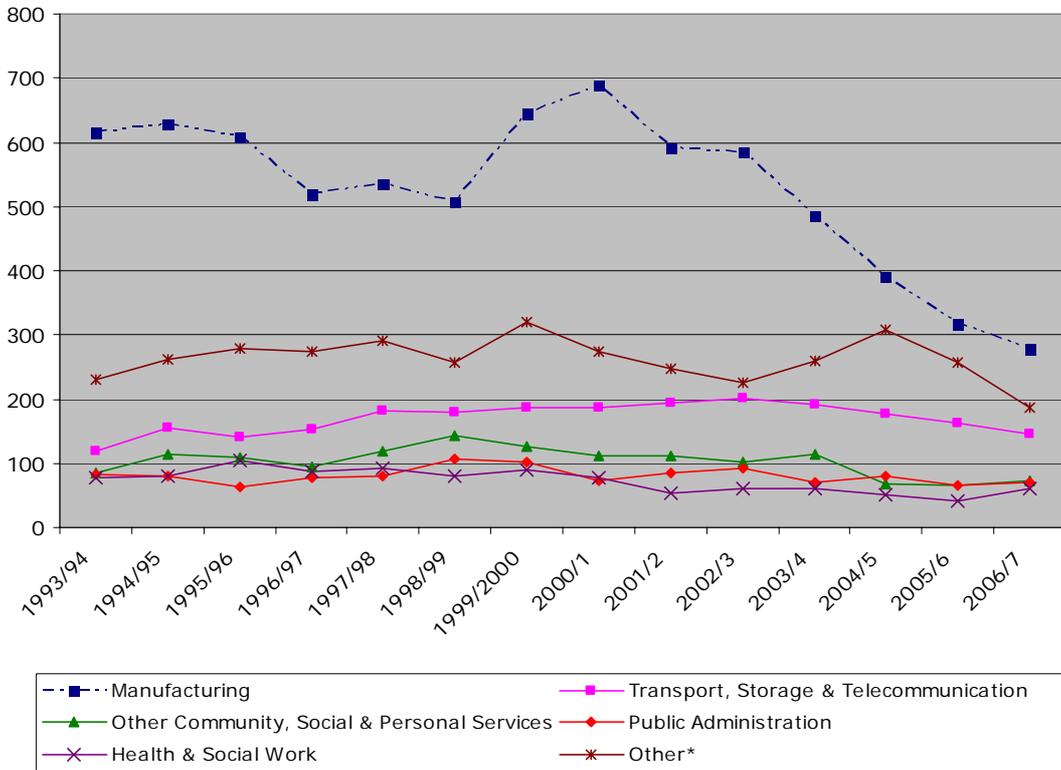
<sup>13</sup> 'Net good' is the difference between those who gave a positive and those who gave a negative response. So, in this instance, 37% of those from the private sector described the relationship as 'good' or 'very good', while 22% described it as 'poor' or 'very poor', leaving a 'net good' of 15%.

## 4.2 Industry

The importance of the employment relations context in a particular industry is highlighted by Hiltrop (1987), who describes this as “a strong indicator of the pattern of conciliation usage”. Molloy et al support this, claiming that in some industries there is “a more traditional or confrontational” approach to employment relations. Molloy et al claim that these were likely to be regular users of Acas, as collective conciliation was seen to demonstrate that it had been a struggle to reach agreement and so it was the best deal they were likely to get (see Section 5.2 on the influence of stakeholders outside of collective conciliation).

Almost one third of cases (31%) in 2006-7 came from the manufacturing industry. However, this is actually a *decline* on previous years<sup>14</sup>. Looking at this sector since 1993-4, numbers of cases have more than halved from 616 to 280, perhaps reflecting the wider long-term decline in manufacturing.

**Chart 4.1: Volume of conciliation cases by industry**



Source: Acas management information

Base: All conciliation requests between 01/04/93 and 31/03/07 (17858 records)

Note: \* 'Other' includes the SIC codes: 'Financial & other Administration', 'Education', 'Wholesale and Retail', 'Construction' and 'Other'.

<sup>14</sup> According to Acas management information.

Looking more broadly at the importance of conciliators' familiarity with each industrial sector in which they work, Corby describes the debate as to whether Acas conciliators should have in-depth knowledge of each particular industry they conciliate in. Where they do not, they can ask "*naïve questions*" and come to the situation with a fresh point of view. The benefits if they *do* know the industry are that they may already have some understanding of the politics and background to the dispute.

Molloy et al consider a conciliator having background knowledge of a specific industry to be helpful, and point out that conciliators can help parties judge the strength and reasonableness of their argument if they have an idea of 'industry norms' or other organisations in the same industry who have gone through similar situations. They add:

*"It was also considered helpful [by customers] where officers were familiar with the background and jargon of a particular industry so they did not require detailed background briefing."*

Some conciliators agreed with this highlighting the importance of finding out as much as possible about the organisation and the situation as well as contextual information such as relevant case law, industry data or pay rates<sup>15</sup>.

### **4.3 Subject of the dispute**

In 2006-7 most conciliation cases concerned a 'general pay claim' or 'other pay/ conditions of employment'. Looking back over the last 15 years (since 1993) these two categories have always formed a large proportion of Acas conciliation cases. However, around 2002 there was a large increase in the numbers of recognition<sup>16</sup> cases, after new legislation concerning trade union rights to be recognised by management came into force. These have since decreased in number, but in 2006-7 were still the category of dispute with the third highest caseload.

In some areas, such as 'general pay claims', 'changes in working practices' and 'other trade union matters', volumes of cases are similar to 1993-4 levels. However, much of the decline in numbers of collective conciliation cases can be seen in the categories of 'other pay/ conditions of employment', 'dismissal and discipline' and 'redundancy'. The decline in cases regarding 'redundancy' and 'dismissal and discipline' seems to be particularly severe. In 1993-4 there were 248 cases involving redundancy, but just 62 in 2006-7. Cases of 'dismissal and discipline' peaked at 165 in 1997-8, but less than 10 years later, in 2006-7, these were down to just 27. There are two likely reasons for this. First, changes in the UK economic climate. In the early 1990s the UK was in recession and so redundancies were more likely. Second, over the period there has been a move towards increased use of individual rights legislation and the employment tribunal system to deal with these situations<sup>17</sup>.

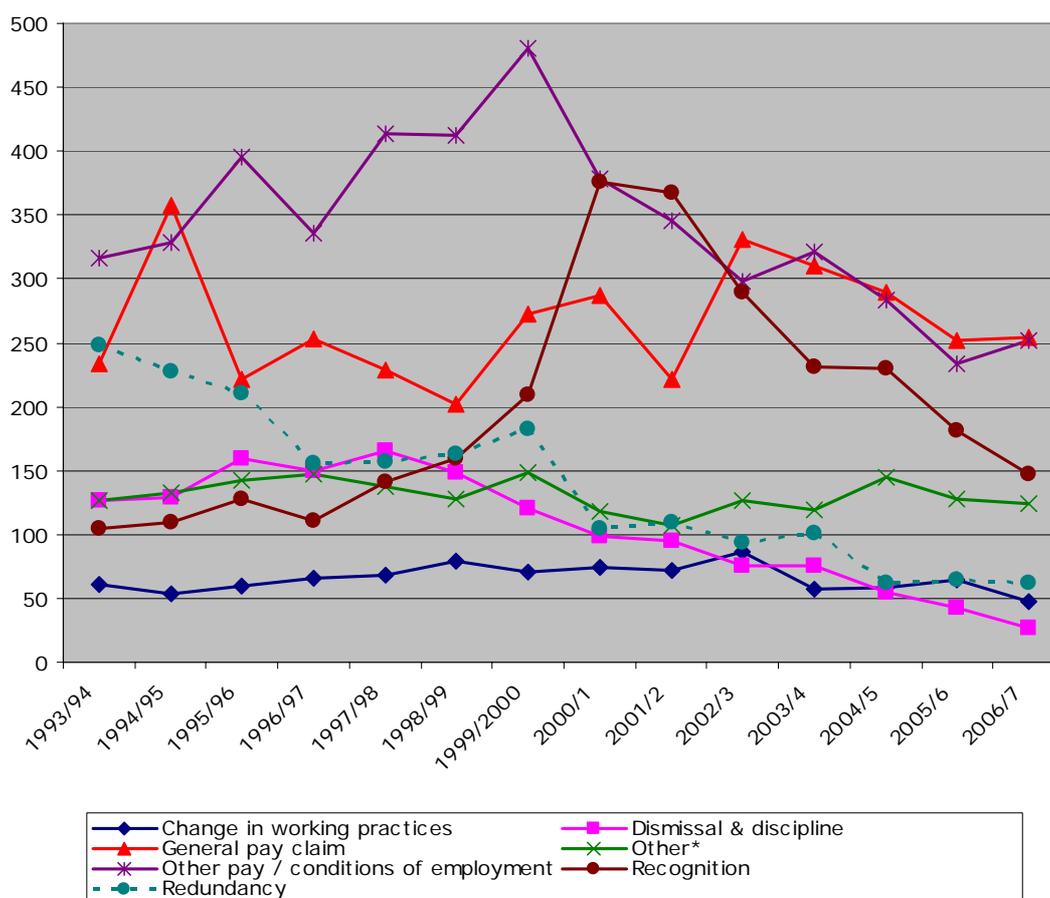
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<sup>15</sup> In the on-line survey of conciliators.

<sup>16</sup> For information on recognition see [www.acas.org.uk](http://www.acas.org.uk). For research on recognition see McKay, S. and Moore, S. (Working Lives Research Institute) and Acas Research and Evaluation Section (2005) *The role of Acas in trade union recognition claims under the Employment Relations Act 1999* (Ref: 03/05) [[www.acas.org.uk/researchpapers](http://www.acas.org.uk/researchpapers)]

<sup>17</sup> This trend has been noted by many academics, for example: Dickens, L (2002)

**Chart 4.2: Primary cause of dispute (numbers of conciliation requests)**



Source: Acas management information

Base: All conciliation requests between 01/04/93 and 31/03/07 (17944 records)

Note: \*Other here includes 'Other trade union matters', 'other' and cases where the data is not available.

#### 4.4 Size of organisation

Looking next at organisational size, employer responses suggest that three in ten conciliations were conducted in organisations with fewer than 250 UK employees (see Table 4.1). However, the majority were in larger organisations, with four in ten involving organisations with a total workforce of 1,000 employees or greater.

Three quarters (74%) of conciliations took place in organisations with more than one workplace<sup>18</sup>. However, even in these multi-site organisations, the actual dispute tended to centre on a single workplace (according to 68% of managers from multi-site organisations).

Opinion seems to be divided as to whether or not the size of the organisation makes conciliation more difficult or not. Molloy and Lewis claim that conciliation is actually more difficult in smaller organisations as participants are less likely to

'Individual statutory employment rights since 1997: constrained expansion' *Employee Relations* Vol. 24, No. 6, pp. 619-637 (19).

<sup>18</sup> According to the management representatives interviewed in 2006-7 customer survey.

have experience of conciliation and the increased possibility of the involvement of the owner could make the situation seem more personal and consequently more emotional. They also point out that the consequences of the settlement are likely to be wider in larger organisations which can *“heighten their [the parties’] determination to hold their initial position, creating inflexibility”*.

The 2006-7 customer survey does not support either view. There were no significant differences on perceptions of the position of respondents’ own or the other sides’ position by organisation size, and the Ipsos MORI analysis did not find organisation size to be a key driver of successful outcomes or customer satisfaction (see Section 7.2 for the full Ipsos MORI findings).

**Table 4.1: Collective conciliation cases by size of organisation (based on the number of UK employees in whole organisation)**

	<b>% organisations (Management responses)<sup>19</sup></b>
1-249 employees	31%
250-499 employees	16%
500-999 employees	14%
1000+ employees	39%
No. responses	258

Source: Ipsos MORI 2006-7 customer survey

#### **4.5 Trade union/ staff association membership**

The proportion of the workforce who are members of a trade union or staff association can be linked to the level of power the employee representative has in the conciliation. As one conciliator put it:

*“...If the TU side have a large percentage membership they are more likely to hold a firmer view than if they have a lower percentage membership. They are more likely to be able to use effective industrial action as a tool.”*  
(An Acas collective conciliator, Survey of collective conciliators)

The customer survey asked respondents to estimate the proportion of employees in the organisation who were members of a trade union or staff association. As table 4.2 shows, employee and management representative estimates differed considerably, with employee representatives being more likely to estimate a higher level of density. This is illustrated by an analysis of matched cases<sup>20</sup>. In just over a third (36%) of cases for which we had both management and employee responses, there was agreement on the level of trade union density. In 47% of matched cases the employee representative gave a higher estimate, and in just 17% it was the management estimate that was higher. This pattern of estimation was also found among employers and employee representatives in the WERS 2004 survey.

<sup>19</sup> The question asked managers to estimate the number of employees in their organisation in the UK. It has been assumed that managers will have a more up-to-date picture of number of employees than employee representatives, who may not work for the organisation.

<sup>20</sup> Where both the management and representative were interviewed about the same case – see glossary of terms for more details.

This may be because neither side will have a complete picture. The trade union may know how many employees are members but may well not have an accurate picture of the total number of employees, whereas the management will not have accurate figures on the numbers of its employees who are members of the union/ staff association.

**Table 4.2: Collective conciliation cases by estimated proportion of employees who are members of any trade union or staff association**

	<b>Employee representative view</b>	<b>Management representative view</b>
None	1%	2%
Up to 25%	7%	13%
Over 25% up to 50%	18%	34%
Over 50% up to 75%	36%	31%
Over 75%	39%	20%
Number of responses	199	228

*Source: Ipsos MORI 2006-7 customer survey*

Analysis of responses to this question does show that the number of organisations in which Acas conducted collective conciliation, but which had no trade union or staff association presence, was very low (between 1% and 2%).

#### **4.6 Number of unions involved in the dispute**

According to the management responses to the customer survey, the majority of disputes (67%) involved just one trade union. Just 13% of managers said that there was no trade union involved in the dispute (although there may have been another type of staff association or worker representative body) and 19% had more than one union involved in the dispute.

#### **4.7 Industrial action during the dispute**

Looking at the 2006-7 customer survey, 87% of employee representatives and 88% of managers said that no industrial action had taken place during the entire dispute (either before, during and after conciliation). However, at the point when they came to conciliation most respondents said that there was a risk of industrial action, but it was rare for action to have already taken place.

##### **4.7.1 Industrial action before the conciliation**

Looking at matched cases<sup>21</sup> we find that in less than 1 in 10 cases (9%) did both sides agree that action had taken place, while in over 8 in 10 (83%) there was agreement that there had been no action. In the remainder, management and union representatives had different memories of what had happened.

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<sup>21</sup> Those for which we had the view of both management and employee representatives.

Where there had been industrial action before Acas involvement, it had typically lasted five days or less - around half (15 out of the 29 representatives who responded to the question) said action had lasted one or two days, and a third (10 out of 29) three to five days. The number of employees involved varied considerably, depending mainly on the size of the organisation. The mean (average) number involved was 620, although this was inflated by some of the largest disputes (the largest recorded was 7,000), as two in five (38%) said under 50 employees were involved.

#### **4.7.2 Ballots for industrial action before the conciliation**

For industrial action to be lawful trade unions must, among other things, ballot their members on whether or not industrial action is appropriate in the situation. The number of matched cases in which there had been a ballot for industrial action were also in the minority. Both sides agreed that one had taken place in 13% of cases, whilst in nearly two-thirds of cases it was agreed that there had been no ballot. This compares to the WERS 2004 survey, where just 5% of workplaces had balloted their members in the previous 12 months. However, as table 4.3 shows, there was more disagreement around this question than the one on industrial action: in nearly a quarter of cases one or other party said that a ballot had taken place. This may be because an indicative ballot had taken place to gain an idea of the strength of their relative positions, and they may not have shared this with the other side.

Where there had been a ballot, the majority were for action lasting one or two days (47%) or three to five days (32%). One in five (22%) said the ballot was for action lasting longer than five days. The number of employees who could be involved varied with workforce size but is more likely to be under 150 (64%), with an average of 273 days of potential action recorded across all cases.

#### **4.7.3 Perceived risk of industrial action at the beginning of conciliation**

In 39% of (matched) conciliation cases both sides agreed that there was a risk of industrial action at the time Acas became involved. However views differed on this question. The findings suggest that there is a risk of industrial action perceived by at least one party in the large majority of organisations in which conciliation takes place (68%) - in only a third of matched cases (32%) did both sides say that there was no risk of action.

**Table 4.3: Was action taken, balloted for or threatened?**

	Actual action %	Ballot for action %	Risk of action %
Both sides agreed Yes	9	13	39
Both sides agreed No	83	63	32
Trade union said Yes; management said No	4	12	18
Trade union said No; management said Yes	3	11	9

Source: Ipsos MORI 2006-7 customer survey

Base: 117 matched cases (where we had interviews with both the management and employee representatives)

Employee representatives were more likely to see a risk of industrial action (58% compared to 48% of managers) and this was the pattern on matched cases where there was disagreement; in 18% the employee side saw a risk of action while the management side did not, while in just 9% the reverse was true.

However, as we shall see later, the risk of industrial action was not one of the key situational factors that affected case outcome (see Section 7.2.1).

#### **4.8 Numbers involved in negotiations on each side**

On average there were three people on each side, during the conciliation. Employee negotiating teams tended to be slightly larger at 3.45 compared to 2.74 on the management side – although some survey participants said there were as many as 20 people on their side.

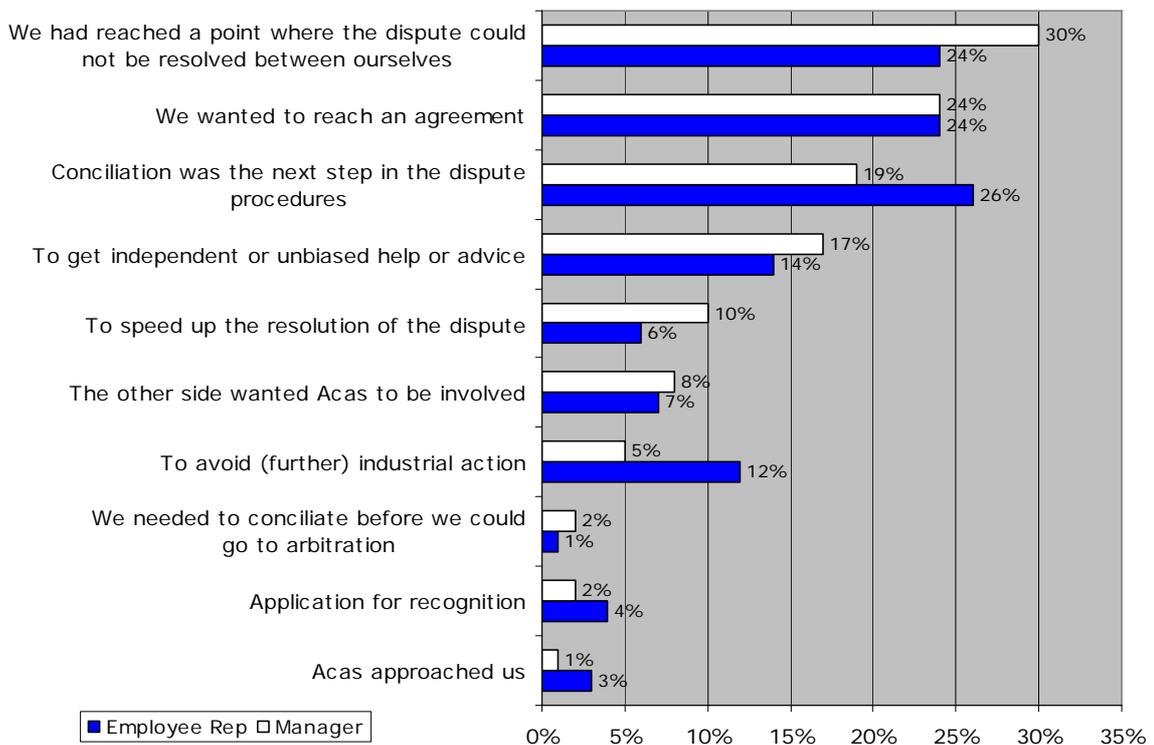
At times these individuals may need help from the conciliator to agree a common line for their side. Disagreement can be on anything from the subject of the dispute to tactics, to power struggles between the personalities involved. Fewer than four in ten respondents (38%) in the customer survey said that their side agreed on the best way forward all of the time. Managers were slightly more likely than were employee representatives to say that their side agreed all of the time (40% and 35%, respectively).

## 5. WHY DO ORGANISATIONS INVOLVE A THIRD PARTY IN THEIR DISPUTES?<sup>22</sup>

In the 2006-7 customer survey, customers were asked first why they decided to involve a third party in their dispute and then why Acas in particular. They were asked to give all their reasons and then to specify which was the most important reason. It should be noted that telephone interviewers did not suggest any possible reasons to prompt the interviewees<sup>viii</sup>.

Looking first at involving *any* third party in the dispute, most of the reasons emphasised wanting to get to a point of settlement, either stated directly (for instance, 'we wanted to reach agreement...'), or indirectly ('we needed help', 'unbiased views', 'to speed up the resolution', or 'avoid industrial action'). Fewer responses emphasised formal negotiation processes (for example next step in the procedures or recognition), or that third party involvement was not their decision, although these are also factors in some situations.

**Chart 5.1: All reasons given for involving a third party in the dispute**



Source: Ipsos MORI 2006-7 customer survey

Base: 228 employee representatives and 267 managers

Note: Open question so responses were coded by interviewer. Some respondents gave multiple reasons and so percentages may not sum to 100%. Some figures given in the text are based upon the most important reason given by respondents and so may not match those given in the chart.

<sup>22</sup> Evidence in this section is taken from the 2006-7 customer survey unless otherwise specified.

Managers were more likely than employee representatives to admit to having reached a point where the dispute could not be resolved between themselves. Whereas employee representatives were more likely to say that conciliation was necessary to avoid (further) industrial action or because it was the next step in the organisations' dispute procedures.

When asked to specify the 'most important' of their reasons, the highest proportion on both sides said that it was because they 'wanted to reach an agreement with the other side' (19% of managers and 20% employee representatives) or that they 'had reached a point where they could not resolve the dispute between themselves' (16% employee representatives and 21% managers).

Dispute procedures were also important here, with 16% of employee representatives and 12% of managers citing this as their most important reason. 80% of customers in the 2002 customer survey said that their workplace had a procedure for dealing with collective disputes, and in 66% of these Acas was specifically named<sup>23</sup>.

Molloy et al's analysis suggests that Acas could be mentioned in an organisation's dispute procedure as either a voluntary or a mandatory step. In addition the policy of some unions means that some union representatives would not move onto a membership ballot until they had gone to Acas collective conciliation.

According to WERS 2004, 43% of UK workplaces have a procedure for dealing with collective disputes. Of those with a procedure for dealing with negotiations on pay and conditions 63% included the provision for involving a third party where managers and employees fail to agree. Three quarters of these workplaces stated that the third party should be someone outside of the organisation, 41% of whom named Acas<sup>ix</sup>.

Both managers and union representatives in the Molloy et al study emphasised the importance to them of avoiding industrial action in their decision to come to a third party and were in agreement that it should be avoided if possible. Managers were concerned about the effect of industrial action on the organisation in terms of productivity, the effect on customers and public relations more broadly. The union representatives tended to point out the negative effects on employees, directly in lost wages and that damage to the organisation caused by industrial action could lead to increased job insecurity.

## **5.1 Why Acas?**

Previous experience of Acas was an important reason in specifically choosing Acas collective conciliation, as opposed to involving any third party. When asked to give all their reasons (unprompted) for choosing Acas, prior involvement in collective conciliation was cited as a reason for using Acas by more than a third of employee representatives (36%), and 16% of managers. A quarter of employee representatives gave this as their most important reason for using Acas collective conciliation, compared to just 9% of managers. Others stated that Acas was the only organisation that they could think of. Some respondents were very specific

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<sup>23</sup> This question was not asked in 2006-7

about their reasons, tying it back to the particular individual they dealt with, as well as Acas as a whole:

*"Because I have a knowledge and respect for the... conciliator and also because of Acas' good standing in employee relations."*  
(Employee representative, Customer survey)

Both Molloy et al, and Dix and Oxenbridge discuss the importance of this relationship between specific conciliators and customers as they build up trust allowing the customer to be more open and frank with the conciliator.

Prior use of other Acas services was also important in respondents' lists of reasons for using Acas collective conciliation, with around a quarter of both managers (23%) and employee representatives (25%) stating this as a reason (and 16% and 14% respectively giving it as their most important reason.) However, Molloy et al highlight use of other Acas services as a consequence of using collective conciliation rather than a route into it.

Some respondents stressed the importance of Acas' independence:

*"Because Acas are independent, they take the heat out of the situation."*  
(Management representative, Customer survey)

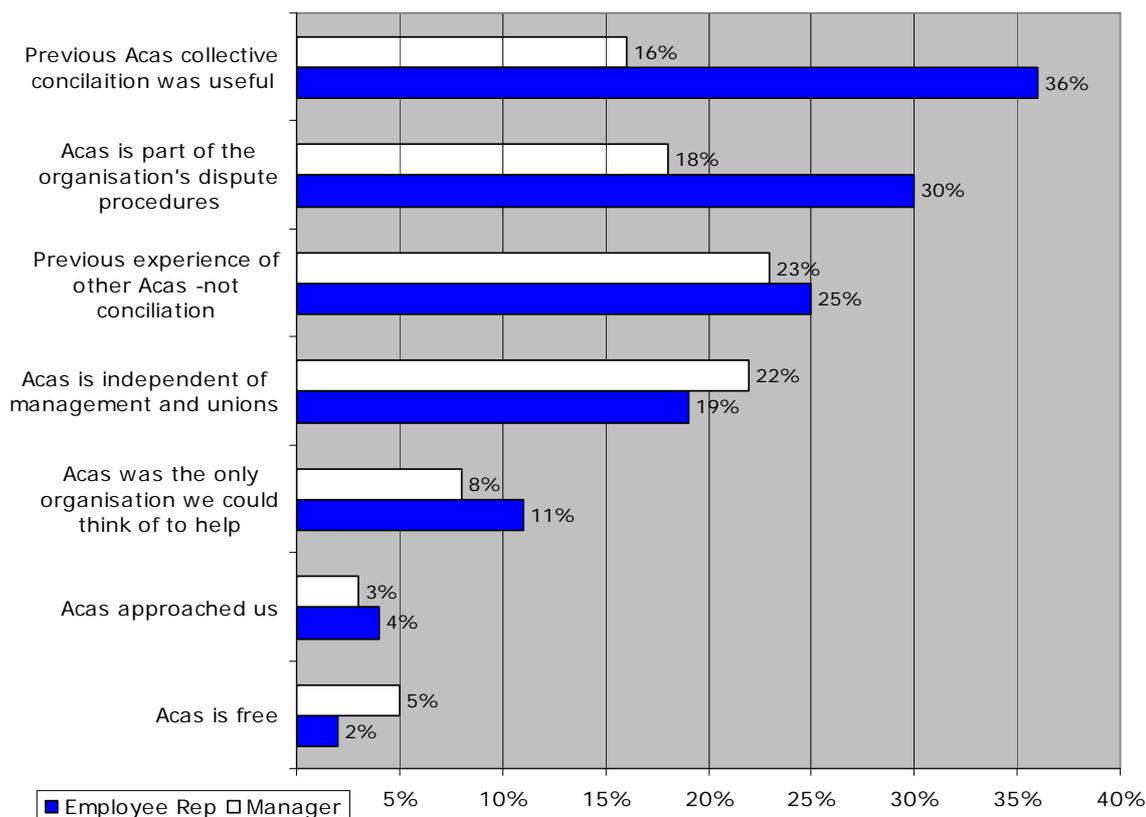
*"To remove tension. They were seen as an honest broker."*  
(Employee representative, Customer survey)

Independence or impartiality from management and unions was seen as important by around one in five managers (22%) and employee representatives (19%) when giving all their reasons for involving Acas in particular; and the *most* important reason for 13% employee representatives and 17% managers.

In public sector organisations Government is the ultimate manager and so in these cases impartiality is linked to independence from government. Corby claims that a perceived lack of independence from government is the reason for low usage of collective conciliation among public sector organisations.

Employee representatives were more likely to specifically mention the organisation's dispute procedures as a reason for involving Acas, with almost a third giving this as a reason, compared to 18% of managers. When moving on to the most important reason for using Acas, this was the most commonly cited reason (19% of employee representatives and 15% of managers).

**Chart 5.2: All reasons given for choosing Acas (rather than another 3<sup>rd</sup> party)**



Source: Ipsos MORI 2006-7 customer survey  
 Base: 228 employee representatives and 267 managers  
 Note: Open question so responses were coded by interviewer. Some gave multiple reasons and so percentages do not sum to 100%. Please not that some figures in the text are based upon the most important reason given and so will not match those given in the chart.

## 5.2 Stakeholders as a factor in conciliation decisions

Conciliators pointed to situations where:

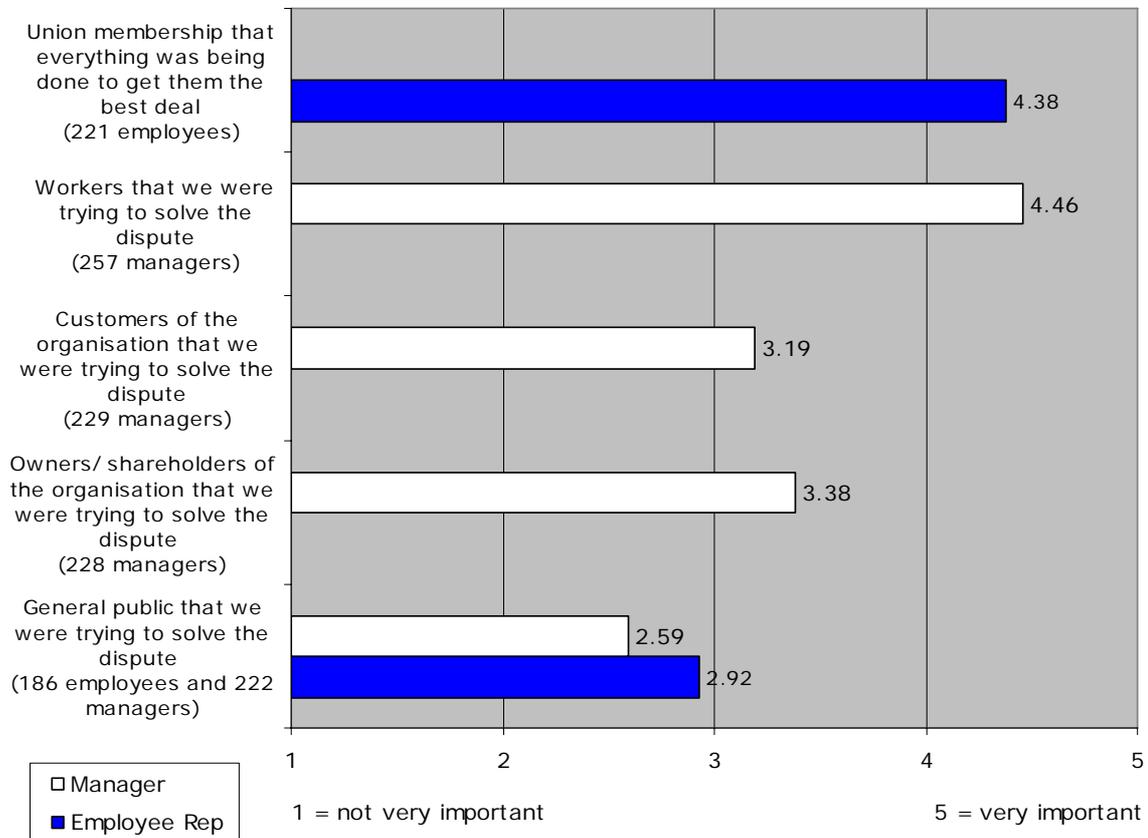
*“One or both of the parties [is] inviting Acas in for cosmetic purposes or to buy time.”* (An Acas conciliator, Survey of collective conciliators)

Hiltrop’s 1987 survey of conciliation found that more than half (56%) of trade union officials agreed that an organisation ‘*should agree to conciliation because it creates a good public image*’. However, only 37% of managers agreed with this. Six in ten managers (61%) in this survey believed that the fact that an agreement is reached using conciliation would make it more acceptable to union members than would otherwise be the case. Again, management and union views differed here, with 45% of trade union officials agreeing with this.

In 2006-7, however, the perceptions of external stakeholders tended not to be given as a reason in their decision to come to conciliation; however this does not discount it as an influence on the conciliation decision. The 2006-7 customer survey explicitly explored external influences on conciliation, particularly whether being seen by a stakeholder group to be trying to get a resolution to the dispute was important to them. Although these external stakeholders might in some

cases be different for managers and employee representatives, both sides emphasised employees as the most important group to which they should demonstrate a commitment to reaching a resolution.

**Chart 5.3: How important, if at all was it to demonstrate to each of the following...?**



Source: Ipsos MORI 2006-7 customer survey

Base: All managers and employee representatives excluding 'don't know' and 'not applicable'

Note: Some questions were only asked to one side

As chart 5.3 (above) shows, amongst management representatives, workers are by far the most important stakeholders in this regard, followed by owners/shareholders, customers and the general public. Amongst employee representatives 'demonstrating to the union membership that everything was being done to get them the best deal' was the most important stakeholder consideration, with the general public a distant second.

### 5.3 Why is Acas collective conciliation not used in all disputes?

Overall, half (47%) of customers had personally been involved in other disputes in the past three years where they had not sought Acas assistance. Just as they were more likely to have prior experience of Acas collective conciliation, employee representatives were much more likely to have been involved in a previous dispute where Acas was not involved – 69% versus just 29% of management representatives. Of these people, 83% had been involved in more than one dispute without Acas.

The most common reason for not involving Acas in the last dispute they were involved in was that the dispute was dealt with internally within the organisation, (60% employee representatives, 64% managers) or that the situation was not serious enough (11% employee representatives, 25% managers):

*"Because we had not reached the stage of becoming entrenched."*  
(Employee representative, Customer survey)

*"Just because there were other routes to take."*  
(Management representative, Customer survey)

Very few gave criticism of Acas' service as a reason – and even where they did, this was related to what conciliation could achieve in the circumstances rather than a negative aspect of the service.

*"There was no scope for negotiation and no role to play."*  
(Management representative, Customer survey)

*"I think we felt that the issue was a principle that we were not prepared to negotiate on."* (Management representative, Customer survey)

No one said that Acas has been too busy to help or that they had not come to Acas because of a previous bad experience. However, 7% employee representatives and 6% of managers did feel they 'would get a better deal without Acas' and 2% of employee representatives (but no managers) that Acas would not make a difference.

However, it should be noted that this survey was only of users of Acas collective conciliation. To get a true picture of the barriers to using Acas, research is needed among non-users of the conciliation service.

#### **5.4 When do parties come to conciliation?**

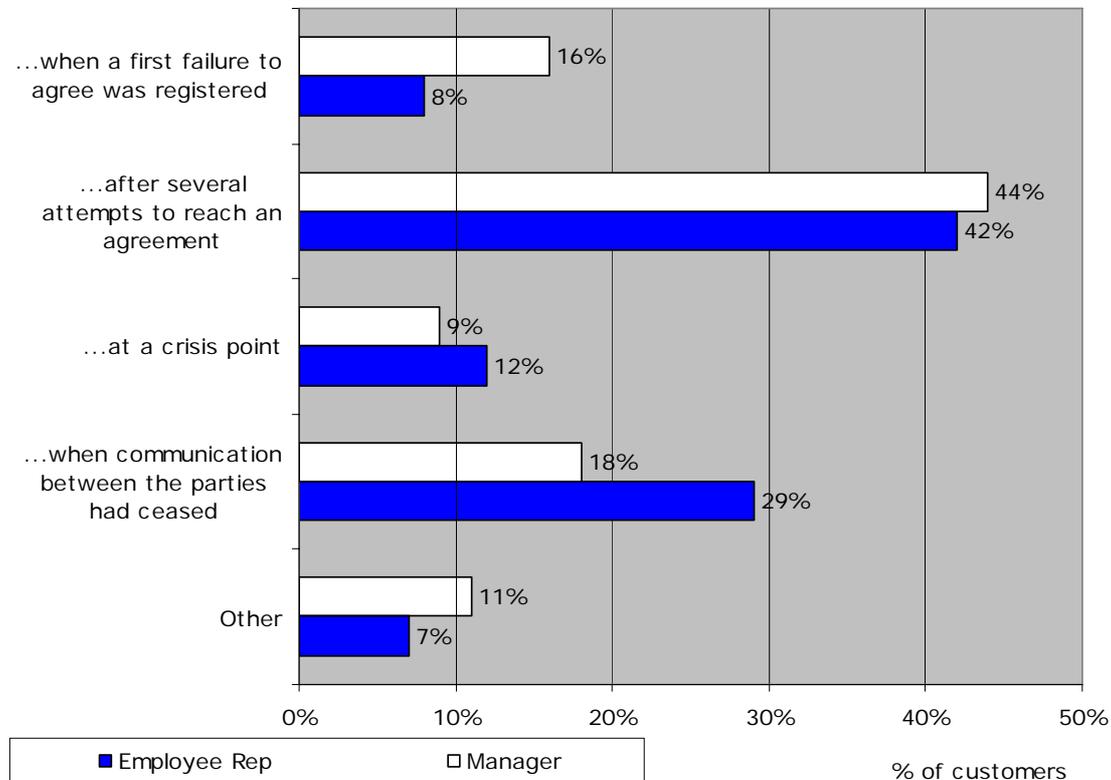
According to the 2006-7 customer survey, Acas tends to become involved when the parties have been trying to resolve the dispute by themselves for some time. More than two in five customers (44% managers, 42% employee representatives) said Acas had become involved 'after several attempts to reach an agreement'.

Employee representatives tended to see the dispute as having progressed further as compared to the perceptions of managers. They were more likely to say communication had ceased (29% compared with 18%) and less likely to say that the situation had not gone beyond a first failure to agree (8% compared with 16%).

This difference in perception applied within cases as well as across them: in only 31% of those disputes for which we had both management and trade union responses was there agreement between the parties on the point that the dispute had reached. This difference in perception was confirmed by further case-level analysis which found that, in 67% of cases, management and employee representatives had a different view of the stage at which Acas was called in on the same case.

The same analysis also confirmed that trade unions were more likely to see the dispute as having progressed further – in 39% of all cases the employee representative saw the dispute as more advanced than their management counterpart and in 28% the opposite was the case.

**Chart 5.4: At what stage did Acas become involved?**



Source: Ipsos MORI 2006-7 customer survey  
 Base: 226 employee representatives, 266 managers

Molloy et al highlighted the importance of timing of conciliation; particularly among full time officials. They tended to emphasise that all internal options should be exhausted before involving Acas. Officials explained this in terms of sustaining their credibility with members, shop stewards and managers – the argument being that their role would be eroded if Acas became involved too soon. They said:

*“I do not want the shop stewards to think that Acas are better negotiators than me... And the only way to cure that is to drag it out and call Acas in”*  
 (Trade union Rep official)

*“But in the back of your mind.... They [Acas] are treading on our toes. I think it's a fairly delicate balance... because at the end of the day someone might say ‘well we might as well not have a full time officer there – the Acas officer's going to deal with it. He's going to produce the solutions’*  
 (Trade union official)

Acas was generally seen as a last resort by Molloy et al's interviewees. In Hiltrop's 1987 survey of conciliation customers 74% of managers and 81% of trade union officials felt that the conciliator should not enter the dispute until all

internal procedures for dealing with the dispute internally had been exhausted. This was backed up by Acas conciliators in 2006-7. As one conciliator put it:

*"The parties have failed to resolve an issue, despite a number of attempts. Acas is a different process... 'drinking in the last chance saloon'."*

## 6. WHAT HAPPENS DURING COLLECTIVE CONCILIATION?<sup>24</sup>

Goodman points out that the confidential nature of conciliation means the conciliation process is not easily observable by researchers. So, in the 2006-7 on-line survey of Acas collective conciliators, we asked conciliators to use their own experience of conciliation cases to generalise about what they do at each stage of the process. It should be noted that each case is different and personalities and conciliation styles vary among conciliators<sup>x</sup> and upon the situations they encounter.

Conciliators indicated the importance/ usefulness of a range of techniques or behaviours they use by rating them on a scale of 1-5, where 1 is 'not at all important' and 5 is 'very important'<sup>xi</sup>. To easily compare these we combined answers into 'mean scores', which shows where on the scale the average responses falls<sup>xii</sup>.

More detail on the behaviours and techniques that were associated with customer satisfaction or successful outcomes can be found in Section 7.

### 6.1 Before the conciliation

According to conciliators the two most important things they should do before a conciliation begins are to ensure that the main decision-makers are involved (mean score 4.66 and 92% classing this as important<sup>25</sup>) and to talk to parties about the situation over the phone (4.48 and 79%). As one conciliator advised:

*"Get as much background information from the parties in advance on the telephone."* (An Acas conciliator, Survey of collective conciliators)

There was less agreement among conciliators about whether it is important to meet the parties in person separately before the main conciliation. Although the mean score for this was almost neutral at 3.17, four in ten (41%) conciliators saw this as important, while a quarter (25%) said it was unimportant. The range of opinion on this issue can be illustrated by the conciliators themselves:

*"The important parts of the conciliation are the initial separate meetings with the parties which are used to identify and clarify the issue(s) in dispute. Until we are satisfied that we understand what is in dispute and more importantly that the parties themselves are in agreement as to what the dispute is about then we cannot move it towards a settlement."*

*"It is desirable to meet parties separately before a conciliation but not always practical."*

*"Only meet parties first where very complex or high profile issue."*

(Acas conciliators, Survey of collective conciliators)

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<sup>24</sup> Unless otherwise stated, all evidence in this section comes from the on-line survey of conciliators conducted by Acas in 2007.

<sup>25</sup> With a score of 4 or 5, where 5 is 'very important' and 1 is 'not at all important'.

According to customers there were on average 2.25 meetings during conciliation. There was very little difference in estimates between managers and employee representatives, implying that they attend similar numbers of meetings.

Researching both the situation and relevant case law, pay rates, industry data etc. were highlighted by 10 conciliators (without prompting). Several also pointed out the importance of thinking through or discussing the situation with colleagues and stressed the need to actively look for issues that might be below the surface, but have an influence on the negotiations.

## **6.2 At the beginning of the conciliation**

Conciliators felt that behaviours and techniques designed to ensure that parties understand the process and rules of conciliation were most important at the beginning of the conciliation. Explaining how conciliation works, setting ground rules and explaining the rules around confidentiality were seen as most important (all had mean scores of above 4.5)<sup>xiii</sup>. As one conciliator put it:

*"[It is important to] set expectations about what conciliation can achieve."*  
(An Acas conciliator, Survey of collective conciliators)

The majority of conciliators in 2007 thought that they should analyse the nature of disputes, highlight the key issues involved and identify areas where agreement (and to a lesser extent disagreement) exists. Explaining the legal implications was seen as less important, and for some conciliators (16%) this was not important<sup>xiv</sup>.

Three quarters of conciliators (75%, mean score 4.16) felt that it was important to break down the issues so they could be dealt with one at a time. But there was disagreement over whether they should deal with the most important issue first or find an easy win at the start, although overall these were both considered important (mean scores greater than 3)<sup>xv</sup>. However, as one conciliator pointed out, this might be easier said than done:

*"Who decides which is the most important issue? Sometimes the parties cannot even agree on that!"*  
(An Acas conciliator, Survey of collective conciliators)

Conciliators thought it was more important that they get the sides to explain their point of view separately (mean score 4.33, 84% considered it important) rather than in front of each other (3.64, 51%). However, there was some disagreement as to whether they should ask parties to explain their points of view in front of each other at all, with one in five conciliators (19%) seeing this as unimportant but half (51%) seeing it as important.

Other things conciliators felt they should do at the beginning of a conciliation tended to involve house-keeping issues, timekeeping and putting people at ease.

### 6.3 During the conciliation<sup>xvi</sup>

The 2001 Acas Survey of collective conciliation customers<sup>26</sup> found that almost all employee representatives (above 90%) expected the conciliator to help the sides to agree terms, suggest ways of settling the dispute and help the other side to understand their point of view. Management expectations were most focused on the conciliator helping sides to agree terms (97%).

Getting parties to analyse their respective positions by asking them to explain the reasoning behind their arguments and identifying their bottom-line in negotiations were both seen by conciliators as particularly useful (mean scores of 4.68 and 4.28 respectively). Putting the other side's argument in more neutral terms (4.50), encouraging them to see the other side's perspective (4.20) and pointing out areas where the other side might move position (4.18) were also seen as useful behaviours or techniques to use.

Seeking new solutions to the dispute was generally seen as useful but the relative usefulness of techniques for doing this varied. Using 'what if' scenarios<sup>27</sup> and acting as a sounding board for new ideas was considered useful (mean scores of 4.48 each). However, getting parties to brainstorm new ideas and using their employment expertise to tell organisations about relevant employment law or other organisations that had faced similar issues were judged less important by conciliators (mean scores of 3.56, 3.21 and 3.25 respectively).

Conciliators also found that techniques to change the group dynamics were useful. Putting parties in separate rooms was considered very useful (mean score 4.46), but so was having informal discussions with individuals from either side (4.02) and 'corridor meetings' (informal meetings with specific individuals from either side to discuss the situation face to face – mean score 3.61):

*"Most of my collective conciliation work is carried out in separate rooms. They have already heard from the other side across the table and the only way to make progress is usually in separate rooms."*  
(An Acas conciliator, Survey of collective conciliators)

This fits with the customer experience<sup>28</sup>, where 87% of customers<sup>29</sup> said that some of the conciliation had taken place separately and 79%<sup>30</sup> said that they had been in the same room as the other side at some point during the conciliation.

More challenging conciliation tactics such as pointing out the consequences of not reaching an agreement (4.10) and giving an assessment of each side's argument (3.81) were seen as useful by conciliators, but less so than other behaviours and techniques. As one conciliator put it:

*"Getting the parties to realise that all sides have the interest of the employees and the organisation at heart. No one wants to close a company down."*  
(An Acas conciliator, Survey of collective conciliators)

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<sup>27</sup> Conciliators can investigate whether parties would move if a certain situation arose by asking them 'what if the other side did...'

<sup>28</sup> As portrayed by the 2006-7 customer survey

<sup>29</sup> 88% of employee representatives and 87% of managers

<sup>30</sup> 78% of managers and 79% employee representatives

But some conciliators felt assessing arguments should be approached with caution due to the importance of maintaining impartiality:

*"Unless we are commenting on factual information such as employment rights under legislation it is very risky to give assessments on the other side's argument. I am more likely to give an assessment to a party about their [own] argument, especially if it is spurious or lacking substance."*

*"You summarise the arguments used but have to be careful if you are going to assess them...i.e. I think that is a strong/weak argument."*  
(Acas conciliators, Survey of collective conciliators)

Other suggested behaviours and techniques included summarising progress periodically, people skills and ensuring that basic needs are met:

*"Give a brief resume from time to time so I am sure where we are in the negotiations. It's easy to get bogged down in details."*  
(Acas conciliators, Survey of collective conciliators)

#### **6.4 At the end of the conciliation**

Helping the parties to draft an agreement was seen as important by over three-quarters (75%) of conciliators, and half (49%) thought that it was important to write up what had been discussed themselves and then give this to the parties. In the customer survey, two-thirds (66%) of customers whose case had settled or where some progress was made reported that the conciliator had helped them to draft an agreement. However the key point to conciliators seemed to be ensuring that everyone fully understood what had been agreed:

*"Make sure that both sides share a common understanding of the closing state of play - agreement that falls apart because of a misunderstanding of its contents can be worse than no agreement at all."*

*"Check the parties have fully understood the agreement that has been reached, it is very important parties understand the implications of THEIR agreement. Agree how and what will be communicated to members and by whom."*

*"Ensure that the parties are clear and have a common understanding of what has been agreed and that they, not Acas, have produced a written agreement. It is their agreement, not ours."*  
(Acas conciliators, Survey of collective conciliators)

Most conciliators saw a role for themselves, after completion of the conciliation, in keeping in touch with the parties to find out the final outcome of the dispute (mean score 3.75). However, only three in ten (29%, mean score 2.95) felt that they should be helping parties to "sell" draft agreements to their constituencies, although a third of employee representatives said that the conciliator had done this in practice. Some conciliators put it slightly differently:

*"Confirm with the parties how they are going to take the messages from the process of conciliation back to the workforce (I encourage this to be a joint process as far as possible)."*  
(An Acas conciliator, Survey of collective conciliators)

## **7. WHAT LEADS TO CUSTOMER SATISFACTION AND TO SUCCESSFUL CONCILIATION OUTCOMES?**

Conciliators become involved in employment disputes with the agreement of the parties involved, often when negotiations have reached crisis point – perhaps there is a deadlock, or parties are refusing to talk. They enter these sometimes emotive situations with nothing but their own personal skills and experience to bring about a settlement.

Despite this, Acas collective conciliators settled or made progress in 90% of cases in 2006-7<sup>31</sup>. Of those customers who reached an agreement 71% said it resolved the dispute in the long-term. Customer satisfaction with the conciliation service was also very high at 85% and 87% of lead management and employee representatives said that they would use or recommend Acas again if a similar situation arose.

So how do conciliators consistently achieve this level of success and high customer satisfaction? Which factors separate successful from less successful conciliation cases?

This section will look first at previous research, particularly the two main approaches that have been taken towards investigating this issue. Next, it will look at analysis of the 2006–7 customer survey conducted by an independent research agency, Ipsos MORI. All these studies are based upon customer perceptions of the conciliation<sup>xvii</sup>.

Two main output measures are explored below: customer satisfaction and conciliation outcome. This section will consider both the effect of characteristics of the dispute and the behaviours and techniques on outcomes and high levels of customer satisfaction.

Looking at the characteristics of the dispute in the first instance allows us to 'control' for the things that the conciliator cannot do anything about and isolate the effects of their behaviour on the situation. Without doing this the analysis would risk focusing on behaviours and techniques used in more straightforward cases, where successful outcomes/ customer satisfaction are more likely, rather than giving a true picture of all conciliation work conducted by Acas.

### **7.1 Research background**

Over the past 30 years there have been two main approaches towards finding out which factors and conciliator behaviours and/or techniques lead to successful conciliation outcomes: in-depth qualitative interviews with customers and statistical analysis of customer survey data. Some of these studies have focused purely on how to reach successful conciliation outcomes, while others have considered both the issues of outcome and customer satisfaction.

This section will centre on an example of each approach – first at a qualitative level, where Molloy et al conducted in-depth interviews with managers and trade

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<sup>31</sup> See Section 9.3 for more details on perceptions of outcome.

union officials about their experiences of Acas collective conciliation. The second study (Hiltrop) is based upon customer survey data from the 1980s and uses statistical techniques to find associations between successful conciliation outcomes and case characteristics and the techniques used by the conciliators.

Molloy et al's qualitative approach found that the following characteristics of the dispute could affect the scope for conciliation agreement:

- *The level of entrenchment of parties at the onset of conciliation* – Both managers and trade union officials gave examples of situations where “there was very little Acas could do” as one or both sides were completely unwilling to move.
- *Parties' purpose in using conciliation* – This covered situations where parties came to conciliation either to prolong the dispute or to get to arbitration<sup>32</sup>, as well as parties entering the conciliation with inaccurate or unrealistic expectations. For example if they expected the conciliator to come to a judgement on the situation or to represent them.
- *Extent to which the issue in dispute is rooted in deeper issues* – If there is a generally negative employment relations climate it can make the conciliation more difficult. This is because the subject of the current dispute may only be the most immediate problem, and reaching an agreement on that may not resolve the deeper relationship issues.
- *Unity of the sides involved in the dispute* – If those on each side disagreed about which line their side should take then the case would be more difficult to settle. The example given was trade union officials whose members had unrealistic expectations about what could be achieved.
- *Openness of parties with the conciliator* – Although Molloy et al say there was little evidence from their research on this, they do include the possibility of circumstances in which parties might not be open with the conciliator about their own position. They cite one trade union official in their study who described being uncomfortable about being completely open with the conciliator in front of shop stewards.

Looking at the role of the conciliator, Molloy et al highlighted the importance of the ‘personality and temperament’ of the conciliator. For example “some might adopt a relaxed approach whilst others were more brisk and businesslike.” They describe conciliation ‘style’ as a spectrum ranging from acting as a ‘go-between’, merely carrying messages, to a ‘pro-active’ conciliator.

- The ‘go-between’ repeats messages from one party to another but does not look beyond the words or try and increase parties’ understanding of their own position or the position of the other side, let alone change them. Customers felt that this approach was less effective and would at best take a lot longer to reach a settlement.
- This contrasts with the ‘pro-active’ conciliator who moves beyond passing messages and uses tactics to actively encourage parties to move position and settle. Customers mentioned conciliators demonstrating a

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<sup>32</sup> See Section 3.2 on the differences between conciliation and arbitration.

real commitment to achieving a resolution, giving them confidence that a settlement would be achieved, adapting their style to the situation and to individuals, and persevering in the face of negative reactions.

Molloy et al found that customers expressed "*an overwhelming preference for the pro-active approach*".

Next, they looked more specifically at the characteristics that customers believed make a 'good conciliator'. Here, the following were found to be key:

- *Impartiality* – Described as being of "*fundamental importance*" to customers, they stressed the need for the conciliator to continually show that they did not favour either party during the conciliation.
- *Professionalism* – Seemingly defined primarily here as trust, customers wanted to be sure that the conciliator would only tell the other side things that they had agreed to be shared. They judged this by the conciliator's attitude and approach but also in the way that they carefully communicated the views of the other side to them.
- *A personable manner* – Rapport and the ability to adapt to different kinds of people was important here. Also covered was the conciliator making sure that parties felt that they were listening to them, understanding what they were saying and that their views were important.
- *Knowledge and competence* – Conciliators should demonstrate that they understood the issues, were aware of parties' agendas, could spot flaws in arguments and did not need to continually refer back to documentation for information. This also included being able to present issues in clear but neutral ways and understanding industry jargon.
- *Patience* – Listening to customers without imposing time limits was seen to remove pressure from the situation for some participants.
- *Accessibility* – Outside of the conciliation customers expected to be able to contact the conciliator either directly or be able to leave a message followed by a quick response.

In contrast to the qualitative approach adopted by Molloy et al, Hiltrop used statistical analysis of customer survey data to find out which characteristics of the dispute and conciliator tactics were associated with successful outcomes. He used two separate surveys conducted in the early 1980s of around 200 responses each and wrote these up as a single paper. He did not look at customer satisfaction in this study.

Hiltrop also took the approach of initially identifying characteristics of the dispute that made conciliation difficult. He identified the following:

- *The subject of the dispute* – Specifically whether it is a pay or non-pay case. Hiltrop believed that pay cases are more likely to lend themselves to compromise as pay is by nature on a continuous scale.
- *Who requested Acas conciliation* – If both sides in the dispute approach Acas jointly for conciliation, rather than one side approaching Acas alone, a conciliated settlement is more likely.

- *Timing of conciliation* – Hiltrop acknowledges that there is debate on this issue with some advocating early intervention to avoid parties becoming too entrenched in their positions, while others consider that if parties spend time negotiating alone they will have a more realistic idea of the strength of their position and that of the other side and so be more likely to settle. Hiltrop himself looks at this issue purely in terms of whether or not a strike was threatened. He concluded that a threat of strike action is more likely to lead to a successful conciliation outcome.
- *Characteristics of disputants* – Hiltrop admits that his last dispute characteristic is open to interpretation and that “*there are many gaps in our understanding of the disputant characteristics associated with successful labour mediation*”. He tested a range of questions associated with this and found that bargainers having unrealistic expectations, the level of hostility between parties, how motivated parties were to settle, the experience of negotiators, their enthusiasm for conciliation and their trust in the conciliator were all likely to make conciliation more difficult.

Next, he tested thirteen conciliator ‘tactics’. Using responses from the first survey he found that seven tactics were significantly associated with a successful outcome, and his model accounted for 45% of the variance. He found that having separate preliminary meetings with parties to explore issues and assisting negotiators with their relationships with constituents were particularly important. He also found that threatening to quit if no progress was made, separating parties and acting as a communication link between parties was associated with positive outcomes, but to a lesser extent. Conciliator attempts to impose procedural arrangements and reduce emotions were associated with non-settlement.

The six conciliator tactics that Hiltrop indicated had no significant effect on the conciliation outcome included: suggesting solutions; synchronising concessions, and; discussing bargaining positions in closed meetings. Hiltrop concluded from his analysis of the first survey that “*the most effective strategy appeared to be serving as a go-between and prod*”.

However, Hiltrop’s own analysis of the second survey gave slightly different results, finding the following to be positively associated with successful outcomes:

- Holding ‘closed meetings’ both separately and together
- Acting as a communication link
- Asking negotiators to recommend the agreement to their constituents
- Separating issues to reach partial agreement
- Emphasising the need to make concessions

He found that dealing with difficult issues first, grouping multiple issues together and asking parties to identify their bottom-line had a negative association with successful outcomes.

## **7.2 Ipsos MORI analysis (2006-7)**

Ipsos MORI conducted statistical analysis on a wide range of case characteristics, conciliator techniques and observed behaviours collected via management information and the customer survey. See Appendix 2 for the full list of factors tested.

The researchers used 'Key Driver Analysis' – a combination of factor analysis, correlations and logistic regression – to find out which dispute/case characteristics and conciliator techniques and behaviours had most influence first on case outcomes and second on customer satisfaction (for more detail see Appendix 2).

In line with previous approaches, they looked initially at factors beyond the conciliator's control (characteristics of the dispute). They found that the initial positions of each side at the onset of conciliation, specifically entrenched positions and needing new ideas to move forward, and the reasons for involving a third party (that Acas had proved useful in the past and that they wanted to speed up the resolution of the dispute) were associated with conciliation outcomes. The case outcome and coming to Acas because it was useful in the past were associated with high levels of customer satisfaction.

Next Ipsos MORI analysed conciliator behaviours and techniques observed by customers, while controlling for the strongest characteristics of the dispute. This approach allowed them to identify the conciliator behaviour and techniques that were most likely to lead to successful outcomes and customer satisfaction across the range of cases dealt with in 2006-7. This found that a successful conciliation outcome was likely if the conciliator:

- Had a pro-active attitude in seeking an agreement
- Was available when needed outside of conciliation meetings
- Worked beyond normal working hours, if necessary
- Established the rules and boundaries of the conciliation
- Dealt with issues beyond the subject of the immediate dispute

High levels of customer satisfaction were associated with situations where the conciliator:

- Had a pro-active attitude in seeking an agreement
- Successfully built rapport with parties
- Was available when needed outside of conciliation meetings
- Was neutral/ impartial

Where appropriate, the Ipsos MORI researchers used statistical tests to group together questions where there were strong associations. This allowed them to test a far wider range of potential influences that had Hiltrop's study in the 1980s, where just 13 tactics were tested.

This section will unpick these findings looking initially at the characteristics of the dispute and then at the behaviours and techniques used by the conciliator. It will consider the effects of these on both conciliation outcome and on customer satisfaction.

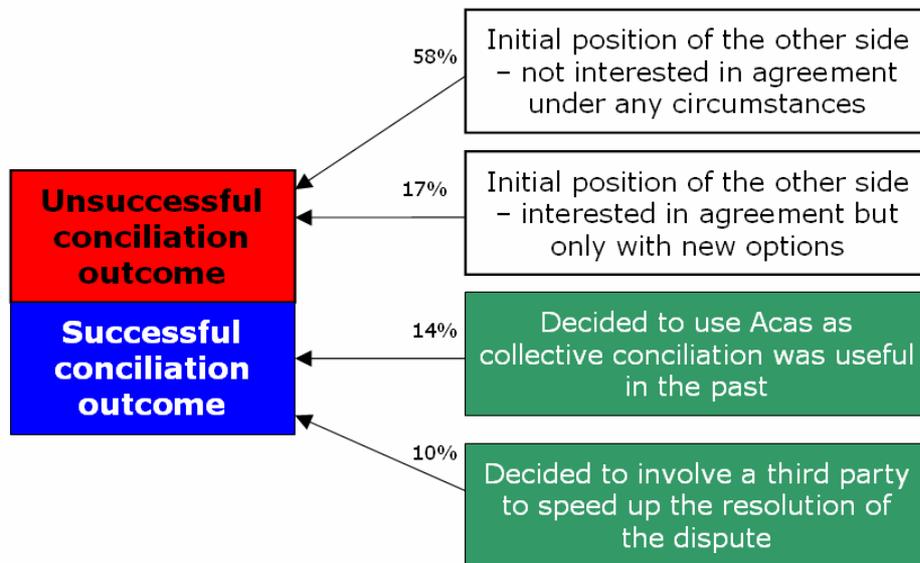
### ***7.2.1 Characteristics of the dispute***

Perhaps Ipsos MORI's most interesting finding is that despite a wide range of potential influences being tested (including the type of case, employment relations environment, levels of hostility, whether there was a threat of industrial action and many more) none came out as a particularly strong predictor of case outcome or customer satisfaction. When the strongest influences are combined they accounted for only 10%/12% of the variance. This suggests that it is conciliator behaviour rather than the characteristics of the case or dispute that is key to successful outcomes and to customer satisfaction.

### Characteristics of the dispute associated with outcome

Looking first at outcome, Ipsos MORI found that the initial positions of parties as they began conciliation and their particular reasons for coming to Acas were the characteristics of the dispute most strongly associated with the outcome of the conciliation.

**Chart 7.1: Characteristics of the dispute that explain outcomes of conciliation**



This model explains 10% of the variation in outcome

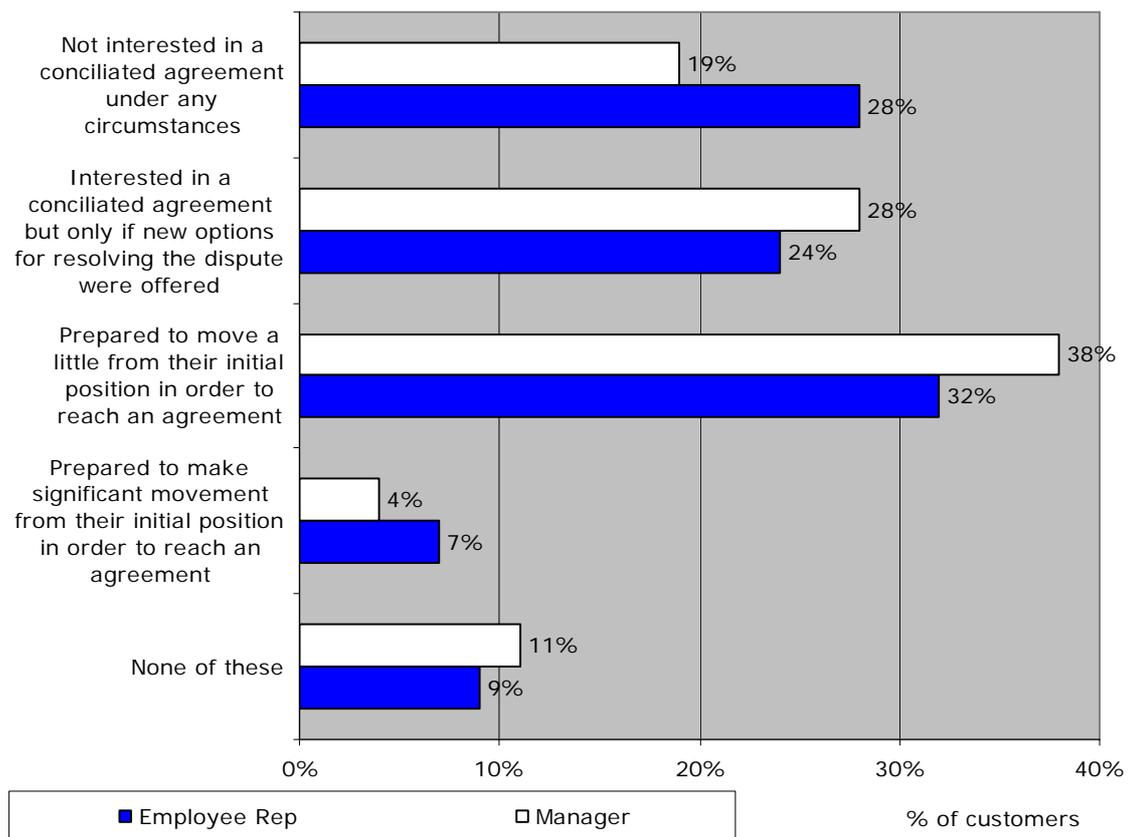
There are two initial starting positions that were associated with *unsuccessful* conciliation outcomes, and two reasons for coming to Acas that were positively associated with *successful* outcomes:

#### *Initial positions*

According to the Ipsos MORI analysis, the characteristic of the dispute that had the strongest influence on the case outcome was parties' perceptions of the position of the *other side* at the onset of the conciliation. Where survey participants had said they believed that *the other side* was 'not interested in agreement under any circumstances' (as the conciliation began), then a successful outcome was considerably more *unlikely*. This means that when parties enter conciliation believing, rightly or wrongly, that the other side has no intention of compromising or moving position this will make the situation more difficult for the conciliator to achieve a settlement. This is backed up by Molloy's qualitative finding (out-lined above) that an unwillingness to compromise by either party will make the conciliation more difficult.

Employee representatives were more likely to see the management side as entrenched, with 28% describing them as not interested in a conciliated settlement under any circumstances. This compares to 19% of managers who believed that the employee side was not willing to move.

**Chart 7.2: Perceptions of the initial position of the other side**



Source: Ipsos MORI 2006-7 customer survey  
 Base: 228 employee representatives, 267 managers

If the initial position of the *other side* was described as 'interested in agreement but only if new options for resolving the dispute were offered' then a successful outcome was also unlikely, but this was a far weaker driver than the more entrenched starting position.

A quarter (28% managers and 24% employee representatives) believed that, as they went into the conciliation, new options for resolving the dispute would be needed in order for the other side to move position. However, as we shall see, techniques to draw out new ideas during the conciliation were not found to be strong drivers of successful case outcomes.

These difficult conciliations were fairly common according to customers, with just 42% of managers and 39% of employee representatives believing that the other side went into conciliation intending to move (either significantly or a little) from their initial positions. Despite encountering these difficult dispute situations, Acas conciliators did have ways to counter them, for example:

*"Before the start of every conciliation I make it clear to the parties that it is their dispute, Acas is not taking 'ownership' of it and conciliation can only succeed if both parties have an open mind and are prepared to consider a position other than the one they have taken that got them into dispute in the first place."*  
 (Acas conciliator, Survey of collective conciliators)

### *Reasons for using Acas*

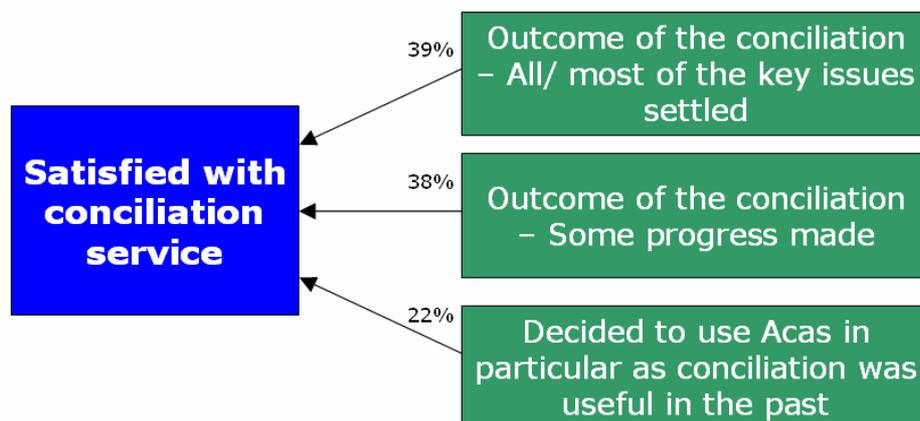
The Ipsos MORI model identified two reasons for deciding to use collective conciliation as having a strong association with successful outcomes<sup>xviii</sup>. First, situations where the parties decided to use Acas collective conciliation in particular because they had found it useful in the past.<sup>33</sup> Several conciliators highlighted the importance of previous experience of Acas in three ways<sup>34</sup>: first, previous positive experience of the service means that the parties know what to expect from conciliation; second, they have the confidence in the process that comes from having experienced its benefits personally, and; third, they are more likely to have negotiating experience.

Speeding up the resolution of the dispute was the second factor associated with successful outcomes and it can be argued that this is backed up by Hiltrop's 1980s analysis, where parties' motivation to settle was a characteristic associated with successful outcome.

### **Characteristics of the dispute associated with customer satisfaction**

The second Ipsos MORI model investigated the case characteristics that were associated with high levels of customer satisfaction. As might be expected, the main driver of customer satisfaction with the service was the outcome of the conciliation<sup>35</sup>. What is perhaps surprising is that there was little difference between cases with a settlement and those where progress towards a settlement was made. Both were far more strongly associated with customer satisfaction than any other characteristic of the dispute. Deciding to use Acas conciliation because it was useful in the past was again also important, but was roughly half the strength of either outcome.

**Chart 7.3: Characteristics of the dispute that affect satisfaction with the service**



This model explains 12% of the variation in satisfaction

<sup>33</sup> This is separate from levels of experience of conciliation of the individual respondent, which did not come out as one of the key drivers.

<sup>34</sup> In the on-line survey of conciliators

<sup>35</sup> Although it can be argued that outcome is not a 'case characteristic' and is something that the conciliator can influence, it has such a strong influence on customer satisfaction that it is necessary to 'control' for it in the later analysis on conciliator behaviour and techniques.

### 7.2.2 Conciliator behaviours and techniques

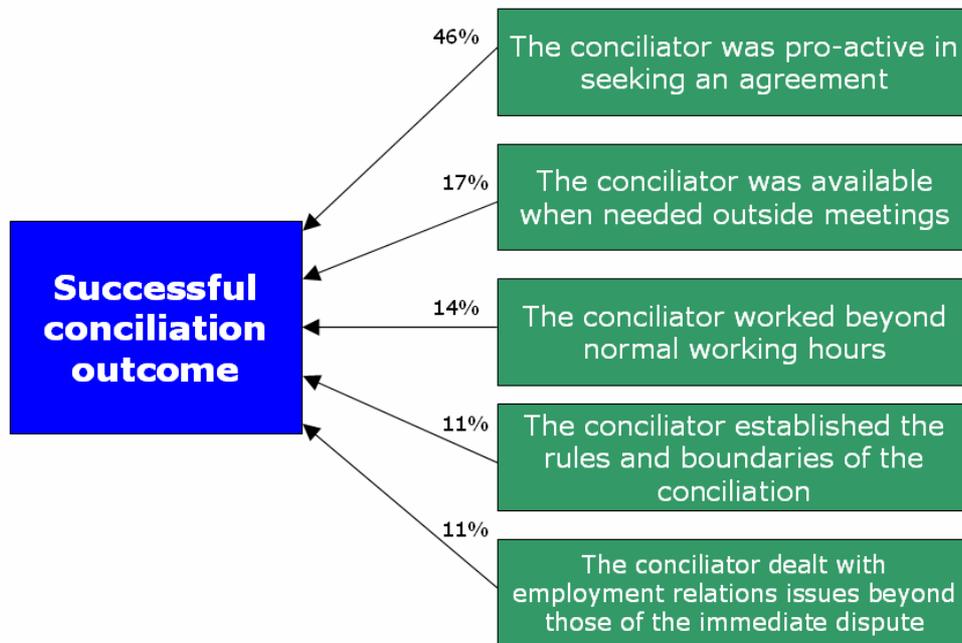
As we have seen, the Ipsos MORI analysis demonstrates that conciliator behaviours were far more likely to predict a successful outcome than were the characteristics of the dispute. The models combining characteristics of the dispute *and* conciliator techniques and behaviour explain high levels of the variation (59 and 52% respectively) in outcome and customer satisfaction (anything from around 30% to 40% is considered a good model), whereas the characteristics of the dispute alone only explained 10%-12% variation in satisfaction.

This section will first look at the outcome of the conciliation, before moving on to examine what influences customer satisfaction.

#### Conciliator behaviours and techniques associated with outcome

Ipsos MORI identified five behaviours or techniques as being strongly associated with successful outcomes. These are now examined in turn.

**Chart 7.4: Which conciliator behaviours and techniques affect the outcome of the conciliation?**



This model explains 59% of the variation in the outcome

#### 1) Pro-active attitude

Displaying a pro-active attitude was the conciliator behaviour most strongly associated with a successful outcome. This was a common behaviour in conciliation with 87% of customers agreeing that the conciliator was 'pro-active in seeking a settlement'. Employee representatives were particularly positive here with 75% *strongly* agreeing that the conciliator was pro-active, compared to 50% of managers.

## *2) Availability outside meetings*

The second factor that Ipsos MORI analysis identified as a key driver was availability of the conciliator when needed to discuss issues outside of conciliation meetings. This could be in person, before, after, or in breaks during the conciliation – or it could be on the phone or via email at a different time. 91% of employee representatives agreed that the conciliator had been available when necessary, compared to 77% of managers. Availability was also highlighted by Molloy et al as one of the features of a ‘good conciliator’.

## *3) Working beyond normal working hours*

Extending a conciliation meeting beyond normal working hours when necessary also emerged as a significant driver from the Ipsos MORI analysis. Four in ten (41%) employee representatives said that during the last conciliation they had been involved in, the conciliator had worked beyond normal working hours as required, although only just under a quarter (23%) of managers that this had happened.

This behaviour was not explored directly in any of the earlier studies of Acas conciliation. However, Molloy et al did highlight that one of the skills of a ‘good’ conciliator was patience, which implies giving parties all the time they need to come to an agreement. As Molloy et al note: *“it was considered very beneficial in the often emotionally charged atmosphere of a dispute situation to have someone who was happy just to listen without imposing any time limits”*.

## *4) Conciliator established conciliation rules and boundaries*

This factor was composed of several conciliator actions at the beginning of the conciliation to explain how conciliation worked,<sup>36</sup> which Ipsos MORI found to be associated with successful conciliation outcomes.

Findings from the survey of Acas conciliators supported the Ipsos MORI analysis, demonstrating the importance of ensuring at the outset that parties understand the process and rules of conciliation. Explaining how conciliation works, setting ground rules and explaining the rules around confidentiality were seen as most important.<sup>37</sup> As one conciliator put it:

*“[It is important to] set expectations about what conciliation can achieve.”*  
(An Acas conciliator, Survey of collective conciliators)

In addition, the majority of conciliators thought that it was important to analyse the nature of disputes, highlighting the issues involved and areas where agreement (and to a lesser extent disagreement) exists. Explaining the legal implications was seen as less important, and for some conciliators (16%) this was not important at all.

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<sup>36</sup> This is a derived factor made up of questions demonstrating that the conciliator had:

- o explained how conciliation worked
- o explained that there are no legal implications to the conciliation
- o explained rules regarding confidentiality
- o set ground rules for the conciliation
- o allowed the other side to explain how they saw the situation

<sup>37</sup> All had mean scores of above 4.5, where 5 is the maximum level of importance and 1 is not at all important.

As already stated above, conciliators thought it was more important to get the sides to explain their point of view separately rather than in front of each other. However, there was some disagreement as to whether they should explain their points of view in front of each other at all, with one in five conciliators seeing this as unimportant but half seeing it as important (see Table 7.1).

Molloy et al support this view. They mention the importance of explaining the role of the conciliator and stress the importance of clarifying the rules around confidentiality.

**Table 7.1: Perceived importance of various conciliator behaviours at the beginning of each conciliation case**

	% Important (5 or 4, where 5 is 'very important')	% Neutral (3)	% Unimportant (2 or 1, where 1 is 'not at all important')	% Never done/ don't know	Mean score
Explain how conciliation works	89	5	3	3	4.75
Set the ground rules for the conciliation	89	6	2	3	4.69
Explain issues around confidentiality	87	8	2	3	4.51
Allow each side to explain their point of view away from the other side	84	8	5	3	4.33
Explain the legal implications of conciliation	59	22	16	3	3.79
Allow each side to explain their point of view in front of each other	51	22	19	8	3.64

Source: On-line survey of conciliators  
Base: 63 conciliators

#### 5) Dealing with issues beyond those of the immediate dispute

Finally, according to the Ipsos MORI analysis, if during the conciliation the conciliator dealt with issues beyond the immediate issue of the dispute, a successful outcome was more likely.

Molloy and Lewis's in-depth interviews with conciliators in 2002 found that conciliators generally saw the primary objective of conciliation as to help parties to resolve the issue in dispute and reach settlement. But conciliators also "*placed varying emphasis*" on a secondary objective of dealing with wider issues such as improving employment relations in the organisation and/or helping to prevent future problems. This is supported by the 2006-7 evaluation. Over half (52%) of conciliators thought it was useful to deal with issues not directly related to the subject of the dispute. Only 10% thought it was not useful to do this<sup>38</sup>.

However, customers were more split on the issue. 40% of employee representatives said that the conciliator *did* deal with issues beyond those of the immediate dispute in their case, but this behaviour was reported by only 22% of managers<sup>39</sup>.

<sup>38</sup> From the on-line survey of conciliators

<sup>39</sup> From the customer survey

In another paper drawing on this and other evidence, Dix and Oxenbridge suggest that in more hostile employment relations environments this limited approach could lead to a situation described by one trade union official:

*"Sometimes all it's doing (conciliation) is turning the gas burner off for a bit.... Conciliation.... Is capable of taking the heat out of some disputes.... But it starts up again... a week later the problem is back there again. And yes, conciliation... did what it was supposed to do but it did not deal with the underlying industrial relations problem."*

However, it should be noted that this situation is rare, as 71% of those customers whose case was settled said that conciliation solved the dispute in the long-term<sup>40</sup>.

Dix and Oxenbridge note that sometimes conciliators do look beyond the immediate dispute, and seek strategies to improve relations and better equip the parties to deal with future conflict or problems if they arise. There is some overlap here with Acas' 'Business and Skills Solutions' service<sup>41</sup>, which aims to deal with longer term employment relations issues.

### **Conciliator behaviours and techniques associated with satisfaction**

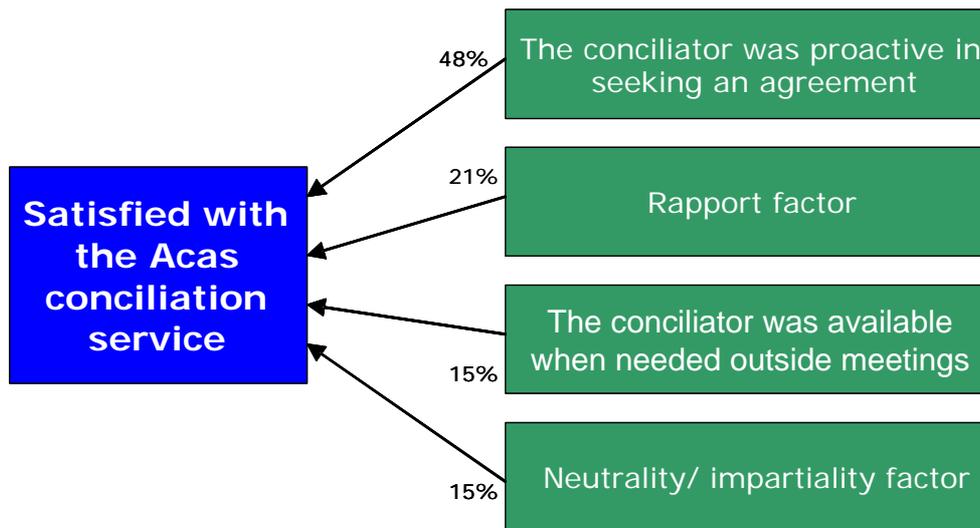
Moving onto the conciliator behaviours and techniques that are associated with customer satisfaction, some over-lapped with the previous analysis on outcome: a pro-active attitude and availability outside of meetings (see above).

### **Chart 7.5: Which conciliator behaviours and techniques drive customer satisfaction?**

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<sup>40</sup> Looking at responses to the 2006-7 customer survey

<sup>41</sup> Acas staff provide tailored advice, facilitation, training, or support on a particular work-related problem. They deal with a wide range of issues including: communication and consultation, redundancy and notice, contracts and hours, employee engagement, organisational change, disputes and mediation, equality, job evaluation, flexible working and improving employment relations. Formerly known as 'Workplace Projects', 'Advisory Projects' and 'Advisory Mediation'. For more information please see <http://www.acas.org.uk/index.aspx?articleid=2001>



This model explains 52% of the variation in the outcome

But what differs about satisfaction with the service is that some of the soft skills of conciliators – rapport and neutrality – are also important drivers/predictors:

#### *Rapport*

Ipsos MORI combined several questions into one for this factor. Therefore, here 'rapport' refers to customer ratings of conciliators on:

- Establishing a rapport with you
- Understanding your point of view
- Listening to you
- Helping you to identify areas of agreement/ disagreement
- Calming the situation
- The conciliator was trustworthy

Almost all (92%) customers indicated that the conciliator was 'good' (22%) or 'very good' (70%) at establishing rapport with them (for more on customer views on conciliators see Section 8.2)<sup>42</sup>. Molloy et al support this view (see above).

#### *Neutrality*

Factor analysis conducted by Ipsos MORI also identified a 'neutrality/impartiality' factor. This factor combines customer ratings of:

- The impartiality of the conciliator;
- How effective the conciliator was at putting issues in neutral language.

Maintaining impartiality is an issue that is always of concern to Acas. As Peter Harwood, Acas' Chief Conciliator puts it:

*"To enable Acas to maintain its 'honest broker' reputation it is essential that it preserves its founding principle of being impartial to the parties."*

<sup>42</sup> In the 2007-06 customer survey

More than nine in ten managers and employee representatives described the conciliator as being 'good' or 'very good' at remaining impartial, although employee representatives were more positive, with 82% classing the conciliator as 'very good' compared to two thirds (68%) of managers.

Again, this finding is supported by Molloy et al. They highlight the importance of conciliators demonstrating to customers that they had no 'axe to grind' in the situation and of continually showing that they did not lean towards one side or the other during proceedings. However, they also found that customers were willing to accept that a pro-active or even challenging approach by the conciliator was consistent with impartiality. The key here was that customers needed to be assured that the conciliator's actions were based upon an '*objective and even-handed assessment*'.

Presenting issues in neutral language was seen as a useful conciliation technique by 84% of conciliators, and 91% of customers said that their conciliator had been 'good' (28%) or 'very good' (63%) at this. Molloy et al describe this, citing an employer who praised how the conciliator "*diluted the language in presenting to the other side*", making it more acceptable.. This was seen to make the other side more likely to listen, enabling each side to have a better understanding of the other's perspective. Hearing the other side's viewpoint relayed in neutral language also reinforced the impression of impartiality of the conciliator and increased confidence and trust in the conciliator.

### **7.3 Conclusion: The role of the conciliator as a driver of satisfaction and outcome**

Isolating the factors that lead to successful conciliation outcomes and to customer satisfaction is never an easy task since the situations are complex, and conciliator behaviour is not always observable by customers or easy to describe or categorise. The dispute situations encountered by conciliators are always different, and so these finding can only be indicative about what techniques and behaviours could prove most useful. However, a clear message coming out of both Molloy et al's qualitative study and the Ipsos MORI analysis is that a pro-active approach to settlement is key.

Ipsos MORI's 2006-7 analysis is broadly supported by Molloy et al's qualitative study. Both highlight a pro-active approach by Acas conciliators as being key to both customer satisfaction and to successful outcomes. This moves beyond the approach advocated by Hiltrop of a 'go-between and prod'. This difference could be explained by the timing of the surveys. Goodman suggests that over the years Acas conciliation style has evolved from being a 'catalyst' in its early years to a "*more pro-active emphasis*", and the Ipsos MORI analysis confirms that this approach is likely to lead to successful outcomes and customer satisfaction. However, despite the strong evidence of the effectiveness of this approach to conciliation, more research needs to be done to find out exactly what conciliator behaviour was observed by customers to lead them to judge that the conciliator was pro-active.

Availability also came out strongly in the Ipsos MORI analysis. That the conciliator was available to customers both in terms of allowing them enough time during

conciliation, even if this means working beyond normal working hours, and being contactable outside the conciliation meetings was important. This was also supported by Molloy et al, but not covered in Hiltrop's study.

Where the drivers of satisfaction and outcome differed in the Ipsos MORI analysis was on people skills and neutrality, which were only key drivers of customer satisfaction, and that the conciliator established the rules and boundaries of the conciliation and dealt with issues beyond those of the immediate dispute (only key drivers of successful outcomes). Again, these were factors highlighted in Molloy et al's study, although not always directly linked to outcome and satisfaction.

There were significant differences in the findings between the Ipsos MORI analysis and Hiltrop's. These differences could be attributed to a range of factors. As well as the methodological differences and the larger scale of the recent study, the employment relations environment has changed considerably from the 1980s when Hiltrop conducted his analysis. Well-documented changes include: changing governments and their priorities, changes in focus from collective to individual rights, decreased use of industrial action, increased use of employment legislation and changes to the laws around trade union recognition potentially leading to a greater incentive to compromise.

However, the main contrast between the two studies is the importance the Ipsos MORI analysis puts on the role of the conciliator in achieving a successful outcome or customer satisfaction.

## 8. CUSTOMER EXPERIENCES OF COLLECTIVE CONCILIATION<sup>43</sup>

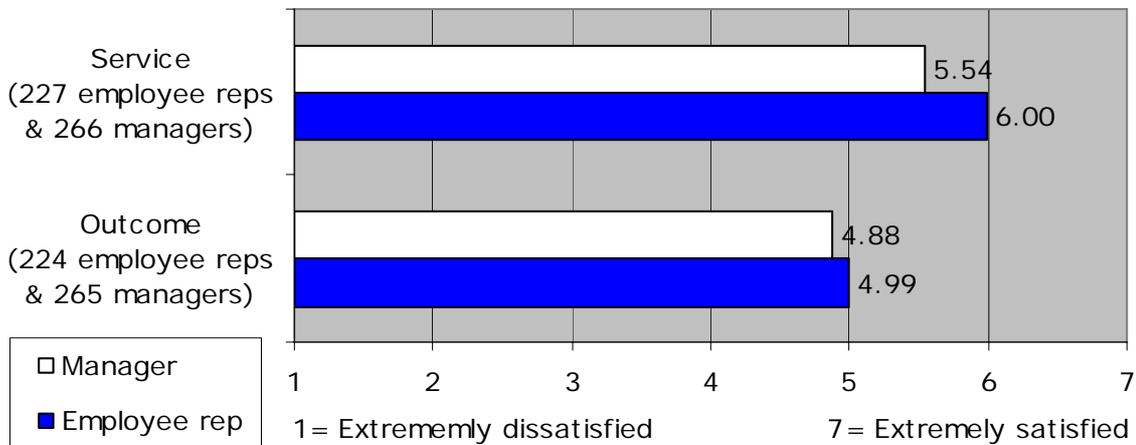
Acas conducts customer surveys on all its services to ensure that they are meeting customer needs and achieving high levels of customer satisfaction. The 2006-7 collective conciliation customer survey asked customers to rate their views of the service as a whole, the final settlement (where there was one) and the skills of the conciliator.

Customers were asked to rate their views using 5-point scales and – in the case of satisfaction – 7-point scales. Two approaches have been taken to analysing this: percentages of customers who gave each response to demonstrate levels of satisfaction; and ‘mean scores’, which give the average response on the scale used (see glossary of terms for more information on mean scores).

### 8.1 Customer satisfaction

Overall, 85% of respondents said they were extremely, very or fairly satisfied with the service provided by Acas collective conciliation<sup>44</sup>. Satisfaction was slightly higher amongst employee representatives than managers (89% compared with 82%), and where there was a successful outcome (90% compared with 65%).

**Chart 8.1: Satisfaction with the Acas conciliation service compared to the outcome of the conciliation (mean scores)**



Source: Ipsos MORI 2006-7 customer survey  
Base: Listed on chart

Looking at those few customers who were less satisfied with the service<sup>45</sup>, they tended to be the same customers as those who were dissatisfied with the outcome or those whose positions were particularly entrenched at the start of the

<sup>43</sup> Unless otherwise stated, all figures in this section are taken from the 2006-7 Acas Customer Survey conducted by Ipsos MORI.

<sup>44</sup> Satisfaction questions used a 7-point scale rather than a standard 5-point scale so as to enable Key Driver Analysis to be undertaken on the key question of ‘What drives customer satisfaction?’ (Due to the positive skew of satisfaction results, a 5-point scale would not allow this).

<sup>45</sup> 33 individuals – classed as those whose satisfaction scores were 3 or below.

conciliation.

Among those who were not satisfied with the outcome of the conciliation (109 customers, 22%), just a quarter (26%, 28 individuals) were also dissatisfied with the service that they had received, compared to just 1% among those who were satisfied with the outcome. It is unknown whether this means that they were unhappy with the service because they did not get the settlement they wanted, or whether they attributed not getting their desired outcome to the service being not good enough.

Of those who saw the other side as entrenched at the start of the process, 13% were dissatisfied with the conciliation, as compared to just 5% of those who were looking for new options from the conciliation, and 3% of those who were prepared to move at the outset.

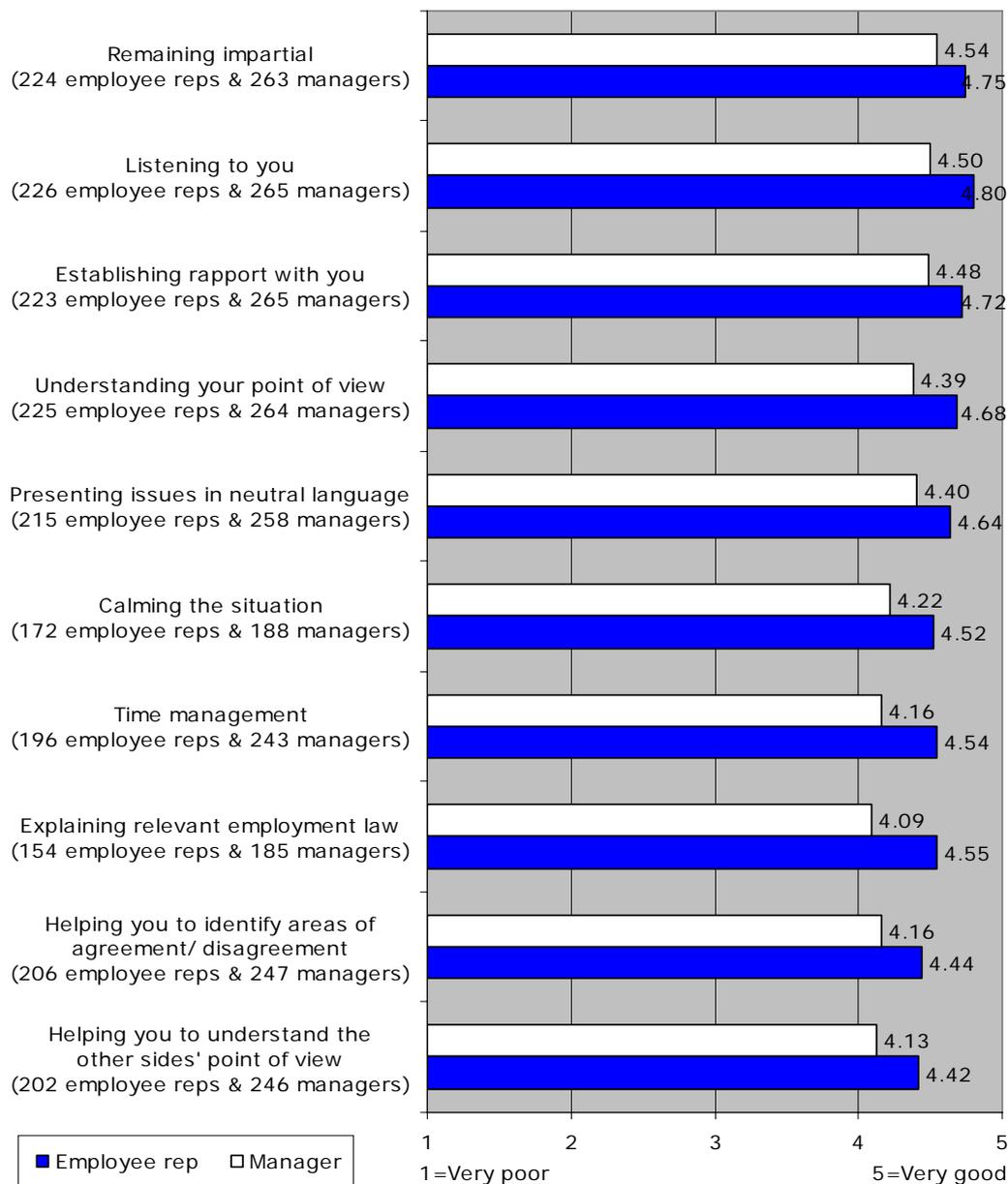
## **8.2 What did customers think of their conciliator?**

Overall customers were very impressed by the skills of Acas conciliators. On all skills considered in the 2006-7 customer survey both managers and employee representatives rated the conciliators between 4 and 5 ('good' or 'very good'), although employee representatives tended to be slightly more positive.

Conciliators were highly rated for their interpersonal skills, particularly those relating to listening (94% of customers considered them to be 'good'/ 'very good'), rapport (92%) and impartiality (93%).

Employee representatives had better impressions of the skills of conciliators on all aspects (see Chart 8.2). The difference in the proportion of employee and management representatives who rate conciliators as 'very good' at these skills is between 13% and 25% – highest on 'time management' (a difference of 25 percentage points), 'explaining relevant employment law' (23%), 'listening to you' (22%), and 'understanding your point of view' (21%). Employee representatives work with conciliators more regularly and in many cases a prior working relationship would exist between them, which could account for some of this difference. Employee representatives, who are better aware of what to expect during conciliation, would arguably also have more realistic expectations of the service including the amount of time it is likely to take (which might, for example, account for such high differences on 'time management').

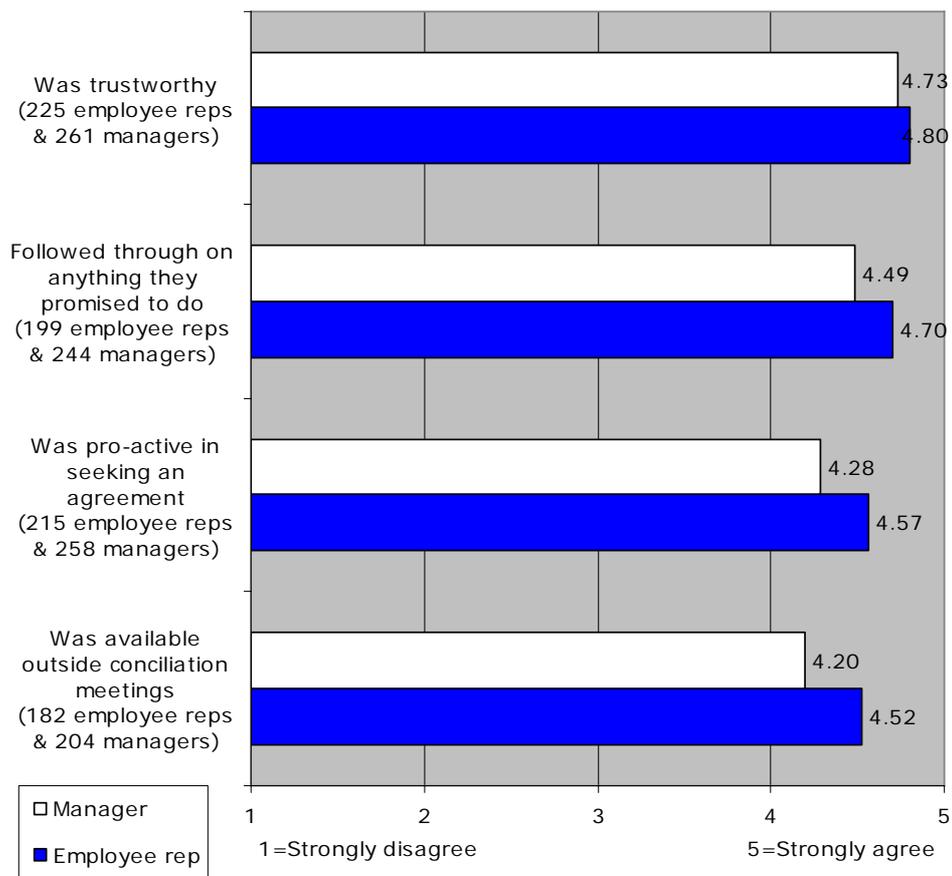
**Chart 8.2: Customer ratings of conciliator skills (mean scores)**



Source: Ipsos MORI 2006-7 customer survey  
 Base: Listed on chart for each question

Customers also assessed other aspects of conciliator behaviour and rated Acas staff particularly highly for being trustworthy, reliable and pro-active. Employee representatives were again more likely to see conciliators in a positive light, especially on being pro-active (where a 25 percentage point gap is found between the two groups at the highest level of agreement) and on reliability (gaps of 21 and 20 percentage points on 'being available outside of meetings' and 'following through on everything they promised to do', respectively).

**Chart 8.3: Customer ratings of conciliator behaviour**



Source: Ipsos MORI 2006-7 customer survey

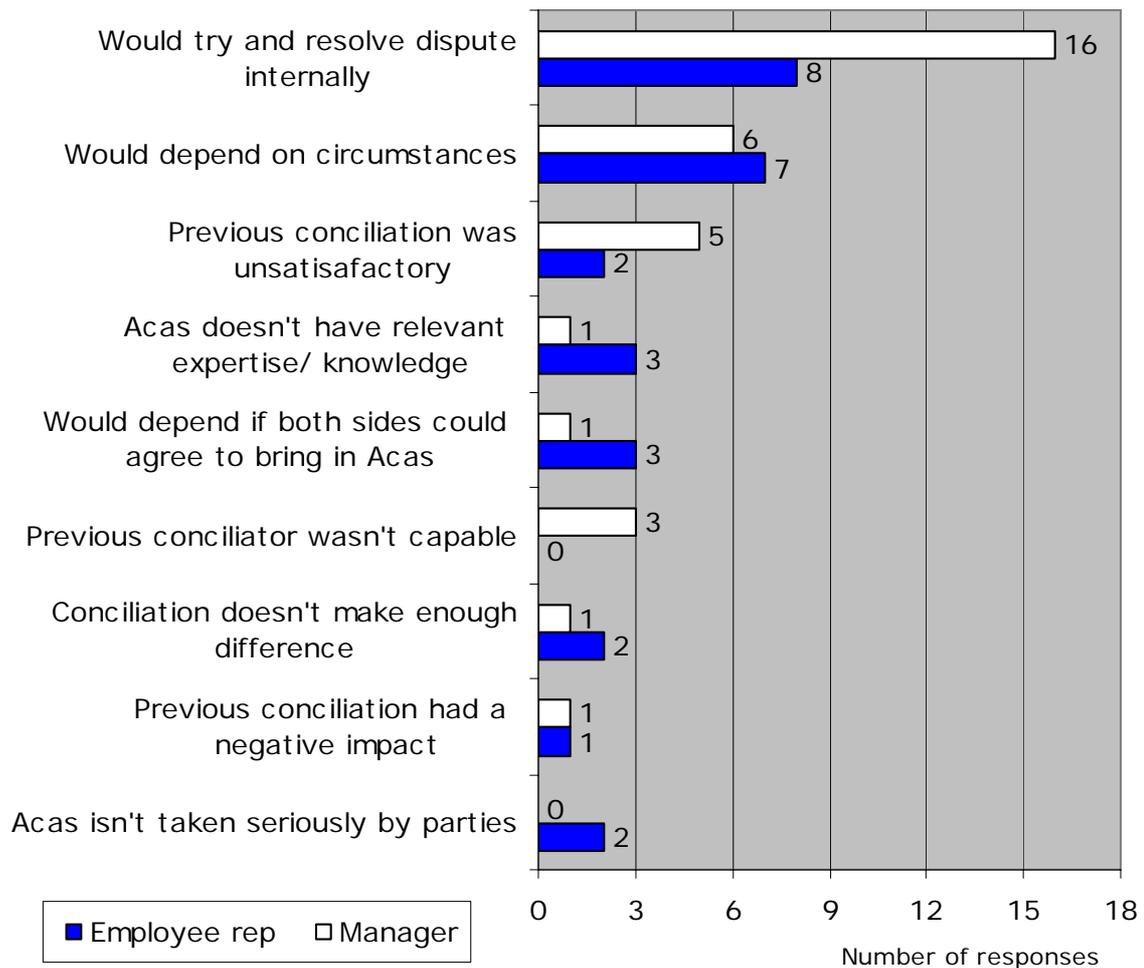
Base: Listed on chart for each question (excludes 'don't know' and 'not applicable')

### 8.3 Future use of conciliation

87% of respondents said that they would be 'likely'/ 'very likely' to use or recommend Acas collective conciliation if they were involved in another employment dispute<sup>46</sup>. Most of these (two thirds, 65% of customers) said that they were 'very likely' to. Differences in levels of advocacy here were not significant between employee and management representatives.

<sup>46</sup> Based on a 5-point scale where 1 is 'not at all likely' and 5 is 'very likely'.

**Chart 8.4: Reasons given for not being likely to use or recommend Acas in the future**



Source: Ipsos MORI 2006-7 customer survey  
 Base: 26 employee representatives, 38 managers (some individuals gave more than one reason)

Of the small number of people who were less likely<sup>47</sup> to use Acas services in future (the 64 people, 13%), most gave reasons concerning the situation; two in five said they would not use Acas if the dispute could be resolved internally (39%) and one in five (21%) that it would depend on the circumstances. Very few cited negative experiences or perceptions of Acas collective conciliation. Chart 8.4 shows these findings.

<sup>47</sup> Defined as anyone who selected 1-3 on a 5-point scale where 1 is 'not at all likely' and 5 is 'very likely'.

## **9. OUTCOMES OF COLLECTIVE CONCILIATION AND THEIR CONSEQUENCES**

### **9.1 Background**

Traditionally publicly available data on outcomes of the Acas collective conciliation service have focussed on whether or not at the end of the conciliation a settlement has been reached or progress made towards one, as recorded by conciliators themselves (Goodman). The 2006-7 customer survey investigated customer perceptions of the outcome of the conciliation, but also moved beyond this to find out more about the wider impact that the conciliation had.

There are some challenges associated with discovering the impact of conciliation. Some effects are immediate and easily linked to the conciliation, such as the avoidance of industrial action. Other consequences may take longer to become apparent - "years" according to Molloy and Lewis – and/ or be harder to identify or link directly back to conciliation. For example where conciliation has improved trust and communication among negotiators this may result in fewer and less severe disputes over the next few years, but this kind of outcome is very hard to quantify and link specifically back to one conciliation case.

Organisations do not exist in a vacuum and so where consequences of conciliation are observable there may be other factors at play that also impacted on the situation; a new contract meaning more money is available to settle a pay claim for example, or new working practices being agreed that effected productivity. We can never know for certain what would have happened without Acas involvement, but opinions of customers here can indicate the value of the service.

The objectives of a specific conciliation case also play a part. The situations in which conciliators work can be very different in terms of urgency and scale. In some for example, imminent industrial action may mean that getting a settlement on the immediate issue urgent and is all that is required, whereas in others the situation may be more amenable to working on underlying issues to produce a longer lasting settlement. In a general pay case, all employees can be affected by the resolution of the dispute but in others the impact may be mainly upon those involved in the conciliation. Therefore what can realistically be achieved in terms of impact within a given situation will vary considerably from case to case.

The final issue to consider when looking at the consequences of conciliation is how the conciliation ended. For example the impact upon an organisation is likely to be very different in a case where a settlement was agreed than in one that went onto arbitration or where no progress towards a settlement was made.

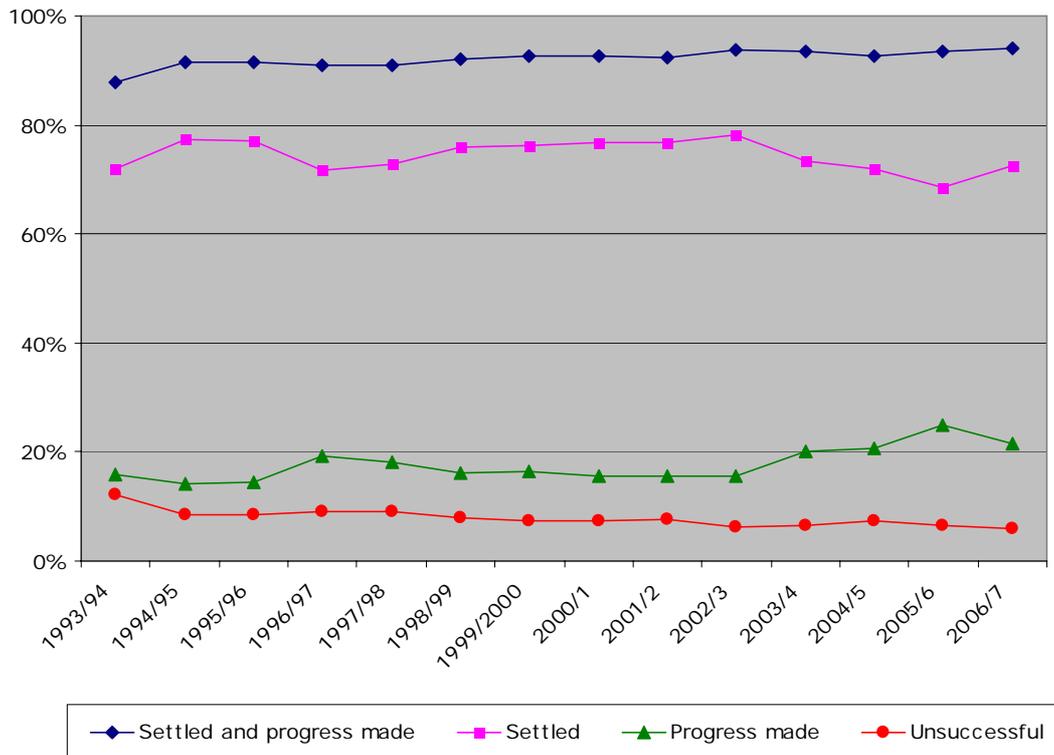
To produce an overall picture of the consequences of Acas collective conciliation the 2006-7 evaluation of the Acas collective conciliation service was designed to take into account the following factors:

- the outcome of the case
- timing of the evaluation
- what effects are likely and can be observed
- who or what is effected
- to what extent impacts can be linked back to the Acas conciliation

## 9.2 Settlement trends

Goodwin analysed case data between 1975 and 1999 and found an increase in overall success rates by Acas conciliators from just over 70% to almost 90%. He states: *“This is an outstanding achievement, and reflects great credit on the skilled Acas staff involved. Indeed it is difficult to envisage it rising further”*.

**Chart 9.1: Proportions of cases with each outcome over time**



Source: Acas management information

Base: 16522 case records (only includes cases where the outcome has been recorded)

Analysis of Acas case data over the last 13 years<sup>48</sup> (where detailed Acas management information is available) supports this, with the proportion of cases where Acas either *settled* the case or *made progress* towards a settlement rising from 88% in 1993-4 to 94% in 2006-7. The proportion of *settled* cases fluctuated during this period and tended to remain between 72% and 78%. However there was an increase in the proportion of cases where progress was made from 16% in 1993-4 to 21% in 2006-7 and a noticeable decrease in cases where Acas was unsuccessful (see Chart 9.1)<sup>xix</sup>.

## 9.3 Perspectives on case outcome

In reporting on its performance against targets set by the government, Acas has at various points drawn on customer views to verify and supplement the information provided by conciliators. Most recently the 2006-7 customer survey

<sup>48</sup> This is the period where detailed data on Acas conciliation cases are available and does overlap with Goodwin's analysis.

asked customers for their views on how the conciliation ended because as Goodwin points out, *"there is a degree of subjectivity"* regarding definitions of outcome. He cites several examples of cases where the outcome could be ambiguous, for example where the conciliator moves in and out of a case as required over a period of time, where a smaller dispute may simply fade away without a formal agreement and voluntary recognition cases, or where recognition does not happen.

Therefore it is unsurprising there were some differences in perceptions of outcome between managers and employee representatives, even when considering the same case. Of the 117 cases where there were responses from both sides there were 16 cases (14%) where their perceptions of the outcome were different. Focusing on cases where interpretations of outcome matched, the settlement rate was 90%<sup>49</sup>, with 64% of customers stating that 'all of most of the key issues were settled'.

**Table 9.1: Case outcomes according to customers**

	%
<b>Outcome successful</b>	<b>90</b>
All/ most of the key issues in this dispute were settled	64
Some progress was made	22
Went onto arbitration	4
<b>Outcome unsuccessful</b>	<b>10</b>
No agreement reached and no progress or referral made	

Source: Ipsos MORI 2006-7 customer survey

Base: 101 matched cases (where both the manager and employee representative agreed on the outcome)

Conciliators themselves tend to be slightly more positive in their reporting of outcomes than customers. This may be due to the timing of the question; conciliators give their perception of outcome immediately after the conciliation is over, whereas the customer survey took place up to a year after the end of the conciliation, giving customers the benefit of hindsight. In 2006-7 just 6% of cases were recorded as unsuccessful by conciliators compared to 10% by the parties involved.

#### **9.4 Collective conciliation and resolving disputes**

As we have seen the main objective of conciliation is to help parties to reach an agreement on the issues in dispute (see objectives of conciliation) and in the majority of cases there is a settlement during conciliation. According to customers, in these cases this settlement tended to be implemented in full and resulted in the long-term resolution of the dispute.

In addition evidence from the 2006-7 customer survey demonstrates that even where there was no settlement during conciliation, customers saw a link between the conciliation and the eventual resolution of the dispute in question. Even in the least successful cases - where there was no settlement and no progress made at the point that conciliation finished - most customers saw Acas as having contributed positively to the eventual resolution of the dispute (where this had occurred by the time of the interview).

<sup>49</sup> However this figure was calculated it exceeded 79%. Acas' performance target is 80%.

Overall regardless of case outcome, at least two thirds of customers thought that Acas involvement had sped up the resolution of the dispute (72% employee representatives, 66% managers). Majorities 'agreed'/ 'strongly agreed' that the conciliation had brought the two sides closer together on the key issues of the dispute (66% of employee representatives and 57% managers) and helped to avoid industrial action (66% employee representatives, 52% managers).

This section will look at each case outcome and its effects on the resolution of the dispute.

#### **9.4.1 Settled cases**

As we have seen in most cases Acas conciliation leads to the settlement of the dispute in question. 59% of employee reps (135 individuals) and 55% of managers (148 individuals) in the 2006-7 customer survey said that 'all or most of the key issues' in their dispute had been settled during conciliation. In the vast majority of these cases, the resulting agreement was implemented in full when it was taken back to the workplace (according to 95% of managers and 87% of employee representatives). Employee reps were slightly more likely to describe the settlement as having been implemented *in part* rather than in full (8% compared to 2% of managers). But only 12 individuals said that the agreement had not been implemented<sup>xx</sup>.

Where the settlement was implemented, either in part or in full, seven in ten (72% of employee representatives and 70% of managers) said that the agreement solved the dispute in the long-term, compared to just over a quarter (28% of employee representatives and 29% of managers) who stated that it only solved the dispute in the short-term. This contrasts with views already given of the objectives of conciliation (see Section 3.3) where conciliators, customers and researchers all stressed that the primary objective of conciliation is to solve the immediate dispute rather than to look for wider improvements. It demonstrates that the benefits of conciliation are wider than immediate dispute resolution – which has traditionally been the way that success of the service is measured.

There were still some instances where conciliation was seen as a very short-term solution. Molloy et al found examples of regular users of conciliation who went back to Acas year after year with the same issues and who said that collective conciliation does not have any wider impact other than ending the dispute and some felt it was unrealistic to expect it to. For example:

*"The nature of the beast is that you will not get long term peace using conciliation ever..... it is a mechanism to resolve a particular issue, the way you get peace is to engage completely differently with your staff"*  
(Manager)

*"Sometimes... all it's doing is turning the gas burner off for a little bit...conciliation...is capable of taking the heat out of some disputes... but it starts up again and the X is a classic example where we've had conciliated positions... we've gone away thinking, great...and then a week later the problem's back there again. And yes, conciliation... did what it was supposed to do, but it did not deal with the underlying industrial relations problem in the X... it came back again."* (Trade union)

However the 2006-7 customer survey found that this situation was rare with just 16% of managers and 14% of employee representatives saying that there had been no improvement in employment relations in the organisation as a result of Acas collective conciliation.

The vast majority of customers agreed that the Acas conciliated settlement had sped up the resolution of the dispute (88% of employee representatives 83% managers 'agreed' or 'strongly agreed'). Molloy et al's analysis illustrated some of the impacts of conciliated settlement, for example:

*"Well it [the dispute] would have taken much longer, and we would have had a few days of dark theatres, and you know, quite damaging, a lot of money would have been lost, and you know, his [the conciliator's] approach probably saved the industry a lot of money" (Molloy et al)*

Over three-quarters of customers who had reached a settlement agreed Acas conciliation had brought the two sides together on key issues of the dispute (82% of employee representatives and 75% of managers); and the large majority said that it helped to avoid strike action (80% of employee representatives and 59% of managers).

#### **9.4.2 Making progress towards a settlement**

*"'Progress' was generally understood [by conciliators] to mean that, although there had been no settlement, the parties had moved forward in some way during the conciliation and the role of Acas had been to some degree, helpful." (Molloy and Lewis)*

Progress short of a settlement was the outcome reported by 47 employee representatives and 46 managers. The vast majority (90%) of these said that the conciliator could not have done any more to resolve the dispute and the reasons they gave did seem to attribute this to the parties or the situation rather than to Acas.

When asked to explain why no settlement was achieved, several just said that one or both sides were not willing or able to settle<sup>50</sup>. Others said that the time was not right to settle at conciliation or they needed more time to think or to consult stakeholders. Some said that although progress was made during conciliation the two sides finally settled the dispute at a later date. In some instances the dispute was still ongoing at the time of the interview (25%).

Where the dispute had been resolved at a later stage most customers said that Acas was important to the eventual settlement and no-one said that Acas had not been important.

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<sup>50</sup> Seven employee representatives and nine managers simply said that neither side was prepared to settle. Five employee representatives and six managers blamed the lack of progress on the employee side, while eight employee representatives and no managers said that the management was unwilling to move. Two employee representatives and one manager attributed it to lack of authority on the management side.

As might be expected positive impacts of the conciliation were most common where settlement was reached, however even where there was progress short of a settlement the majority of parties reported positive impacts of the conciliation. Between a half and two thirds of managers and employee representatives 'agreed'/ 'strongly agreed' that conciliation: brought sides closer together on key issues of the dispute (53% managers, 53% employee representatives); helped to avoid strike action (64% managers, 51% employee representatives); and sped up the resolution of the dispute (67% managers and 56% of employee representatives).

#### **9.4.3 Going to arbitration<sup>51</sup>**

Ten employee representatives and 15 managers reported that in conciliation they agreed that the best way forward was to go to arbitration. Here, an independent expert hears the views of both sides and makes a decision to resolve the dispute which the parties agree beforehand is going to be binding. This is in contrast to conciliation where the conciliator works with parties to reach an agreement themselves. Goodman considers the difference between the two approaches. He claims that the main benefit of arbitration is that it guarantees a settlement of some kind. Disadvantages include that it takes responsibility for the settlement of the case away from parties, discourages compromise from initial bargaining positions in case the arbitrator 'splits the difference' between the offers on the table and it can lead to a dependency meaning that parties may become less inclined to try and resolve a dispute themselves in future.

Over a third (9 of out 25 individuals) of those who went onto arbitration said that they had viewed conciliation as 'a stepping stone to arbitration'. This is built into some dispute resolution procedures. In addition parties are encouraged to try and resolve the dispute through conciliation before a case goes onto arbitration. The rest gave either unwillingness of the other side or of their own side to move as the reason for going to arbitration.

#### **9.4.4 Cases with no settlement and where no progress was made**

As we have seen, it is relatively rare for a conciliation to be unsuccessful, with no settlement and no progress being made towards one: 33 employee representatives and 55 managers reported that no settlement was reached during conciliation and no progress was made. However, these parties tended not to attribute this to a failure of the Acas conciliation service, with 88% of employee reps and 75% of managers saying that there was no more that Acas could have done to reach an agreement. Most blamed the situation and the entrenched positions of the parties involved. Just 4 managers (and no employee representatives) attributed the failure to make progress to the conciliator not being good enough.

At the time of the interview, some disputes were still on-going and others had reached an agreement with or without further Acas assistance. In some cases there was no settlement and either industrial action took place or the management imposed a settlement, while in others the organisation returned to the status quo without an agreement.

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<sup>51</sup> For more on the differences between arbitration and conciliation see Section 3.2.

Acas was generally felt to have contributed towards the eventual dispute resolution: where the dispute had been resolved at the time of the intervention, only three employee representatives and seven managers felt that Acas had been unimportant in the eventual resolution of the dispute.

Molloy et al give examples of the benefits of the conciliation in these cases. They claim that non-settlement via conciliation can have a positive impact on disputes in that it draws a line and brings home to parties how serious the situation is. They cite an example of an employer who after witnessing the conciliator trying everything to settle the dispute said that it made the two sides really consider *“how far they were prepared to go”*.

Customers also reported positive impacts on the dispute of these apparently 'unsuccessful' conciliation cases. Between a sixth and quarter of the customers in these cases saying that conciliation had brought the sides closer together; speeded up dispute resolution or avoided industrial action.

#### **9.4.5 What would have happened to the dispute without Acas<sup>xxi</sup>?**

*“Our business would have gone into a meltdown. Our relationship with our staff would have been ruined. We would have had a strike on our hands and given our precarious financial position, would have destroyed our business.”* (Management representative, Customer survey)

*“We would have had a total conflict situation where both sides would have been at war and both sides then would have been looking for a win situation instead of a win-win situation. All sides would have also suffered financial loss and security of employment could have been in jeopardy.”* (Employee representative, Customer survey)

*“I think I may have lost my job and that the situation would have escalated out of control.”* (Management representative, Customer survey)

The final way of looking at the impact of collective conciliation on the dispute is to ask what would have happened without Acas. Without interviewers suggesting any responses, customers were asked to consider what would have happened if they had not involved Acas collective conciliation in their dispute. The most popular response to this completely open question was that this 'would have led to industrial or strike action' (31%)<sup>52</sup>. The dispute is also likely to have 'taken longer to resolve' (11%) or 'would not have been resolved at all' (14%). However, a small number said that the outcome would have been 'no different' (8%) or that they 'would have resolved it themselves' (5%).

In customers' own words...

Would have led to industrial/strike action or prolonged the dispute:

*“We would have had more lost days than we did and it would have taken longer to settle.”* (Management representative, Customer survey)

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<sup>52</sup> Later in the survey when they were prompted on this issue, 58% said that Acas helped to avoid industrial action (see Section 9.4).

*"We would have reached a settlement but it just would have taken a longer period of time. As a result there would have been a significant breakdown between both parties." (Employee representative, Customer survey)*

*"I think we would have had a long, messy dispute probably resulting in strike action. We would have got nowhere." (Employee representative, Customer survey)*

The dispute would not have been resolved:

*"We would have had a dispute of the blind versus the blind. They would not have known our areas of dispute and we would not have understood their terms of reference." (Employee representative, Customer survey)*

*"I think we would have spent many more inconclusive meetings discussing the issue. Acas was a catalyst for finding a solution." (Management representative, Customer survey)*

The outcome would have been the same (in the long run):

*"We would have reached the same point in the end but would have been more difficult to get there." (Employee representative, Customer survey)*

*"I think because we had already won an employment tribunal we would have got it settled anyway however Acas' role sped up the situation to both sides' satisfaction." (Employee representative, Customer survey)*

## **9.5 Impacts beyond the dispute**

As well as delivering its primary role of promoting a resolution to the immediate dispute in question, collective conciliation can also have longer term and wider impacts on the organisations concerned. In addition, the immediate impact of Acas collective conciliation can, in some key instances, be felt far beyond the organisation in which the dispute takes place, producing benefits to the UK economy.

### **9.5.1 Wider impact of conciliation on the customers of the service**

More customers agreed that the relationship between representatives on either side had improved as a result of the conciliation (net improvement was 24% from employee representatives, 10% according to managers<sup>53</sup>), and that manager-employee relationships had improved generally in the organisation (13% net<sup>54</sup> agreement among employee representatives and 14% according to managers). Molloy et al highlight this in their research, describing how conciliation can help break down negative expectations based upon outdated stereotypes, leading to more constructive communication.

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<sup>53</sup> Based on subtracting the number of customers agreeing that this improvement had happened from the number disagreeing with this view.

<sup>54</sup> *Ibid.*

Unsurprisingly organisations were most likely to have felt impact in these two areas where a full settlement was reached: 53% of employee representatives and 45% of managers in these cases reported an improvement in relations between managers and employee representatives. Almost half (48% of employee representatives and 46% of managers) saw an improvement in relations between managers and employees in the organisation as a whole

Improvements in employment relations were more apparent in private sector organisations (regardless of case outcome), where the net<sup>55</sup> agreement that there was an improvement between representatives of each side was 21% compared to 0% in the public sector, and that general relationships between managers and employees had improved was 18% compared to 1%.

In the majority of cases there were improvements in the employment relations climate in the organisation as a whole; some improvement was reported by 78% employee representatives and 76% managers, with a large improvement (answers of 5 or 4) identified by 36% employee representatives and 29% managers. Findings here contradict Molloy et al's conclusion that conciliation can have a particularly strong influence on smaller organisations – just 70% of respondents from organisations with less than 250 employees reported an improvement compared to 81% in organisation with between 250 and 999 employees and 80% in those with more than 1000 employees.

Three-quarters of customers (75% of employee representatives and 74% of managers) reported some improvement in employee morale as a result of the Acas conciliation. A third of employee representatives (36%) and a fifth (19%) of managers noticed a large improvement (responses of 4 or 5). Molloy et al offer one explanation for improvement in the area suggesting that morale may have improved because workers no longer have to work with the uncertainty of possible industrial action.

Again the figures here were highest where a settlement was reached. Over half (51%) of employee representatives and over a quarter (28%) of managers whose dispute had settled reported a large improvement in employee morale. The equivalent figures in respect of working practices were 32% - employee representatives- and 21% - for managers. Over a quarter (27%) of both groups reported an improvement in the organisation's ability to deal with change

Bottom-line measures of organisational performance were less likely, than human resources indicators to improve due to conciliation. However, improvements in profitability were far more likely where there had been a threat of industrial action. More than half (52%) of managers reported some improvement in profitability where there was a risk of industrial action (20% a large improvement), compared to 29% where there was no risk (just 6% reported a large improvement). This was also apparent in responses regarding competitiveness and performance. Larger organisations were more likely to report improvements in performance (68% in organisations with more than 1000 employees, compared to just over half in smaller organisations). These effects were most common where a settlement was reached, but were not entirely restricted to this group.

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<sup>55</sup> *Ibid*

### 9.5.2 Impact of collective conciliation on the UK economy

The final way of looking at the impact of the Acas collective conciliation is to look at the benefits to the UK economy. As a government-funded body, Acas has to demonstrate that the benefits of its services outweigh the costs of running them. The effects of a collective dispute have a ripple effect, impacting not just on those directly involved but also on customers and related businesses throughout the economy. Therefore the benefits of a conciliated settlement are also widespread. An independent 2007 report on the economic impact of Acas<sup>56</sup> investigated the costs and benefits of each of Acas' services and demonstrated that as a whole Acas benefits the UK economy to the tune of £800 million per year.

Looking specifically at the collective conciliation service, the report shows that it saves the UK economy many millions of pounds. Meadows concluded that Acas collective conciliation activities generate benefits to the economy worth £159 million. The main beneficiaries of Acas collective conciliation activities according to Meadows are businesses and individuals who have no connection with the disputes, but whose activities are disrupted by them. These benefits account for £66 million of the overall impact of £159 million. Businesses more closely connected with the dispute, as customers of the organisations where the dispute takes place, were also found to be major beneficiaries at £56 million. The immediate impact on the employers and employees involved in disputes was relatively small. However, Meadows estimated that over subsequent months, the impact of Acas involvement on these parties was much greater (valued at around £45 million) as a result of improved employee morale, changes introduced in working practices and speeded-up negotiations.

**Table 9.2: Economic impact of Acas collective conciliation in 2005-6**

<b>Net economic impact</b>	
<b>Immediate impact of intervention in 8 key disputes</b>	
Employers of those involved in the disputes	£3,161,939
Employees involved in the dispute	£1,163,891
Taxpayers	-
Direct business customers of organisation experiencing dispute	£55,830,387
Competitor businesses	-£9,824,751
Other businesses indirectly affected by dispute	£65,796,833
Individuals affected by dispute	-£2,406,061
<b>Total</b>	<b>£113,722,237</b>
<b>Impact of longer-term improvements reported by the parties in other disputes</b>	
Improved employee morale	£15,272,296
Changes in working practices	£22,214,249
Improved communication	£6,768,404
Speeding up negotiation process	£659,736
<b>Total</b>	<b>£44,914,685</b>
<b>Overall impact</b>	
<b>Total</b>	<b>£158,636,912</b>
Cost of delivering service	£1,605,000
<b>Benefit/cost ratio</b>	<b>98.8</b>

Source: Meadows, P. (2007) *A Review of the Economic Impact of Employment Relations Services Delivered by Acas*, NIESR: London.

<sup>56</sup> Meadows, P. (2007) *A Review of the Economic Impact of Employment Relations Services Delivered by Acas*, NIESR: London. Available at [www.acas.org.uk/researchpapers](http://www.acas.org.uk/researchpapers)

## **10. CONCLUSION**

The Ipsos MORI analysis of customer views highlights the importance of Acas collective conciliators in the resolution of employment disputes. It shows that, although conciliation takes place in a wide range of situations, with different types of organisations and individuals involved, the conciliators themselves make a huge difference in resolving disputes.

Although the primary aim of conciliation is to reach a settlement, the 2006-7 evaluation demonstrates that the impact of conciliators' work reaches beyond this – affecting the wider organisation and even the national economy and, in the majority of cases, providing long-term solutions. It is this type of pro-active approach which is shown by the Ipsos MORI analysis to increase the likelihood of a conciliated settlement.

Given the high settlement rate of Acas collective conciliation cases and the impacts of the service, it is not surprising that customers value the service. However, Ipsos MORI analysis demonstrates that, additionally, it is the people skills and impartiality of conciliators which leads to customer satisfaction. Previous research over the last thirty years – from Hiltrop in the 1980s, to Meadows in 2007 – using a range of methods, substantiates the view that customers value the collective conciliation service highly, and it makes a real difference to their organisations in helping them to resolve disputes.

## APPENDICES

### Appendix 1: Methods used in the 2006-7 evaluation of collective conciliation

The 2006–7 evaluation of collective conciliation brings together findings from two surveys – a telephone survey of collective conciliation customers and an e-mail survey of Acas staff who undertake collective conciliation. In addition, data from Acas management information ('Acas 6', 'Paradox collective database') is included as appropriate. Below is a summary of how each survey was conducted and technical details as to the management information.

#### Customer survey

An independent research company, Ipsos MORI, conducted the telephone survey of lead management and employee representatives who used the Acas collective conciliation service during 2006. The fieldwork was run by Ipsos MORI Telephone Services between 7<sup>th</sup> February and 23<sup>rd</sup> March, 2007.

The questionnaire was designed by Acas Research and Evaluation Section (RES) – drawing on relevant academic literature and previous research – in consultation with the Evaluation Steering Group, Acas Area Directors and Acas conciliators. Cognitive interviews were conducted by Ipsos MORI in January 2007 with a range of user representatives and conciliators before the questionnaire was finalised. This process further ensured that the questionnaire functioned as anticipated and helped establish a common understanding of the terminology used in the survey.

The sample of respondents for the survey was provided by Acas RES based upon information from Acas management information systems (MIS) and any missing details supplemented by the conciliators themselves. A small number of sensitive cases were excluded<sup>57</sup> and individual contacts were de-duplicated to ensure they were only contacted once. Where possible, the sample included contacts for both sides of the dispute (i.e. the lead manager and employee representative). However, given that some people, particularly trade union full-time officers, were involved in multiple conciliations during 2006 and could only be interviewed about their most recent conciliation experience, there were several cases where researchers could only attempt to interview one side. Where possible conciliators provided alternative contacts but this was not always the case.

As the Table A1.1 shows, a total of 896 client contacts were provided, from which 495 interviews were achieved – giving a response rate of 55%. A higher response was obtained from employee representatives (60%) than from management (52%), but the numbers of each are broadly similar. At least one interview was achieved with a management or employee representative in 377 cases (69%).

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<sup>57</sup> **Reasons for exclusion from the sample** – Multiple IC cases were excluded from the sample where they had been identified (63 management contacts, 52 employee contacts). Other valid reasons for not being included were: the contacts had moved on (in one case, sadly deceased); the case was live; duplicate entries; erroneous entries; WRB involved (no rep.); conciliation request was withdrawn. This totalled 117 management contacts and 104 employee rep. contacts.

The average interview length was 23 minutes, and 86% of those who were interviewed said that they would be willing to take part in future Acas research. Just 107 individuals refused to take part in the interview. The remainder were either not contactable, not available during the fieldwork period or did not recall the dispute. Of those who refused to take part in the interview, 57 said that they were not interested in research, 23 were too busy and just 2 individuals said that they had taken part in previous Acas research.

Unless otherwise stated all analysis excludes 'do not knows' and 'not applicables'.

**Table A1.1: Response rates to the customer survey**

	<b>Population</b>	<b>Achieved sample</b>	<b>Response Rate</b>
<b>Contacts</b>	<b>896</b>	<b>495</b>	<b>55%</b>
Management side	516	267	52%
Employee side	380	228	60%
<b>Cases</b>	<b>545</b>	<b>377</b>	<b>69%</b>
Matched cases (cases with both a management and employee rep. contact)	343	117	34%
Cases with just one contact	202	260 <sup>58</sup>	N/A

Source: Ipsos MORI

Further details of the methodology and a full profile of respondents can be found in a separate technical report.

### Survey of collective conciliators

The on-line survey of collective conciliators was conducted using SNAP software by Acas Research and Evaluation Section (RES). The questionnaire was designed by RES in consultation with the Evaluation Steering Group. The fieldwork period was 26<sup>th</sup> February to 22<sup>nd</sup> March 2007.

The sample for the survey was based on entries on the collective conciliation database, which is in turn based on the 'Acas 6' form completed by conciliators for each case. This contains any conciliator listed as working on a collective conciliation case, under the following conditions:

- **Cases input in 2006** – The record was entered between 01/01/06 and 01/01/07
- **Cases that finished in 2006** – The record was entered between 01/01/05 and 01/01/07 and recorded as finalised during 01/01/06 and 01/01/07
- **Cases that are on-going during 2006** – The record was entered between 01/01/05 and 01/01/07 and was still on-going at the time of the survey.

<sup>58</sup> The number of cases in the achieved sample with one contact is higher than the population because it includes cases where two contacts were provided in the sample but an interview was only achieved with one of the two contacts

Conciliators who had left Acas were excluded where possible. In response rate calculations, those who had left and those who responded (via email) to say that they had limited involvement in conciliation work and so felt unable to participate were excluded. Therefore the response rate was 82%.

The questionnaire took conciliators on average 56 minutes to complete (this is based upon the time the questionnaire was left open on their computer and so is not necessarily the time they spent completing it).

### **Management information**

Prior to April 2007, Acas collective conciliators recorded their conciliation work on 'Acas 6' forms which were then input onto a single Paradox database which would be centrally downloaded. Data in this database was stored as numerical codes, and RES coded this based upon the codes listed in the 'Acas 6' form. However, this means that any code changes to the 'Acas 6' form are not taken into account in the analysis.

Analysis in this report covers cases input onto the database since 01/04/1993, which was the first year when full data was available for collective conciliation. Unless otherwise specified only records marked as 'conciliation requests' are included, meaning that 'information only' and 'running along side' cases are analysed separately.

## Appendix 2: Technical details of Ipsos MORI analysis

Analysis used by Ipsos MORI to answer the key research question:

*What behaviours and techniques lead to successful conciliation outcomes and to customer satisfaction?*

Key driver analysis (multiple regression) and factor analysis were conducted to ascertain the relative effectiveness of conciliator techniques. Techniques were scrutinised against two key indicators – overall satisfaction with the service and whether the outcome itself was successful or not<sup>59</sup>. The analysis was completed in a number of steps:

1. First, regression was used to determine which external aspects of the situation had most effect. In order to allow sufficient statistical power for the remainder of the analysis the strongest three questionnaire items were picked and 'forced in' to subsequent regression models, in order to control for their effect.
2. Second, factor analysis was carried out to reduce the number of conciliator technique questions to be included in the models. This analysis groups questions which correlate with each other. The initial derived groupings were discussed and checked for sense, and some modifications were made. This was in part to ensure a logical 'cause and effect' from the chosen factors to the key indicators. For example, a situation where the conciliator helps a customer draft an agreement is strongly related to a successful outcome, but this only occurs where there is a settlement. Thus cause and effect is in the wrong direction (settlement follows drafting an agreement) and inclusion of this question is not helpful.
3. Finally, further regression analysis compared the effect on the key indicators of conciliator techniques grouped as factors, controlling for the most important situational aspects. These models thus establish which behaviours and techniques are the most effective in bringing about positive outcomes (satisfaction and settlement), regardless of the original situation.

Technical details provided by Ipsos MORI.

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<sup>59</sup> Case outcome analysis was conducted with a weighted dataset whereby each matched case response counted half that of each unique response, so each case had equal representation whether one or two responses were collected about it. Satisfaction analysis includes the full 495 responses weighted equally (i.e. each customer experience of the service has equal representation).

### Appendix 3: Factors tested by Ipsos MORI analysis

Questions investigated by Ipsos MORI to answer the key research question:

*What behaviours and techniques lead to successful conciliation outcomes and to customer satisfaction?*

#### Characteristics of the dispute

- Had you been involved in any Acas collective conciliation before this one?
- Approximately how many collective disputes had there been in this organisation in the last 3 years?
- Before Acas became involved had any industrial action already taken place?
- What kind of industrial action had taken place?
- How many days of strike or stoppage were there?
- And how many employees were involved?
- At the time Acas became involved was there any risk/ further risk of industrial action?
- At the time Acas became involved had a ballot for any (further) industrial action taken place?
- What type of action was the ballot on?
- And how many days of strike or stoppage was this for?
- And how many employees were involved?
- In total during this dispute how many days, if any, were actually lost in strike action?
- And how many employees were involved?
- How many trade unions or other worker representative bodies were involved in the dispute?
- Did the dispute involve an application to an employment tribunal?
- How many employment tribunal applications was that?
- Thinking back to the time that Acas became involved, which of the following best describes the situation?
- Why did you decide to involve a 3rd party such as Acas in your dispute?
- Of the reasons given, which was most important in deciding to involve a 3rd party such as Acas in your dispute?
- Why did you decide to use Acas conciliation in particular?
- Of the reasons given, which was the most important in your decision to use Acas conciliation in particular?
- In decision to bring in third party , how important : To demonstrate to the union membership that everything was being done to get them the best deal?
- In decision to bring in third party, how important: To demonstrate to workers that we were trying to solve the dispute?
- In decision to bring in third party, how important: To demonstrate to customers of the organisation that we were trying to solve the dispute?
- In decision to bring in third party, how important: To demonstrate to owners/ shareholders of the organisation that we were trying to solve the dispute?
- In decision to bring in third party, how important: To demonstrate to the general public that we were trying to solve the dispute?
- In the last 3 years have you personally been, or are you currently, involved in any other disputes where you did not seek Acas assistance?

- Why did you not ask for Acas involvement in this/these cases?
- As you began the conciliation, which of the following best describes the initial position of your side?
- As you began the conciliation, which of the following best describes the initial position of the other side?
- Before attending conciliation, did you or anyone on your side meet with the conciliator to explain your side of the dispute?
- Before attending conciliation, did you or anyone on your side explain your side of the dispute in writing to the conciliator?
- Before or during conciliation, did you or anyone on your side discuss the situation on the phone with the conciliator?
- How much of the conciliation took place over the phone?
- Approximately how many conciliation meetings were there in total as far as you know?
- And approximately how many conciliation meetings did you attend?
- And where was this meeting held?
- As far as you know, were the meetings held At the workplace?
- During the conciliation did all the representatives on your side broadly agree on the best way forward?
- As far as you know, were the meetings held At Acas?
- As far as you know, were the meetings held At another venue?
- During the conciliation would you say the employee and management parties were in separate rooms...?
- How many individuals representing the employees/ management of this organisation attended any of the conciliation meetings?

### **Behaviours and techniques**

- Conciliator explained how conciliation worked
- Conciliator explained that there are no legal implications to the conciliation
- Conciliator set ground rules for the conciliation
- Conciliator explained rules regarding confidentiality
- Conciliator allowed your side to explain how they saw the situation
- Conciliator allow the other side to explain how they saw the situation
- Conciliator dealt with each issue one at a time
- Conciliator suggested that you deal with the most important issue first
- Conciliator dealt with employment relations issues beyond those which were the subject of the dispute
- Conciliator suggested new ideas for dealing with the dispute
- Conciliator acted as a sounding board for new ideas
- Conciliator asked you to 'brainstorm' new ways of dealing with the dispute
- Conciliator asked you to identify your 'bottom line'
- Conciliator helped you to draft an agreement
- Conciliator worked beyond normal working hours
- Rating of the conciliator at: Presenting issues in neutral language
- Rating of the conciliator at: Remaining impartial
- Rating of the conciliator at: Helping you to identify areas of agreement/ disagreement
- Rating of the conciliator at: Understanding your point of view
- Rating of the conciliator at: Calming the situation
- Rating of the conciliator at: Establishing a rapport with you
- Rating of the conciliator at: Listening to you

- Rating of the conciliator at: Time management
- The conciliator Was trustworthy
- The conciliator Followed through on anything they promised to do
- The conciliator Was on your side
- The conciliator Was pro-active in seeking an agreement
- The conciliator Was available when needed outside the conciliation meetings
- Conciliator used 'what if' scenarios to seek areas of potential agreement
- Conciliator asked you to explain the reasons behind your argument
- Conciliator gave an assessment of the strength of your argument
- Conciliator gave an idea of issues where the other side might move from their position
- Conciliator make the other side's point of view sound more acceptable
- Conciliator told you about organisations which faced similar issues
- Conciliator discussed the situation informally with you and a member of the other side apart from the other people involved
- Conciliator pointed out the consequences of not reaching an agreement
- Conciliator threaten to stop the conciliation unless progress was made

## TECHNICAL ENDNOTES

<sup>i</sup> This approach means that the views of very experienced conciliators with years of experience have the same influence as those of new conciliators, who may have only worked on one or two cases at the time of the survey.

<sup>ii</sup> Towers, B. and Brown, W. (eds.) (2000) *Employment Relations in Britain: 25 years of the Advisory, Conciliation and Arbitration Service*, Oxford: Blackwell.

<sup>iii</sup> Kressel, K., D. Pruitt and Associates (1989) *Mediation Research*, San Francisco: Jossey Bass.

<sup>iv</sup> 1987 Survey

<sup>v</sup> Grainger, H. and Crowther, M. (2006) *Trade Union Membership 2006* (DTI)

[See: <http://www.berr.gov.uk/files/file39006.pdf>]

<sup>vi</sup> Workplace Employment Relations Survey 2004 [See: <http://www.wers2004.info>]

<sup>vii</sup> Kersley, B., Alpin, C., Forth, J., Bryson, A., Bewley, H., Dix, G. and Oxenbridge, S. (2006) *Inside the Workplace: Findings from the 2004 Workplace Employment Relations Survey*, London: Routledge, p.209.

<sup>viii</sup> Therefore, these figures may appear lower than on other Acas service evaluations (e.g. the training evaluation, where respondents are given a list of reasons for using Acas and asked to select which apply, prompting them for each possible response).

<sup>ix</sup> WERS 2004, pp. 213-4.

<sup>x</sup> Dix, G. (2000) *Operating with Style* (Acas) [See: [www.acas.org.uk/researchpapers](http://www.acas.org.uk/researchpapers)]

<sup>xi</sup> Or, for questions on techniques used during the conciliation, we used a scale of usefulness where 1 = 'not very useful' and 5 = 'very useful'.

<sup>xii</sup> Conciliators could also select an option of 'don't know/ never used'. To get a full picture of the relative importance of each, we have included responses of 'don't know/ never used' in the percentage calculations used in this section.

<sup>xiii</sup> Explaining how conciliation works (mean score 4.51, 87% felt it was 'important' or 'very important'); Setting ground rules (4.75, 89%); Explaining the rules around confidentiality (4.69, 89%). (On a scale where 1 = 'not at all important' and 5 = very important').

<sup>xiv</sup> Giving it scores of 1 or 2, where 1 = 'not at all important' and 5 = very important'.

<sup>xv</sup> Dealing with the most important issue first – 33% considered it 'important', 17% 'not important', giving a mean score of 3.31. Find an easy win at the start – 38% considered it important, 21% not important, giving a mean score of 3.15.

<sup>xvi</sup> For questions on techniques used during the conciliation we used a scale of usefulness where 1 = 'not very useful' and 5 = 'very useful'.

<sup>xvii</sup> The only slight exception being that in the Ipsos MORI analysis, factual information on the case provided by the conciliator was also tested, e.g. the main issue of the dispute. However, none of these were found to be main drivers of either customer satisfaction or successful conciliation outcomes.

<sup>xviii</sup> Please note, this is their reasons for using Acas in particular (rather than any third party) and is based upon their unprompted response to an open question.

<sup>xix</sup> These settlement rates were calculated using cases where the outcome was known.

<sup>xx</sup> In these instances, it is unclear what happened. Just two individuals said the settlement was rejected when it was taken back to the workplace, and only one said the situation had changed, making the settlement no longer appropriate. The remaining 9 said that none of these reasons applied.

<sup>xxi</sup> Note: this was an entirely open question, where the interviewer did not suggest any of the reasons listed and recorded what the customer said. Later, these responses were coded into all the categories that applied. This means percentages may not sum to 100%. The question was asked before any prompted questions on this issue.



