

# Research Paper

Report of the Second Employment Tribunal/Acas pilot on attendance of Acas individual conciliators at Case Management Discussions

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Prepared by Acas Research and Evaluation Section

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## **FOREWORD**

This report covers the findings of the second study Acas has undertaken with the Employment Tribunal Service to establish if there are benefits to be gained by an Acas Conciliator attending Case Management Discussions which are arranged in all Employment Tribunal cases with a discrimination element and in some other complex cases.

The Case Management Discussion is helpful in crystallising the issues which are in dispute and should provide an ideal opportunity for the parties to give further consideration to settlement having had the benefit of the Employment Judge's instructions.

This study aimed to build on the findings of the first study and to give a clear steer on whether there would be benefits in adopting this approach and whether any such benefits were affordable in terms of any additional resource required by ACAS to ensure the successful rolling out of the pilot.

It has proved more difficult than anticipated to match characteristics exactly between those cases which were "treated" as part of this pilot and those which were not. It has however given further evidence on which we can draw in considering the next steps.

The pilot took place in 2010 in advance of the publication of the Government consultation on Resolving Workplace Disputes which proposed changes to the current system including the possibility of all cases coming through Acas for conciliation before an Employment Tribunal case can be lodged. In addition there will shortly be a further consultation on whether applications to Employment Tribunal should be subject to a charge. Both of these options could have great impact on the way that Acas and the Employment Tribunal interact and will have implications when considering of how this pilot might be taken forward.

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**Acas**

## SUMMARY

This report provides an evaluation of the second Employment Tribunal/Acas pilot on post-Case management Discussion (CMD) conciliation.

- Over the period of the pilot 409 cases were allocated to the 2 conciliators. Preliminary telephone contact was made with parties in 6 in 10 cases.
- The conciliators attended a total of 125 CMD hearings and had face-to-face contact with at least one party in 136 cases.
- Hence conciliators were only able to have any contact with parties in 33 per cent of the cases that were allocated to them.
- Main factors limiting conciliator involvement were:
  - Their availability. In practice due to overlaps between Hearing timings; and discussion with parties necessarily taking place whilst hearings for other cases were underway conciliators only attended between 2 to 5 CMD hearings a day although their case allocation amounted to 10 case per day; and
  - Rescheduling of CMDs and/or their replacement with telephone hearings.
- Substantive conciliation took place on the day of the CMD in 18 per cent of all the cases allocated to the pilot (54 per cent of cases where any contact was made).
- In 82 per cent of cases where there was contact with the parties, agreement was reached for (further) conciliation at a later date – in six in 10 of these substantive conciliation had taken place at the CMD.
- 3 cases were settled on the day of the CMD – one via a COT3 and the other two via a private settlement.
- Outcomes of a control group of 261 cases identified by the Tribunal as having had CMDs during the pilot, but on days other than those when conciliators were in attendance, were compared with those of the 136 “treated” cases.
- There was no evidence of any impact of the pilot intervention on case duration: closed cases in both the treated and control groups had mean case durations of 189 days.
- “Treated” cases were significantly more likely than the control group to have resulted in settlement or withdrawal of the cases (50.7 per cent v 39.5 per cent for all cases; 88 per cent v 79 per cent of cases closed by 3 months after completion of pilot).
- However, a preliminary exploration of case characteristics shows that there were key differences between the control and treatment groups in terms of: patterns of representation, jurisdictional coverage, and number of jurisdictions<sup>1</sup>. In addition, some cases that were “treated” as part of the pilot were specifically selected by Judges or conciliators as appearing

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<sup>1</sup> The Tribunal may be able to advise as to whether there would be any reason for systematic differences between the cases heard at CMD on ‘pilot’ days and those heard on ‘control days’.

particularly suitable for intervention at this stage. *These factors mean that it is not clear whether the difference in outcomes was a result of the pilot intervention or of differences in the case characteristics.*

- An assessment of the efficiency of the pilot and estimation of the resource requirements in the event of a further roll-out indicates that such a roll-out would be likely to require additional resource from Acas, although the level of that requirement would depend on the nature of the roll out and the effect of other measures currently under consideration.

## **1. BACKGROUND – THE INITIAL PILOT**

In early 2009, Acas and the London Central Employment Tribunal conducted a pilot exercise to explore the possibility that the attendance of an Acas conciliator at a CMD would facilitate the process of conciliation and so increase the chances of case resolution without recourse to a full hearing. Many cases which have a CMD are ones which would be expected to require a relatively lengthy full tribunal hearing - should they reach this stage - so successful conciliation following a CMD could be particularly beneficial in terms of costs to the parties and the Exchequer.

The hypotheses which the pilot set to test were:

- The attendance of an Acas officer at the CMD as an observer would give him or her a better understanding of the issues in the case and the areas of dispute between the parties and also enable an earlier assessment as to the prospects for a successful conciliation.
- The understanding derived from attendance at the hearing would put the conciliator in a strong position to speak to parties immediately after the CMD and to offer the opportunity for early settlement in some of these cases.

The pilot ran from 11 February to 10 July 2009. A qualitative evaluation of this pilot concluded:

- The offer of conciliation immediately after a CMD has the potential in a minority of cases to lead to immediate Acas settlement or to speed progress towards such a settlement.
- This arrangement appeared to have least success in cases where parties were represented and were not present at the Hearing.
- In many cases this stage in the process of complex Employment Tribunal (ET) cases is too early for parties to be ready to conciliate – although this may in part be a reflection of the fact that a number of those being offered conciliation at CMD were unprepared for this offer.

The following emerged as considerations for any roll-out of this service:

- Parties need to be given advance warning that they may be offered face-to-face conciliation following their CMD.
- Conciliators need access to Tribunal case papers prior to the CMD hearing date as they need time to consider case files, to decide which cases look most likely to benefit from conciliation at this stage and so which hearings to attend. This record-sharing process could well be facilitated by the early roll-out of Caseflow.
- The demands on conciliators involved in the delivery of face-to-face conciliation following a CMD are slightly different from those they face with the bulk of their conciliation case load. In particular they have to make face-to-face approaches to parties and need a detailed understanding of tribunal processes.

- Given the case load that the conciliation team were facing during the pilot (at that time as much as 30 or 40 per cent above the standard level) it proved very difficult for conciliators to combine work on the pilot with handling their main work load. Under the model used in the first pilot, conciliators had very little spare time between attending hearings, reading case files and seeing parties to undertake work on their other cases.
- Clear communication was required to avoid confusion between the roles of CMD conciliator and the conciliator designated in the initial Acas contact letter, so that the parties were clear who they should be speaking to; and so that there was effective follow-up to post-CMD discussions.

## 2. THE SECOND PILOT

Following this initial exercise Acas and the Employment Tribunal decided that there was prima facie evidence that the availability of a conciliator immediately following a CMD could be a beneficial model which might lead to early resolution of some more complex ET cases. However, before making a decision on whether or not to roll-out the offer more widely, firm quantitative evidence was needed to determine:

- Whether or not the provision of a conciliator at CMD hearings actually produced higher resolution rates, and /or increased the speed of resolution for the cases where this service was applied;
- The resourcing costs of any such benefit.

In order to address these issues a second pilot exercise was undertaken. This ran from July to December 2010. The second pilot took into account findings from the first pilot evaluation and the following changes were made to the way the service was delivered:

- Acas provided a dedicated team of two conciliators from its London region team, who were relieved of their usual caseload. These conciliators each attended the Tribunal on one day a week throughout the pilot and were allocated those cases which were to be heard at CMD on that day.
- The conciliators retained responsibility for these cases from the point of allocation through to resolution, whether or not they actually made contact with the parties at the CMD, and regardless of the outcome of any such discussions.
- It was agreed that the conciliators would aim to make telephone contact with parties or their representatives prior to the CMD, to provide advance notice that they would be available on the day of the hearing if required.
- The Tribunal made a commitment to contact parties by letter in advance of the CMD hearing to notify them that Acas would be in attendance.
- The Tribunal also undertook to provide the relevant case papers for the conciliators and to provide office and other facilities on the days that the conciliators were attending the Tribunal.

### **3. EVALUATION OF THE PILOT**

#### **Analysis of IC management information**

For this second, quantitatively-focussed, exercise it was agreed that it would be important to have an assessment of the counter-factual – that is what would have happened to the cases where the piloted service was provided if conciliation at CMD had NOT been available. For this reason a control group was identified. This consisted of cases timetabled to be heard at a CMD in the London Central Tribunal during the period of the pilot but on those days that the conciliators were not in attendance. This list of cases was supplied by the ETS. ET case numbers, together with case year were used to match cases in the control and pilot groups with information in Acas Individual Conciliation Management Information. The files forwarded by the ETS included numbers for both control and some pilot cases. With these excluded there was a total of 261 cases in the control sample.

Using Acas Management information to identify and remove a small number of multiple cases, a balance of 400 cases was allocated to the pilot over a 6-month period. Not all of these received the pilot “treatment” of contact with a conciliator on the day of the CMD. Logistical and resource limitations meant that conciliators had contact at the CMD with either or both parties in a total of 136 cases. Consideration was given to putting the remaining 264 cases into the control sample. However, since it is not clear that these were completely untouched by the pilot - for example in some cases parties will have had earlier telephone contact with a conciliator than would typically be the case; and some will have been aware that there was a conciliator in attendance even though they did not have direct contact with them – it was decided that this group should be excluded from the main counter-factual assessment. Instead it has been used as an alternative comparator to provide a “check” on the main analysis.

When comparing outcomes for the two samples a cut-off date of 3 months after the end of the pilot was set. By this deadline a total of 78 “treated” and 130 “control” cases had reached a resolution.

In addition to data from Acas’ IC Management Information, analysis was also conducted to compare the performance of the conciliators involved with the pilot with their colleagues in the London Region. The key performance measure used was Public Hearing Days Saved (PHDS<sup>2</sup>). Comparison was undertaken on the basis of the whole 2010/11 financial year.

#### **Collection of data on pilot cases**

The evaluation also drew on data collected by the conciliators for the purposes of the pilot. A dedicated spreadsheet was designed into which the conciliators entered information on:

- Case number
- Date of the CMD hearing
- Telephone contact with the parties prior to the CMD
- Representative status of the parties at CMD

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<sup>2</sup> 0.25 days for each Fast track case settled or withdrawn; 1 day for each standard case and 2.5 days for each open case.

- Whether there was contact between the parties (or their representatives) and the conciliator
- The nature of any such contact
- Progress made in any post CMD discussions
- The outcome of the case

### **Interviews with conciliators**

Finally, although this evaluation was predominantly quantitative in nature, it was decided that it would be important to have more detail on how the second pilot model had been applied in practice, and to ensure that conciliator experience of this model was captured. For this reason two interviews were conducted with each of the conciliators: one around halfway through the pilot and the second once the pilot had been completed.

#### **4. THE CONCILIATOR EXPERIENCE**

Conciliation following CMDs was provided by two experienced Acas conciliators. Each was present at the Tribunal office on one day a week. During that day up to 10 cases might be subject to a case management discussion and these were allocated in advance to the conciliator due to be in attendance on that day. However, the fact that more than one CMD could be held at the same time, together with the logistics of combining attendance at the CMD hearings with contact and discussion with the parties, meant that in practice conciliators attempted to conciliate in between 2 and 4 cases on each day that they attended the tribunal. Conciliators generally met with the Judge at the start of the day, who might suggest which cases were most likely to benefit from the conciliators' input. In addition, conciliators sometimes selected cases on the basis of case documentation. However, factors such as the timing of hearings meant that it was often not possible to act on this information.

##### **Comparison with first pilot**

Both conciliators had taken part in the first pilot and generally took the view that this second one was better organised than the first. For example, retaining the cases that they had been allocated throughout the life of the case – rather than returning them to the Acas conciliator previously responsible once the CMD was over – was felt to provide a better service to customers and was also more satisfactory for the conciliators. In addition, making initial telephone contact with at least some parties in advance of the hearing increased the chances that parties would be aware of the presence of Acas and the role that they might play. Conciliators also found that there was generally good support from Judges for the pilot who encouraged parties to speak to Acas after the CMD. However, there was some variation in the degree of proactivity on this issue, and one conciliator found that part-time judges were less well informed about the Acas role.

Other aspects which were highlighted in the first pilot as an issue, were only addressed to some degree the second time around: while the tribunal service generally provided the relevant case paperwork for conciliators, this did not always happen; and while some parties contacted by the conciliators had received a letter from the TS explaining the Acas presence, not all said that they had done so. Finally, the TS made an effort to provide the conciliator with office space while he or she and was at the Tribunal. In practice, however – due to space constraints - this commitment did not always result in such a facility being in place, and sometimes the conciliator had to hold sensitive conversations with customers in corridors or other more public spaces. Nonetheless this was a less frequent occurrence than in the first pilot.

##### **Added value**

The presence of conciliators meant that in a few instances judges called on them to offer conciliation in cases which were not originally time-tabled for that day and so not amongst the allocated cases. This situation was particularly challenging for the conciliators who were effectively conciliating with little or no information on the case – but none the less it was reported by conciliators as a by-product of the pilot which was valued by Judges.

## **Differences compared to “normal” conciliation in Employment Tribunal cases**

The conciliators felt that conciliation in the context of the CMD was broadly the same process as for their usual conciliation role. However there were some differences which could facilitate or hinder that process. First, conciliator contact with clients was often of considerably longer duration than would have been the case in conciliation delivered by telephone, meaning that it was often possible to progress the information seeking aspect of conciliation more quickly.

*I was speaking with parties for a minimum of half an hour, certainly with unrepresented claimants it was an hour . . . there is quite a bit of emotion there in the relatively early stage and you get to explore a little more detail about what might be feasible in terms of resolution . . . you can do more face to face than you can on the on the phone, you can still do it but it might take a few more telephone calls to focus in exactly on what their concerns are.*

A further advantage was provided by attendance at the CMD Hearing, which could furnish the conciliator with information on the case which would otherwise not have been available and which could act as a “lever” in conciliation.

*Its quite useful for me to sit there and get a handle on some of the issues and maybe some of the jurisdictional points that have cropped up and you can discuss subsequently . . . there's quite a few pressure points in terms of complying with deadlines; the Judges orders*

However, on the downside the fact that it was fairly early in the case and parties were quite emotional about the situation and not yet focussed on an outcome was seen by conciliators to reduce the chance of a settlement at this stage – albeit that there might be the potential to lay the groundwork for future discussions.

In short, although both conciliators felt that the discussions held following the CMD were often a good basis for establishing trust with parties – especially claimants; and parties and Judges alike valued the service, neither was sure that in the end this had an impact on the likelihood that a case would settle.

## **Job satisfaction and personal development**

Both conciliators enjoyed the CMD role – at least the opportunity to talk to parties on a face-to-face basis: *I'm sort of feeling I'm actually doing the job as it should be done rather than just on the telephone.* However, there were particular challenges: needing to go into a full room and ask for a party or representative; or dealing with a barrister face-to-face, demanded personal confidence. In addition, the lack of reliable office space and the uncertainty of which cases timing would allow them to intervene on, meant that they had to be up to speed with up to 10 cases at any one time and be prepared to deal with the one they were confronted with. This required particular organisational skills.

## 5. THE SCOPE OF THE INTERVENTION

Conciliators involved in the second pilot were asked to record information on their cases in a tailored spreadsheet. This was designed by the Acas Research and Evaluation team. This section draws on data from that spreadsheet.

409 cases were allocated to Acas conciliators over the period of the pilot. Preliminary telephone contact was made with the claimant, or their representative in 59 per cent of these cases and with the respondent (or representative) in 59 per cent.

Well over half (57 per cent) of claimants/claimant representatives contacted in advance of the CMD expressed an interest in conciliation; 3 per cent had no interest in conciliation at this stage; and the remainder felt that it was too early to say. Of the respondents and respondent representatives contacted a slightly lower proportion – 47 per cent – said that they were interested in conciliation. However, only 1 per cent said that they were definitely not interested. The remainder felt that it was too early to say, or in the case of representatives, said that they had not received client instructions on the issue so were unable to make a commitment at this stage.

Conciliators were able to attend CMD hearings for 125 (31 per cent) of the cases that they were allocated over the period of the pilot. Attendance at hearings was restricted by conciliator availability – there was only one conciliator in attendance on each pilot day meaning that when they were in discussion with parties of one case there was no one available to attend the hearing for another one. Also in a number of cases – 56 – the CMD was either postponed or converted to a telephone hearing meaning that it did not take place on the day that the conciliator was available or made “sitting in” impractical.

Conciliators had at least some contact on the day of the CMD with either or both parties in a total of 136 cases over the period of the CMD. In the overwhelming majority of instances (86 per cent), these were cases where the conciliator had also sat in on the CMD. In 54 per cent of cases where any contact was made (and 18 per cent of all the cases allocated to the pilot) conciliators reported that substantive conciliation had taken place. In a further 7 per cent of cases the conciliator had what they described as “substantive contact” with the claimant or their representative; but did not speak to the respondent and in 4 per cent they had such a discussion with the respondent/respondent representative, but were unable to do so with the claimant. In 26 per cent of cases where any contact was made (9 per cent of all cases in the pilot) this was limited to initial contact (such as the sharing of contact information) with both parties; and in the remainder some preliminary contact was made with one of the parties.

Looking at the outcomes of the conciliation that took place on the day of the CMD, the conciliator records indicate that just 3 cases were settled on the day of the CMD – one via a COT3 and the other two via a private settlement. However, in 82 per cent of cases where there was contact with the parties, agreement was reached for (further) conciliation at a later date – in six in 10 of these substantive conciliation had taken place at the CMD.

## 6. THE IMPACT OF THE PILOT

As set out above a key aim of this pilot was to determine whether the provision of a conciliator at CMD hearings:

- produced higher resolution rates; and /or
- increased the speed of resolution for the cases where this service was applied.

The assessment of this impact was based on a comparison between the outcomes of the “treatment group” – those cases where the conciliator had contact with either or both parties on the day of the CMD; and the “control group” – cases which had a CMD at the Tribunal during the pilot period, but where the CMD took place on a day when a conciliator was NOT in attendance.

### Case outcome

Looking first at resolution rates an analysis of information from Acas management information shows the following:

**Table 1: Case outcomes**

	Treatment group All %	Closed only %	Control group All %	Closed only %
ET1 final judgement made	3.7	6.4	7.3	14.5
Acas settled	42.7	74.4	23.0	45.8
Strike out	2.9	5.1	3.4	6.7
Withdrawn/privately settled	8.1	14.1	16.5	32.8
Case not closed 6 months after pilot	42.6		49.8	
<i>N</i>	136		261	

Hence it appears that where a conciliator was in contact with either or both parties on the day of the CMD there was significantly more likely to be a subsequent Acas settlement. Taking just those cases which had closed by six months after the end of the pilot, 74 per cent (58 cases) were resolved by means of a COT3 settlement. The equivalent figure for the control group was 46 per cent. It could be envisaged that this difference is accounted for by the presence of a conciliator encouraging those parties who would otherwise have withdrawn their case or opted for a private settlement, instead choosing to settle via Acas. Indeed it was the case that pilot treated cases were significantly *less* likely to have resulted in a private settlement or a withdrawal than the control cases. However, taking all kinds of settlement and withdrawal together shows that the “treated” cases were more likely than the control group to have resulted in one of these outcomes (50.7 per cent v. 39.5 per cent for all cases)<sup>3</sup>.

<sup>3</sup> It should be noted that none of the other differences between the two samples shown in table 1 are statistically significant

It order to begin to assess whether this apparent higher success rate for cases which had had conciliator involvement at the CMD was linked to that intervention, or whether instead it might be linked to of other differences between the samples which have been shown to influence outcomes<sup>4</sup>, a preliminary examination of key case characteristics was conducted. This shows the following differences between the pilot and control samples:

- A higher proportion of respondents were represented in the pilot group as against the control group (23.5 per cent of cases as compared to 16.8 per cent); but there was lower claimant representation (50.7 per cent v 57.5 per cent)
- Cases nominated for a CMD are those which have been determined by the judiciary as relatively complex and the majority involve one or more discrimination jurisdictions. There is some evidence that cases that were included for treatment in the pilot were more complex than those in the control group. Comparing the proportion of cases including a discrimination jurisdiction shows that while almost all treated cases (94 per cent) had a discriminatory element; this was only the case for 70 per cent of control cases. Also although number of jurisdictions in a case is not generally a clear indicator of case complexity, it may have more relevance in this context. The MI data indicates that the pilot treated cases on average involved a higher number of jurisdictions than the control group: the average number of jurisdictions in the pilot cases was 2.7 and in the in the control group it was 2.5.

So there is prima facie evidence of differences in the composition of the pilot and control groups which might, at least in part, account for the differences in outcomes. Furthermore, conciliator evidence suggests that to some extent there was selectivity in the cases where they offered conciliation: judges would in some cases flag-up those cases that they felt were most likely to be open to conciliator intervention, and also conciliators themselves sometimes drew on case documentation to determine which CMDs they would attend.

That the difference in case complexity as defined above was a result of selection decisions by Judges or conciliators is however less clear. Here we turn to an analysis of the characteristics and outcomes of those 264 cases that were originally allocated to the pilot but where there was no conciliator contact with the parties at the CMD. All else being equal, if judicial or conciliator selections had been made on the basis of the above “complexity” criteria we might expect that those cases which received no conciliator contact, would have been less complex than those in either the pilot or control group. However this was not the case. This part of the pilot sample was nearly as likely as the treated group, and much more likely than the control group to include a discrimination jurisdiction (90 per cent); and the average number of jurisdictions in the cases was actually higher than for either other sample – at 2.8. It is of course possible that selection of cases introduced other sources of bias, which cannot be identified from analysis of the available management information data.<sup>5</sup>

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<sup>4</sup> Peter Urwin, Franz Buscha and Paul Latreille, *Employment Tribunals and Representation: Analysis of the 2008 Survey of Employment Tribunal Applications* Acas Research Paper (forthcoming).

<sup>5</sup> The finding on the characteristics of the case samples would indicate that some accidental bias was introduced into the pilot by the way that cases were initially allocated to control or treatment groups. The Tribunal may be able to clarify whether there were any

This analysis of the characteristics of the part of the pilot sample which did not have conciliator contact, by indicating greater case similarity with the treated group than is the case for the control group offers an alternative comparator sample (see table 2). This comparison needs to be undertaken with some caution as whether this comparator sample constitutes a completely “untreated” group is questionable. Nonetheless it does show that cases in which Acas conciliators were involved were:

- More likely to result in a COT3 settlement
- Less likely to lead to a private settlement or case withdrawal

However, there was no significant difference between these samples in the likelihood that the case would result in one or other of these outcomes, perhaps indicating after all that the increase in Acas settlements *was* at the expense of other forms of settlement/withdrawal.

**Table 2: Case outcomes – including pilot cases without conciliator contact**

	Treatment %	Control group %	Pilot cases – no conciliator contact %
ET1 final judgement made	3.7	7.3	2.7
Acas settled	42.7	23.0	30.7
Strike out	2.9	3.4	2.7
Withdrawn/privately settled	8.1	16.5	20.5
Case not closed 6 months after pilot	42.6	49.8	43.6
<i>N</i>	136	261	264

Hence, it is not appropriate to conclude from this evidence that having a conciliator present at the tribunal when CMDs are taking place *necessarily* results in improved ET hearing avoidance.

It would be possible to conduct more complex analysis with the aim of controlling for some case characteristics (albeit that sample numbers would limit the scope of this), however this analysis would not be able to account for any bias in the results which is an outcome of judicial or conciliator selection.

### Length of case

A further potential benefit from conciliator presence at the CMD was that even if parties were not ready to settle on the day of the CMD, it might encourage speedier case resolution. However, a simple comparison of the average time for closed cases to reach a resolution does not support this hypothesis: the mean length of time between case creation date and case clearance date as recorded in Acas MI was 189 days for both pilot and control groups (there were marginal differences in the medians: 168 days for the pilot group and 176 for the control group).

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systematic differences in the kinds of cases allocated for CMDs on particular days of the week during the period of the pilot (as set out in the methodology section “control” cases were those which were heard on days other than those when a conciliator was due to be in attendance).

## 7. EFFICIENCY OF ACAS ATTENDANCE AT CMDs

Over the course of the pilot two conciliators were allocated all cases chosen for the pilot. These included not only those where contact was made on the day of the CMD, but also all the other cases which were timetabled for a CMD on the days that they attended the Tribunal. By 15 March – 3 months after the end of the pilot - 237 cases handled by these conciliators were closed; with 204 resolved as a settlement or withdrawal.

Comparing the key efficiency measure used in Acas – PHDS<sup>6</sup> – we find the following outcomes for the cases covered in the analysis above<sup>7</sup>:

- *Treatment Group* (face-to-face contact with a party on day of CMD) = 93.3%
- *Control Group* (CMD during pilot period but not on same day as conciliator attended) = 84.4%
- *Pilot – No IC Contact Group* (CMD on day conciliator attended but no contact on that day) = 95%

The average PHDS for open track cases in the London Region in 2010/11 was 81%. Hence there is evidence that cases covered by the pilot were more productive in PHDS terms than those in the control group, and than the generality of OT cases in London. However, the similarity in outcomes for the treatment group and those cases in the pilot where there was no conciliator contact at CMD, would indicate that this difference may not be attributable to the interventions at CMD per se but rather to different case characteristics or relative conciliator competence or a combination of both (NB as already indicated the pilot conciliators were allocated all the cases in the pilot whether or not they met the parties at CMD).

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<sup>6</sup> PHDS = settlements + withdrawals/private settlements expressed as a % of closed cases minus cases struck out

<sup>7</sup> For simplicity these calculations are based on the assumption that all cases in both groups were open track, this was not the case: all three groups included a few Standard and Fast Track cases

## 8. WHAT WOULD THE PROVISION OF CONCILIATION AT CMDs COST ACAS?

Quantifying costs to Acas of rolling out the CMD pilot further is a very difficult task as there are a number of unknowns, hence the following analysis should be treated with caution

### Estimating the Number of Cases<sup>8</sup>

The ETS generally seek to arrange a CMD in all Open Track (OT) cases. Based on 2010/11 figures, there may be approx 21,000 such net receipts in a year. The ETS aim to hold the CMD approximately 8 weeks from the date of receipt of the ET1, which means that few of these cases will have been resolved or withdrawn by that time. Additionally, a CMD can be arranged in a more complex case in either Fast or Standard Track, but perhaps we can assume that the number of OT cases that are closed for whatever reason before a CMD can be held is less or at most equal to the number of CMDs arranged in other tracks.

### Estimating G9 Resource Implications

With these uncertainties in mind we can look at some of the parameters, taking 21,000 as a base for the number of CMDs in a full year.

If we:

- assume that CMD cases are handled by dedicated CMD conciliators<sup>9</sup>
- use the operating model that the CMD conciliator is allocated these cases from the date of notification by the ETS that attendance at the CMD is appropriate until the closure of the case; and
- assume that a caseload would be 275 cases in a year (equivalent to a full conciliator caseload, so there would be no or minimal implications for either loading cases onto other conciliators or using more G9 resource on the non-CMD caseload) with no other cases allocated,

We can estimate the resource implications for a range of scenarios as set out in Table 3.

**Table 3: Estimated resource implications of conciliation at CMDs: based on existing standard case load**

% CMDs at which conciliation offered *	Number of conciliators required (FTE)
100	76.4
50	38.2
25	19.1

\* % of CMD cases (total 21,000) deemed appropriate for Acas attendance by ETS

However, evidence from the conciliators involved in the pilot is that a CMD pilot case is more resource intensive than a non-pilot case. It is therefore reasonable

<sup>8</sup> NB – all cases are weighted

<sup>9</sup> The alternative would be that all G9 conciliators attend a CMD when a case allocated to them is deemed appropriate for this exercise – which would be an extremely wasteful use of resources

to assume that a caseload of 275 per CMD FTE G9 is over-ambitious, especially as rollout in ETS offices nationally could be expected to increase travelling time issues which were not a significant factor in the pilot.

The experience of the conciliators in the pilot was that a reasonable caseload may be in the order of 5 x CMD cases per week taken through to conclusion; with average downtime that would equate to approximately 200 cases per year. The implications of a caseload of 200 cases per CMD conciliator are estimated in Table 4.

**Table 4: Estimated resource implications of conciliation at CMDs: based on reduced caseload for CMD conciliators**

<b>% CMDs at which conciliation offered</b>	<b>Number of conciliators required (FTE)</b>
100	105.0
50	52.5
25	26.25

A comparison of the figures in tables 3 and 4 shows that if attendance at CMDs were rolled out in all cases, Acas would require 28.6 more conciliators and if rolled out in 25% of cases 7.1 more conciliators.

### **Non G9 Resource**

In addition to G9 resource implications there would be extra resource expended in the work involved in reallocating CMD cases between conciliators and in informing parties of the new arrangements. This would be eased once the Acas Phoenix case management system is fully rolled out but not eliminated completely.

### **Conclusion on potential cost to Acas**

The above analysis indicates that further roll-out of a conciliation offering at CMD Hearings would have resource implications for Acas in the form of a requirement for additional conciliators. In the immediate-term at least there would also be a requirement for extra administrative resource. The level, and hence viability, of these requirements would be determined by a number of factors which are at this stage unknown, in particular:

- The number of cases where conciliator attendance at CMD would be required
- The appropriate case load for a dedicated "CMD conciliator"
- The implications of the intervention on the caseload composition of conciliators not involved in offering conciliation at CMD
- The amount of time that these conciliators would spend on a case before it is transferred to a CMD conciliator.

## 9. CONCLUSION

This report presents some *prima facie* evidence that the availability of face-to-face conciliation immediately following Case Management Discussions may have a positive impact on case outcomes. However a closer examination of the data has indicated that the difference in outcomes between control and treatment groups in the pilot may be a factor of case composition and the relative expertise of the conciliators involved in the pilot, rather than the intervention itself. On the other hand indications from the earlier pilot of this service were that it was an offer which was valued by parties, a finding that was endorsed by the conciliators in this study.

It seems likely that any further roll-out of the offer would have resource implications for Acas, however whether meeting these demands would be sustainable is currently unclear due to a number of unknown or untested factors. To have greater clarity about both the input and outcome implications of this service would require a more extensive, and larger-scale testing of the offer, together with a control group better matching the characteristics of the "treated" sample.

Given that there are a number of changes currently under discussion including the Resolving Workplace Disputes Consultation and the prospect of charging for Tribunal applications which mean it would be sensible to wait until these changes have worked through the system before attempting any further testing. The rollout of the Acas case management system due for completion by Summer 2012 would also assist by increasing Acas ability to move cases quickly between Conciliators in support of this work.



