

Research Paper

Why Pre-Claim Conciliation referrals become Employment Tribunal claims

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TNS BMRB

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August 2012

Prepared for Acas by TNS BMRB

Preface

The authors would like to acknowledge the support and advice provided during the course of the project from Barbara Davey at Acas.

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EXECUTIVE SUMMARY

Introduction and methodology

As well as providing individual conciliation (IC), a service which attempts to resolve Employment Tribunal (ET) claims which have been lodged, Acas also provides Pre-Claim Conciliation (PCC). PCC is an expansion of the IC service, and is provided to 'potential' ET claims, aiming to resolve disputes before they enter the Tribunal system.

Previous research has shown PCC to be successful, but there is limited evidence on the substance of PCC referrals that do result in an Employment Tribunal claim. Research was therefore needed to inform service development and improvement.

The approach adopted combined quantitative and qualitative methods to achieve the key requirements for a robust programme of research providing baseline data and practical insights to inform the development of Early Conciliation. The quantitative strand involved telephone interviews with 370 claimants and 314 employers in ET cases which had previously been the subject of unprogressed PCC referrals or PCC cases where a resolution was not reached or time limits were reached (impasse PCC cases) prior to the ET application. The qualitative strand involved: depth interviews with employers and claimants involved in ET cases where PCC had taken place beforehand but had been unsuccessful; focus groups with Acas conciliators, and five case studies involving interviews with the employer, claimant and conciliator in each case.

The context

Profile of unprogressed PCC referrals and impasse PCC cases in the quantitative survey

Standard and fast track cases were more prevalent than open track cases for both unprogressed and impasse cases, which reflects the general profile of PCC referrals and cases. (In unprogressed cases 44 per cent were standard, 35 per cent fast and 20 per cent open track. In impasse cases 42 per cent were standard, 46 per cent were fast with 12 per cent open track.)

The overwhelming majority of claimants in unprogressed PCC referrals and impasse PCC cases worked for the employer they were making their claim against (99 per cent of both groups). At the time of the interview only three per cent of claimants involved in impasse PCC cases, and two per cent in unprogressed PCC cases still worked for the employer. Amongst those no longer working at the organisation, over eight in ten (86 per cent of claimants in both groups) reported that they had left prior to submitting the ET claim, with just over one tenth (13 per cent in impasse PCC cases and 11 per cent in unprogressed PCC cases) leaving after.

The profile of organisations between the two outcome types varied on some key factors. Amongst unprogressed PCC referrals there were a larger proportion of organisations with more than 250 employees than those in impasse PCC referrals (45 per cent versus 24 per cent). Linked to this, organisations involved in unprogressed PCC referrals were more likely to have an internal HR department and/or a legal department compared with those involved in impasse PCC cases (amongst unprogressed PCC referrals 64 per cent had an internal HR department, and 24 per cent an internal legal department, compared with 48 per cent and 13 per cent of organisations involved in impasse PCC cases). This suggests that the organisations which did not progress with PCC referrals may have done so because they felt they had procedures in place to deal with the issue internally.

Characteristics of claimants tended to be in line between unprogressed PCC referrals and impasse PCC cases.

In terms of representation, 17 per cent of both employers and claimants had a representative at PCC, significantly lower than in ET cases (60 per cent of employers and 46 per cent of claimants had a day-to-day representative in SETA 2008). For employers the most common representative was a solicitor, barrister or lawyer (77 per cent). For claimants the most common representative was family or friends (32 per cent), or solicitors, barristers or lawyers (29 per cent). At the ET stage, 39 per cent of claimants chose to appoint a day-to-day representative, as did 44 per cent of employers.

Context behind the qualitative research, exploring routes into Acas, and their needs at their first contact

Claimants reached the Acas helpline either directly from internet searching or referral from CAB and / or legal centres. The first port of call for claimants was usually friends and family who helped to lead the claimant onto the path to seeking help.

Experience at the helpline stage was very positive. Claimants were pleasantly surprised to receive an instant response to their questions about their rights, to be told they had 'a case' and to be offered further help in the form of PCC.

There were strong needs amongst certain claimants for emotional support to deal with resentments regarding the dispute. Certain claimants had further needs for help in understanding and managing their dispute and these included those with learning difficulties, mental health problems and those for whom English was not their first language. These needs went largely unmet despite the efforts of conciliators to spend considerable time listening and empathising with the claimant.

Take up and perceptions of PCC

Reasons given for not taking up PCC revolved around one or both parties not being willing to negotiate or the conciliator not being able to reach the employer. Amongst claimants the most common reason given was that the employer was not willing to negotiate (reported by 45 per cent). The most commonly cited reason amongst employers was that they there were not contacted about possible Acas assistance or that they did not know about the dispute (mentioned by 44 per cent).

Parties claimed that PCC seemed the next step in the process as opposed to feeling that this was a decision that needed to be deliberated over. Parties generally felt they had been well informed about the process through verbal or written information but there was still much confusion and misunderstanding about PCC and the role of Acas. There was a tendency to view Acas as an enforcer on the side of the claimant, despite conciliators stressing their impartiality.

Avoidance of time and cost of an employment tribunal was a strong motivation for employers to accept PCC. Claimants generally felt they had 'nothing to lose' in trying PCC and had faith in Acas helping them and the employer to reach a settlement.

The act of being offered PCC and having 'a case' raised claimant expectations about their chances of success in an employment tribunal.

Experience, outcome and satisfaction at PCC

Three quarters (71 per cent) of survey participants who tried to make contact with the conciliator said that the conciliator was **always or usually available when needed**. Claimants were more positive about the conciliator's availability than employers with almost half (47 per cent) saying that the conciliator was always available when needed compared with just over a third of employers (34 per cent).

Two thirds of service users (67 per cent) completely **trusted their conciliator**. Interestingly there were no significant differences in the proportion who said they completely trusted their conciliator by whether or not a resolution was brokered or that they ran out of time, suggesting that trust is built up in the majority of PCC cases regardless of the outcome.

Only two percent of cases involved **face to face communication** with the conciliator during PCC. There were no strong demands for face to face contact by claimants or employers in the qualitative research but a retrospective suggestion in the qualitative interviews that face to face communication may have offered them greater support and / or helped to resolve the claim quicker.

Three quarters of service users (74 per cent) were **satisfied** with the service received from Acas during PCC, and almost half (45 per cent) were either extremely or very satisfied. Satisfaction levels were higher amongst claimants than employers (81 per cent claimants were 'satisfied' versus 66 per cent of employers). The survey

uncovered that **frequency of the conciliator being available when needed** had the greatest link to satisfaction. Nine in ten service users (91 per cent) who said their conciliator was always or usually available when needed were satisfied with the PCC process. In the qualitative research, a host of other factors were identified as impacting on experience and evaluating satisfaction. These revolved around the conciliator or service being:

- Supportive
- Impartial
- Expert and knowledgeable
- Consistent
- Responsive

Barriers and enablers to a case being resolved at PCC

Five areas were identified as helping or hindering parties to reach a resolution.

The first of these is the concept of **tailoring** rather than offering support in a 'one size fits all' model. It was apparent that claimants needs and type of case required a different type of response and varying level of conciliator resource. Filtering of cases seemed to be more focused on type of case rather than claimant needs.

The second relates to **employer trust** in Acas and the challenge in getting employers to take part in PCC. Despite conciliators verbalising their impartiality, conciliators were viewed as being 'on the side' of claimants and this affected how much employers engaged with the PCC process.

Employers valued receiving written information from Acas about the organisation and the PCC process. They were motivated to proceed to avoid the dispute escalating and causing a cost to the business. Employers wanted to feel as much of a 'client' as they imagined the claimant was. They expected regular updates on the case and to be informed by Acas if the claimant intended to submit an ET claim. At the very least, they considered that they should be made aware of the time limit involved in PCC and the deadline for submitting an ET1.

The third factor is **employer incentive** and this relates to trust and engagement. Until faced with a tribunal hearing, conciliators claimed that smaller employers in particular resisted settling (possibly to keep owed monies in their bank account for as long as possible).

A number of **beliefs, expectations and knowledge gaps** further helped or hindered claims being resolved. These included:

- A disparity in reality and expectations about length of time PCC would take and conciliator availability. Conciliators and employers taking annual leave during the PCC process led some claimants to submit an employment tribunal claim earlier than needed.
- A belief that Acas was an employment rights enforcer.

- The level of understanding about the tribunal process.
- Perceptions about the likelihood of success.

Three key enablers were identified for helping to resolve claims earlier on and these were:

- More exploration and tailoring of PCC to meet claimant needs for additional support e.g. those lacking in language, literacy skills or with mental health problems
- Building trust and engaging employers
- A focus on addressing unhelpful expectations and knowledge gaps

Experience, outcome and satisfaction after the ET claim

In 14 per cent of cases where PCC had taken place prior to an ET claim, additional jurisdictions were listed on the ET1 form than were raised during PCC.

Thirty nine per cent of claimants and 44 per cent of employers had a day-to-day representative during their ET claim. Use of representation was high amongst cases where a representative was used during PCC (93 per cent of employers and 74 per cent of claimants who had a representative at PCC also had one during their ET claim).

Seventy per cent of claimants had personally had contact with Acas during the process of their ET claim, as did 52 per cent of employers¹

Evaluation of the conciliator in terms of their availability, role and qualities were largely positive. Seventy per cent reported that the conciliator was always or usually available and 83 per cent felt they had enough contact with the conciliator. Strong ratings of the role of the conciliator were given, in particular with just over seven in ten rating the conciliator as 'very' or 'fairly' good at: 'relaying proposals and offers to and from each part, 'explaining tribunal procedures' and 'outlining the law as it applied to the case'. There were limited differences in the evaluation of conciliator between cases that had taken part in PCC and those that had not. However, amongst cases that had taken part in PCC, evaluation tended to be more positive in cases where the same conciliator was used in PCC and IC compared to those where it differed.

Two thirds (66 per cent) felt that the conciliator helped them make their decision about settling without undue influence, and 60 per cent agreed that Acas moved the parties towards resolving the case.

The mean number of days spent on the ET claim by employers was seven and the median was three days. For claimants, the mean number of days was 21.6, and the

¹ This does not include personal contact Acas may have had with a representative.

median was 3. For claimants where PCC took place before the ET claim, the time spent on the ET claim was reduced (a mean of 20 days and a median of 3 compared to a mean of 28.3 days and a median of 4 days).

In cases where PCC took place prior to the ET claim compared to those where it did not, the Acas settlement rate was higher (63 per cent versus 54 per cent).

A host of factors were highlighted by the qualitative work as contributing to cases being withdrawn, settled or going to a hearing. These included:

- Reasons for cases being withdrawn focused mostly around inaccuracies in the claimant's claim.
- The stress, time and cost (for employers) involved in a hearing were the main reasons for parties coming to an agreement.
- A sense of injustice was often the force in propelling employers and claimants to **not** settle.

In 59 per cent of cases survey respondents were satisfied with the case outcome, with 27 per cent dissatisfied and 11 per cent neither satisfied nor dissatisfied. Satisfaction with the case outcome was higher among parties in cases that had taken part in PCC beforehand (62 per cent compared with 51 per cent). However, due to the settlement rate being higher amongst cases where PCC had taken place (compared to those where it had not), it is important to explore whether this pattern is evident amongst different outcome types. Amongst settled cases it is (63 per cent versus 49 per cent), however, limited base sizes prevent examination amongst other outcome types. Satisfaction levels were also found to vary between party types, with satisfaction higher amongst claimants than employers (63 per cent versus 55 per cent).

Three quarters (76 per cent) were satisfied with the post claim IC service they received. Satisfaction with Acas appeared to be linked with case outcome with satisfaction higher among Acas settled cases (82 per cent), than those that went to a hearing (59 per cent). Satisfaction levels were higher in cases where PCC had taken place compared with those where it had not (80 per cent versus 67 per cent). Again as identified above because the settlement rate was higher amongst cases where PCC had taken place beforehand compared to those where it had not, it is important to examine if this trend remains evident amongst different outcome types. Within settled cases it does – in settled cases where PCC had taken place before, 87 per cent reported being satisfied, compared to 69 per cent of parties in settled cases where it had not. However, it is again not possible to explore this amongst other outcome types due to limited base sizes.

Future use of Acas was positive, 79 per cent of claimants who used Acas would recommend a friend or relative to use Acas in a similar dispute, and 56 per cent of employers who used Acas would recommend their involvement in a similar dispute. Recommendations were stronger in cases where PCC had taken place before the ET claim.

Conclusions and service improvement recommendations

PCC has been shown to be successful² and it is estimated that approximately 75 per cent of PCC referrals do not go on to become ET claims.

The current research has helped to identify what happens to a case when it is unsuccessful at PCC and the claimant then goes on to submit an ET claim. Amongst these cases, around a third of parties (31 per cent of claimants, 34 per cent of employers) 'repped up' – that is they chose not to have a representative at the PCC stage but did at the ET stage. Further jurisdictions (in addition to those given at PCC) were found to be listed on the ET1 form in one in seven cases. This did not vary between those who used a day-to-day representative and those who did not. The data indicatively suggested that when additional jurisdictions were listed on the ET1 form, cases deemed as standard or open track at PCC, generally remained the same at the ET stage. However, amongst cases deemed as fast track at the PCC stage, only half remained as fast track at the ET stage, with just under half being recorded as standard track at the ET stage.

This research shows even where PCC is not successful at resolving disputes, it has positive impact post-claim including; a higher settlement rate at ET, higher satisfaction with the IC service provided by Acas and stronger agreement to use Acas again in the future.

Building on this success, the research has highlighted a number of areas that could hinder early resolution and that could feed into the design of the early conciliation service. **Five key service improvement recommendations** are made.

The Five Key Service Improvement Recommendations

1. **More diagnosis** (beyond jurisdiction) early on in the process around type of claimant, their needs and the size of claim and tailoring of service based on this. This might be to understand whether the claimant has any learning difficulties and/or gauging the extent of their needs for emotional support to help design the right conciliation package for their needs (including the format of conciliation and whether face to face) and/or ensure they are referred to a third party to be supported.
2. Consideration of interventions that will **help to engage employers** such as raising awareness of Acas and the PCC service and the benefits to the employer of learning about employment law and taking up PCC if offered. This includes a focus on information and/or processes that will help to show the impartiality of conciliators e.g. face to face meetings and making sure employers are aware of the timetable, deadlines and outcomes.

² Davey, B. and Dix, G. (2011) *The Dispute Resolution Regulations two years on*. Acas Research Paper.

3. Ensuring that **conciliators are easy to contact and responsive** as this was a key indicator that was linked to satisfaction.
 - a. Where a conciliator is taking annual leave then processes or resource is set up to avoid the claimant becoming impatient.
 - b. Employers expect the end of the conciliation to be signalled and an outcome communicated to them. This also helps to demonstrate the conciliators impartiality.
4. Parties perceived PCC and IC to be one conciliation process and there was a higher settlement rate and more positive perception when **the conciliator was the same throughout PCC and IC**. If a different conciliator is used for IC then consideration could be given to providing a reason for this to avoid the assumptions that this is due to poor practice of any kind.
5. Providing consistent information about **the tribunal process** to address gaps in knowledge and perceptions and providing information about the claimant's chances of success as early as possible to avoid raising expectations. In cases where more information was provided about a hearing and how the judge would make a decision, this helped claimants to evaluate the cost versus benefit of continuing with their claim.

1. INTRODUCTION AND METHODOLOGY

1.1 Introduction

The Advisory, Conciliation and Arbitration Service (Acas) commissioned TNS-BMRB to undertake a piece of research to explore why Pre-Claim Conciliation (PCC) referrals become Employment Tribunal claims. Previous research has shown PCC to be successful, but there is limited evidence on the substance of PCC referrals that do result in an Employment Tribunal claim. Research was needed to inform service development and improvement.

1.2 Policy context and background

As well as providing individual conciliation (IC), a service which attempts to resolve Employment Tribunal (ET) claims which have been lodged, Acas also provides Pre-Claim Conciliation (PCC). PCC is an expansion of the IC service, and is provided in 'potential' ET claims, aiming to resolve disputes before they enter the Tribunal system. The service was introduced in 2009, following the Gibbon's Review in 2007 of employment dispute resolution arrangements, which recommended that where possible workplaces disputes should be resolved without recourse to an ET. Early dispute resolution is important, not least because it can provide significant financial savings to the parties and the state.

The service is offered to callers (mainly employees) to the Acas National Helpline who may become involved in a potential ET claim, although some referrals come directly to Acas, usually from employers. A PCC-trained conciliator works with both the employer and the claimant to help them resolve the dispute before an ET application is lodged, and so reducing the number of disputes entering the ET system. PCC has three main objectives:³

1. To encourage earlier and speedier resolution of disputes with positive employment relations outcomes;
2. To reduce the administrative burden of conflict and produce time and cost savings for employers, employees and the state; and
3. To ensure a positive customer experience.

Acas has agreed a set of targets with the Department for Business, Innovation and Skills (BIS) to monitor how well PCC promotes early dispute resolution. These metrics include:

³ Davey, B., Dix, G. (2011) *The Dispute Resolution Regulations two years on: The Acas experience*. Acas research paper

- Appropriate Referral Rate (90 per cent of PCC referrals from the helpline are appropriate); and
- ET claims Avoidance Rate (70 per cent of all PC referrals do not result in an ET claim within three months of the referral being closed).

Since its introduction in 2009, PCC has been shown to be successful. It is estimated that in 2011/12 78 per cent of closed PCC cases do not go on to become ET claims (against a target of 70 per cent). The evaluation of the first year of PCC⁴ also concluded that most service users are highly satisfied with PCC, generally believing that PCC can have a positive impact on dispute resolution. However, despite this, Acas' knowledge about parties' experience of PCC which results in an ET claim ('PCC to ET') is limited. These claims will consist of PCC referrals which are 'unprogressed' and PCC cases which are 'unresolved', outlined in more detail below:

Due to the success of PCC so far the Government wishes to extend the PCC service so that *all* potential claims will be referred directly to Acas for conciliation. This is referred to as the 'Early Conciliation Service' and the findings of this research will help to inform the delivery of the Early Conciliation service, which is intended to be rolled out in 2014.

1.3 Pre Claim Conciliation and the process of making an employment claim

Referrals for PCC come from Acas Helpline advisors. Any callers to the Acas Helpline who are considering submitting an ET claim are referred for PCC if they meet certain requirements namely; that reasonable efforts have been made by both parties to resolve the issues, eligibility criteria to make a valid ET claim are met (e.g. the employee must meet any necessary service qualification) and there is an intention to claim. The large majority of referrals come via the employee calling the helpline, however, in a minority of cases it can be from the employer themselves if they can get in touch with Acas in cases when they think an employee is intending to make a claim.

All referrals are allocated to trained PCC conciliators who contact callers within two working days. If the eligibility criteria for PCC are satisfied and the caller wishes to proceed, the conciliator will try to contact the other party and try to secure their agreement to participate in PCC. If the other party agrees then the PCC *referral* becomes a PCC *case*.

For all PCC referrals/cases there are three types of outcomes:

- Unprogressed referrals – a referral may be unprogressed for a number of reasons including:

⁴ Infogroup/ORC International (2010) *Evaluation of the first years of Acas' Pre-Claim Conciliation* Acas Research Paper.

- if the caller to the helpline does not wish to proceed with PCC;
 - if contact with the other party cannot be made;
 - if the other party declines to participate.
- Resolved PCC cases – The offer of PCC is accepted by both parties and PCC takes place and the dispute is settled either via Acas via COT3 (a legally binding agreement), or privately after discussions with the conciliator.
 - Unresolved PCC cases - The offer of PCC is accepted by both parties and PCC takes place but a settlement is not reached. This can be for two reasons:
 - either the parties cannot reach an agreement; known as ‘impasse – no resolution brokered’;
 - or the deadline for submission of an ET claim is reached so conciliation has to be abandoned; known as ‘impasse – ran out of time’.

In instances where PCC either does not take place (the referral is unprogressed), or does take place but a resolution is not reached, the claimant can go on to submit an ET claim.

During PCC, similarly to post-claim conciliation, referred to here as IC, either party may have a representative and in these cases the conciliation will take place with them rather than the parties. Conciliation mainly takes place on the telephone; however, it can be carried out face to face in more complex discrimination cases. In comparison to ET claims, representatives are used to a lesser extent in PCC.

In line with ET claims, jurisdictions are recorded; however, in PCC they are recorded by the conciliator after discussions with the claimant, whereas in ET claims jurisdictions are recorded on the ET1 form submitted to the ET. Jurisdictions determine the ‘track’ of both PCC and ET claims; ‘fast’, ‘standard’ or ‘open’ track. Fast track cases are typically straightforward claims generally concerning breaches of contract or monetary disputes. Standard track cases are more complex, mainly involving claims of unfair dismissal. Open cases are the most complex, discrimination cases. PCC generally attracts more fast track claims, and fewer open track disputes than employment tribunal claims.

1.4 Project aims and objectives

The research was commissioned to uncover more information about PCC referrals and cases which go on to become ET claims. More specifically, the research objectives were as follows:

- To understand why parties choose / choose not to take part in PCC.
- To understand the barriers to successful dispute resolution at PCC and identify the factors which lead to an ET claim and different ET outcomes (going to hearing, settled, withdrawn).

- To understand the contribution of conciliator behaviours to outcomes in these cases and whether these skills / behaviours differ from those in ET claims that are not preceded by PCC.
- Compare PCC jurisdictions to see whether there are additional jurisdictions once an ET claim is made and why.
- Compare the findings with existing evaluation evidence to determine whether the characteristics of these cases differ from those where either PCC was successful, or there was no conciliation prior to a claim being submitted.
- To provide baseline data which may be used for comparison with the new EC service on:
 - Satisfaction with the conciliator, conciliation service and the outcome.
 - The impact on employment relationships.
 - Time spent on case (post claim).
 - Employer and employee demographics.

1.5 Research design

The research approach adopted combined quantitative and qualitative methods to achieve the key requirements for a robust programme of research providing baseline data and practical insights to inform the development of Early Conciliation.

The quantitative and qualitative strands were undertaken together with both teams of researchers involved in the briefing, immersion sessions and deliverables. The research began in February 2012 with a site visit and familiarisation day at the Manchester Acas office. The research team had the opportunity to meet with conciliators, conciliation managers and helpline managers to discuss the referral process and monitor calls made to the helpline where claimants were eligible for PCC.

1.6 Quantitative methodology

1.6.1 *Survey Design*

The quantitative strand of the research involved a telephone survey of claimants and employers who had been involved in unprogressed PCC referrals and impasse PCC cases, where the claimant had gone on to submit an ET claim.

The sample consisted of all closed ET cases, which had been referred for PCC since the beginning of 2011. In all cases, PCC either did not take place (unprogressed PCC referrals), or took place but a resolution was not reached (impasse PCC cases). A census approach of all such cases was taken, where there were adequate contact details. Only the claimant or the employer in each case was interviewed. The party to interview was selected at random prior to fieldwork, with claimants selected in half of the cases, and employers in the remaining half of cases.

1.6.2 Questionnaire

The questionnaire included the following topics:

- Profile of the claimant and the employer
- Take up and outcome of PCC
- The PCC experience
- The ET outcome
- Representation during the ET claim
- Experience of Acas IC
- Time spent on the ET claim
- Satisfaction with the ET outcome and Acas IC
- Future use of Acas

Where possible the questionnaire utilised questions sourced from other surveys within the domain namely; Acas' evaluation of the first year of PCC (2010), Survey of Employment Tribunal Applications (SETA 2008), and Acas' Individual Conciliation (IC) customer satisfaction survey (2010). A number of bespoke questions were also included. The full questionnaire can be found in Appendix 1.

1.6.3 Pilot

A short pilot stage was carried out prior the main stage fieldwork. The pilot fieldwork took place from the 22nd February to the 29th February 2012. Twenty interviews were conducted, 10 with claimants, and 10 with employers. The aim of the pilot was to test contact protocols, along with collecting information about the questionnaire content and flow.

1.6.4 Fieldwork

The main stage fieldwork took place from the 8th March to the 19th April 2012. In total, 370 interviews with claimants and 314 interviews with employers were conducted. A response rate of 59 per cent was achieved in the claimant interviews and 52 per cent in the employer interviews. The full breakdown of survey response is included in the Technical Report. The average interview length for employers was 21 minutes and for claimants was 22 minutes.

1.6.5 Weighting

The final achieved sample was weighted to be representative of outcome at ET (went to hearing, settled and withdrawn), Track (fast, standard and open), and respondent type (claimant and employer). Full details are included in the Technical Report.

1.6.6 Sample profile

The weighted profile of the achieved interviews on key characteristics is shown in Table 1.1 below.

Table 1.1 Profile of achieved cases

	%
Party Interviewed	
Claimant	50
Employer	50
Unweighted	684
Track (of ET claim)	
Fast	43
Open	14
Standard	43
Unweighted	684
Outcome of PCC	
Unprogressed PCC referral	30
Impasse PCC case	70
Unweighted	684
Whether had a representative at PCC	
Yes	17
No	82
Don't Know	1
Unweighted	476
Outcome of ET claim	
Went to hearing	21
Acas settled	60
Privately settled	8
Withdrawn	10
Dismissed	1
Other	*
Unweighted	684
Whether had a day-today representative for ET claim	
Yes	42
No	58
Don't know	1
Unweighted	684

Base: All interviews, except for 'whether representative at PCC' which is based on all impasse PCC cases.

1.7 Qualitative methodology

The qualitative strand involved research with three groups: employers, claimants and conciliators. More specifically, the qualitative methodology comprised of:

- 10 depth interviews with employers (unmatched)
- 10 depth interviews claimants (unmatched)
- Five case studies which comprised of matched cases
 - Five depth interviews with conciliators
 - Five depth interviews with employers
 - Five depth interviews with claimants
- Two focus groups with conciliators

In total, thirty depth interviews were conducted with claimants and / or employers. The majority (28) of the interviews were face to face and lasted approximately an hour. A journey mapping approach was used in the interview so as to explore the timeline and process of the claim from inception to outcome. This involved the researcher drawing a timeline with key events attached (correspondence with Acas, ET1⁵ or ET3⁶ form and outcome) and then discussing each stage together with the respondent.

Table 1.2 below summarises the number of interviews across matched and unmatched cases for claimants and employers:

Audience	Unmatched cases	Matched cases
Employers	10 face to face depth interviews lasting one hour	5 of the 15 depth interviews as case study
Claimants/ employees	10 face to face depth interviews lasting one hour	5 of the 15 depth interviews as case study
Total	20	10

The research was carried out across four geographical areas – London, Bristol, Birmingham and Manchester. Potential respondents received a letter informing them about the research prior to our recruiter calling them to invite them to take part.

Employers were given a £50 donation to charity to incentivise them to take part in the research.

The qualitative fieldwork was conducted using full, tailored discussion guides, developed in collaboration with Acas. These can be found in the Appendix 2-4 at the end of the report.

Further details about recruitment and analysis can be found in the Technical Report.

1.7.1 Case studies

A case study approach was applied to allow for five cases (15 interviews) to be looked at holistically from the perspectives of conciliator, employer and claimant. All parties were aware that we would be talking to each of them and that we would not be disclosing the details of these interviews with the parties.

⁵ ET1 – an application to an employment tribunal.

⁶ ET3 – a response to an application to an employment tribunal .

1.7.2 *Sample profile for claimant and employer interviews*

Across the sample of claimants and employers we wanted to be sure that we were getting a range of cases. All the cases we received from Acas had taken part in PCC and gone through to the ET stage by submitting an ET1 and ET3 to the HM Courts and Tribunal Service.

Each case that had progressed from PCC to an ET claim is labelled with a PCC outcome. This outcome explains the status and reason for PCC not resulting in the case being resolved or settled at PCC and may be classified as 'ran out of time' or 'no resolution'. Across the sample, we ensured that we recruited a mix of these outcome types.

We further stratified the sample by track and the ET outcome of the case to ensure a broad range of case types (Table 1.3).

Table 1.3 Qualitative interviews by track and ET case outcome				
	Went to hearing	Acas settled	Withdrawn or privately settled	Total
Claimant				
Fast track	2	1	2	5
Standard track	2	1	2	5
Open track	1	2	2	5
Total	5	4	6	15
Employer				
Fast track	1	1	1	3
Standard track	2	2	2	6
Open track	1	3	2	6
Total	4	6	4	15

1.7.3 *Research with Conciliators*

In addition to interviewing conciliators as part of the case studies, we held two focus groups, one in the London Acas office and one in Manchester. Staff across all sites were given the opportunity to 'opt in' to being involved, their details passed onto TNS-BMRB and then six conciliators were randomly selected to take part from this list. The focus groups lasted approximately ninety minutes. These groups were used to discuss typical scenarios of where PCC works well and less well and the barriers and enablers around cases being resolved at the PCC stage.

2. THE CONTEXT

Chapter Summary

Profile of unprogressed PCC referrals and impasse PCC cases in the quantitative survey

- Standard and fast track cases were more prevalent than open track cases for both unprogressed and impasse cases (following the profile for PCC referrals in general).
- The overwhelming majority of claimants in unprogressed PCC referrals and impasse PCC cases worked for the employer at the time of the dispute.
- The profile of organisations between the two case types varied on some key factors – unprogressed PCC referrals tended to be from larger employers and those with an internal HR department and/or a legal department compared with impasse PCC cases.
- Claimant characteristics were broadly in line between unprogressed PCC referrals and impasse PCC cases.
- Seventeen per cent of both employers and claimants had a representative at PCC, significantly lower than in all ET cases (60 per cent of employers and 46 per cent of claimants had a day-to-day representative in SETA 2008). At the ET stage, 39 per cent of claimants chose to appoint a day-to-day representative, as did 44 per cent of employers.
- The most common representative for employers was a solicitor, barrister or lawyer (77 per cent). For claimants it was family or friends (32 per cent), or solicitors, barristers or lawyers (29 per cent).

Context behind the qualitative research, exploring routes into Acas, and their needs at their first contact

- The Acas helpline was reached by claimants either directly via internet searching or referral from CAB and / or legal centres. The first port of call for claimants was usually friends and family who helped to lead the claimant onto the path to seeking help.
- Experience at the helpline stage was very positive. Claimants were pleasantly surprised to receive an instant response to their questions about their rights, to be told they had 'a case' and to be offered further help in the form of PCC.
- Needs were strong amongst certain claimants for emotional support to deal with resentments regarding the dispute. Additionally claimants with learning difficulties, mental health problems and those for whom English was not their first language had additional needs for help in understanding and managing their dispute. These needs went largely unmet despite the efforts of conciliators to spend considerable time listening and empathising with the claimant.

2.1 Introduction

In this chapter the context and profile of the cases included in the research are discussed. The first part of the chapter focuses on the quantitative survey examining the profile of the cases included. The second part of the chapter, examines the findings from the qualitative research, exploring the routes into Acas, and customers' needs at the point of their first contact with Acas.

2.2 Profile of cases

In this section an overview of the profile of cases included in the quantitative survey is discussed. These were disputes referred for PCC but PCC did not take place (unprogressed PCC referrals) and those which were referred for PCC, PCC took place but a resolution was not reached (impasse PCC cases). After the offer of and/or completion of PCC, claimants went on to submit employment tribunal claims for the same dispute.

First the characteristics of both unprogressed PCC referrals and impasse PCC cases are explored along with the characteristics of organisations and claimants. These profiles are compared where possible to the profile of all PCC service users, using the findings from a survey of PCC users from an evaluation of the first year of PCC (which included unprogressed PCC referrals, impasse PCC cases, and resolved PCC cases) and the profile of employers and claimants involved in applications to employment tribunals (using data from the Survey of Employment Tribunal Applications 2008 (SETA)).

2.2.1 Case characteristics

Amongst unprogressed PCC referrals 44 per cent were standard track, 35 per cent were fast track and 20 per cent were open track.⁷ For impasse PCC cases a similar proportion were standard track cases (42 per cent), however, a larger proportion were fast track (46 per cent), with smaller proportion (12 per cent) were open track cases. The distributions of track amongst these referrals and cases varied somewhat in comparison to all ET claims received by Acas in 2010/11 (45 per cent were standard track, 27 per cent fast track and 28 per cent open track⁸).

2.2.2 Employment status

Amongst both unprogressed PCC referrals and impasse PCC cases the overwhelming majority of claimants worked for the employer who they were making their claim against (99 per cent of both groups). This is in line both with all PCC service users interviewed in Acas' first year evaluation of PCC (97 per cent), and those who submit employment tribunal applications (97 per cent of claimants in SETA 2008 were current or former employees of organisations against whom they brought their claim against). At the time of the interview only three per cent of claimants involved in impasse PCC cases, and two per cent in unprogressed PCC referrals still worked for

⁷ Using track recorded at the ET stage.

⁸ Acas Annual Report and Accounts 2010-2011.

the employer. This is broadly comparable to SETA, where six per cent of claimants were still with the employer at the end of the claim. Amongst those claimants no longer working at the organisation, over eight in ten (86 per cent of claimants in both groups) reported that they had left prior to submitting the ET claim, with just over one tenth (13 per cent in impasse PCC cases and 11 per cent in unprogressed PCC referrals) leaving after.

2.2.3 Profile of organisations

Table 2.1 displays the profile of organisations amongst unprogressed PCC referrals and impasse PCC cases.

The breakdown of organisation sector was similar between unprogressed PCC referrals and impasse PCC cases. However, in comparison to sectors involved in employment tribunal cases, public sector organisations were less likely to be among unprogressed PCC referrals and impasse PCC cases – in SETA 2008 19 per cent of employment tribunal claims were against employers in the public sector. This supports previous comparisons of PCC cases with ET cases reported by Davey and Dix, 2011.⁹

There was some variation in the size of the organisation and the number of workplaces between unprogressed PCC referrals and impasse PCC cases. Unprogressed PCC referrals had a higher proportion of large organisations (those with 250 or more employees) and organisations with multiple workplaces, compared to impasse PCC cases.

There was little variation in workplace size between unprogressed PCC referrals and impasse PCC cases with around six in ten workplaces having between 1 to 29 employees (i.e. a 'small' workplaces), three in ten workplaces with between 50 and 249 employees (i.e. a 'medium' workplace), and around one in ten with 250 or more employees (i.e. a 'large' workplace). This breakdown is largely in line with the breakdown of all PCC service users (in the first year evaluation of PCC survey, 13 per cent of PCC service users interviewed were from large employers), and supports previous analysis by Davey and Dix 2011,¹⁰ that organisations with large workplaces are less likely to be among PCC referrals than in employment tribunal cases (SETA 2008 suggested that 19 per cent of organisations involved in employment tribunal were from large workplaces).

Organisations involved in unprogressed PCC referrals were more likely than those involved in impasse PCC cases to have an internal Human Resources (HR) department (64 per cent compared to 48 per cent), and to have a internal legal department (24 per cent compared to 13 per cent). This suggests that they may not

⁹ Davey, B. and Dix, G. (2011) *The Dispute Resolution Regulations two years on*. Acas Research Paper.

¹⁰ Davey, B. and Dix, G. (2011) *The Dispute Resolution Regulations two years on*. Acas Research Paper.

have progressed with PCC because they felt they had procedures in place to deal with it internally.

This finding is not unexpected as the presence of these departments is linked to organisation size (with the prevalence of these departments increasing with organisation size), and as discussed above, a higher proportion of unprogressed PCC referrals were from employers with 250 or more employees. In comparison to employers involved in employment tribunals, SETA 2008 showed 62 per cent of employers had an internal legal department, and 20 per cent an internal legal department. These proportions are in line with those evident for unprogressed PCC referrals, but are higher than those for impasse PCC cases.

Table 2.1 Profile of organisation

	Unprogressed referrals	Impasse cases	All
	%	%	%
Sector			
Private sector	82	79	80
Public sector	12	11	11
Non-profit/ voluntary sector	3	5	4
Don't know	3	6	5
Unweighted	201	483	684
Single or multiple workplace			
Single workplace	38	49	2
More than workplace	60	49	46
Don't know	2	2	52
Unweighted	201	483	684
Number of employees at organisation			
1 to 24	34	41	38
25 to 49	21	35	29
250 or more	45	24	33
Don't know	1	*	1
Unweighted	131	183	314
Number of employees at workplace			
1 to 24	58	63	61
25 to 249	30	28	29
250 or more	10	9	9
Don't Know	2	-	1
Unweighted	201	483	684
Whether organisation has an internal HR department			
Yes	64	48	55
No	36	51	45
Don't know	-	*	*
Unweighted	131	183	314
Whether organisation has an internal legal department			
Yes	24	13	17
No	76	87	82
Don't know	1	*	1
Unweighted	131	183	314
Whether organisation is a member of an Employers or Trade Association			
Yes	39	34	36
No	53	63	58
Don't know	9	4	6
Unweighted	131	183	314

Base: For Sector, Single or multiple workplace, and Number of employees at workplace – All employers and claimants. For Number of employees at organisation, Presence of an internal HR department, Presence of an internal legal department, and Membership of employers or trade association – All employers.

2.2.4 Profile of claimants

Table 2.2 displays the profile of claimants; it includes the employment related characteristics of claimants, along with their personal characteristics.

Exploring firstly the employment related characteristics, the occupation profiles of unprogressed PCC referrals and impasse PCC cases were largely consistent. Some minor differences were, however, apparent with claimants in unprogressed PCC cases slightly more likely to work in administrative and secretarial occupations (SOC group 4) and skilled trade occupations (SOC group 5).

Just over a fifth of claimants in both unprogressed PCC referrals (21 per cent), and impasse PCC cases (22 per cent) had managerial duties, however, a slightly larger proportion of claimants in impasse PCC cases had supervisory duties (15 per cent versus nine per cent of unprogressed PCC referrals). The proportion of claimants who were members of a trade association or staff association was largely in line between the two groups; around one tenth of claimants in unprogressed PCC referrals (10 per cent) and impasse PCC cases (eight per cent). These findings are consistent with those of all PCC service users, as 10 per cent of all service users in the first year evaluation of PCC were members of a trade union. However, it again highlights that trade union members are under-represented in PCC referrals compared to those in ET claims (as the equivalent figure from SETA 2008 was 25 per cent).

Turning now to personal characteristics, 41 per cent of claimants involved in unprogressed PCC cases were women, as were 43 per cent of claimants in impasse PCC cases. This is similar to the profile of all PCC service users (41 per cent in the review of the first year of PCC), and those in employment tribunal claims (40 per cent as reported in SETA), and again supports previous evidence (by Davey and Dix 2011)¹¹ that women are underrepresented in PCC referrals and ET claims compared to the UK workforce.

The profile of claimant age is largely consistent between claimants in unprogressed PCC referrals and impasse PCC cases, with just under half of claimants in both unprogressed PCC cases (49 per cent) and impasse cases (47 per cent) aged 35-54. The breakdown is largely in line with the profile of all PCC service users (from the first year evaluation of PCC survey), and the profile of all employment tribunal applications (from SETA 2008).

Just over two in ten claimants (22 per cent) in unprogressed PCC cases reported having a long standing illness, disability or infirmity, and amongst claimants involved in impasse PCC cases the equivalent figure was 16 per cent. However, due to small base sizes (as this information was only collected in claimant interviews) this difference does not reach conventions of statistical significance. In terms of comparison to the profile of ET claimants, 22 per cent of claimants in SETA 2008

¹¹Davey, B. and Dix, G. (2011) *The Dispute Resolution Regulations two years on*. Acas Research Paper.

reported having a disability, which is in line with the proportion in unprogressed PCC cases, but higher than the proportion in impasse PCC cases.

The profile of the ethnicity of claimants was largely consistent between unprogressed PCC referrals and impasse PCC cases. They were also broadly consistent to those evident amongst all PCC service users (91 per cent of claimants were white in the evaluation of the first year of PCC) and employment tribunal claimants (86 per cent of claimants were white in SETA 2008).

2.2.5 Summary of the profile of unprogressed PCC referrals and impasse PCC cases

In summary the profile of unprogressed PCC referrals and impasse PCC cases were largely similar. There were, however, some key differences between the two groups, namely;

- Unprogressed PCC referrals in comparison to impasse PCC cases were more likely to:
 - be from larger organisations;
 - have an internal HR department and/or legal department;
 - have claimants who work in administrative and secretarial occupations (SOC group 4) and skilled trade occupations (SOC group 5).
- Impasse PCC cases in comparison to unprogressed PCC referrals were more likely to have a higher proportion of fast track cases.

Table 2.2 Profile of claimants

	Unprogressed PCC referrals %	Impasse PCC cases %	All %
SOC			
Managers and senior officials	22	23	23
Professional occupations	6	3	3
Associate and technical operations	5	10	8
Administrative and secretarial occupations	17	9	12
Skilled trade occupations	15	11	12
Personal service occupations	7	11	10
Sales and customer service occupations	10	9	9
Process, plant and machine operatives	5	9	8
Elementary occupations	14	15	15
Unweighted	162	396	558
Managerial / Supervisory duties			
Manager	21	22	22
Foreman / Supervisor	9	15	13
No managerial or supervisory responsibilities	70	62	64
Don't know	1	*	1
Unweighted	200	477	677
Member of trade union or staff association			
Yes	10	8	8
No	90	92	91
Don't know	-	*	*
Unweighted	70	299	369
Gender			
Male	59	57	59
Female	41	43	42
Unweighted	201	483	684
Age			
16-24	9	10	10
25-34	19	24	22
35-54	49	47	48
55 or more	21	17	18
Don't know	2	1	1
Refused	1	*	*
Unweighted	201	476	684
Whether have a longstanding impairment, illness or disability			
Yes	22	16	17
No	78	84	83
Unweighted	70	300	370
Ethnicity			
White	82	87	86
Black	7	4	5
Asian	8	6	7
Mixed ethnic	1	2	2
Other	-	1	1
Unweighted	70	300	370

Base: For SOC – All employers and claimants where a SOC code could be derived. For Managerial/supervisory duties – All employer and claimants where the claimant was a current or former employee. For Trade union membership – All claimants where the claimant was a current or former employee. For Gender and Age – All employers and claimants. For Longstanding impairment, illness or disability, and Ethnicity – All claimants.

2.2.6 Profile of Representatives at PCC

Seventeen per cent of claimants in impasse PCC cases reported using a representative to deal with Acas during the PCC process, as did 17 per cent of employers. This is substantially less than in employment tribunals; in SETA 2008 46 per cent of claimants had a day-to-day representative as did 60 per cent of employers.

As might be expected claimants involved in fast track cases were less likely to have a representative at PCC than claimants involved in standard track cases (12 per cent compared with 24 per cent). The findings also indicated a similar difference amongst employers although the difference was not statistically significant.

Amongst claimants who reported having a representative, the most common representatives were family or friends (32 per cent) and solicitors, barristers or lawyers (29 per cent). Trade unions and the Citizens Advice Bureau (CAB) were also used (in 12 per cent of cases respectively). In comparison to representatives used by claimants in employment tribunals, this shows a greater use of more informal types of representation and a reduced use of formal types; in SETA 2008 only 15 per cent of claimant representatives were family or friends, however solicitors accounted for 42 per cent of such representatives, and trade unions accounted for 15 per cent.

Amongst employers who reported use of a representative during the PCC process, a solicitor, barrister or lawyer was the most common representative mentioned by 77 per cent of such employers. One in ten (10 per cent) reported using an employment rights advisor, and six per cent a legal specialist in the company. These were the three most common representatives used by employers in employment tribunal cases (in SETA 2008, 66 per cent of day-to-day employer representatives were solicitors, barristers or lawyers, nine per cent were a company specialist, and eight per cent an employment rights adviser).

At the ET stage the proportion of claimants and employers with a day-to-day representative increased with 39 per cent of claimants and 44 per cent of employers choosing to appoint a day-to-day representative. The use of representation during the ET case is discussed further in Section 6.3.2.

2.3 Routes into Acas and needs

Based on the qualitative research and journey mapping techniques¹², this section describes the routes which claimants took to reach Acas, together with their expressed needs at this time.

Awareness of Acas was patchy with some claimants being aware of the organisation but associating it with large industrial disputes. Others came to hear about Acas

¹² Journey mapping approach: a map to help shape respondents journey through the PCC process. More information about this is found in Chapter 1.

either through CAB (from referral from friends and family), internet searches for 'unions' or 'conciliator', or legal advisers and legal centres.

Claimants were looking for an organisation that could help them solve their disputes, and their expectations were high. CAB were said to be unable to help due to limited resources, availability and legal expertise so referred claimants to Acas.

At the point of calling the Acas helpline, potential claimants were primarily seeking information to determine whether they had been treated unfairly or not.

"I just wanted information on my rights and whether it was ok for them [employer] to behave like that". (Claimant)

Claimants were impressed by the knowledge and expertise of the helpline staff and felt that they had received a good explanation of their employment rights. They were particularly impressed by helpline staff responding to their questions instantly, rather than having to wait to speak to another advisor or being called back.

"They knew what to say straightaway and they didn't need to think about it or ask someone else and put me on hold... I hate it when people put you on hold."
(Claimant)

Certain claimants expressed their needs for emotional support at this time. Conciliators echoed that claimants could be quite demanding for support and time in the early part of their claim. Other claimants confessed their difficulty in understanding and / or managing the dispute. These claimants tended to be those more vulnerable due to a literacy / language difficulty and / or mental health problems.

Based on the interviews conducted with these types of claimants, it would seem that these needs were not always met and that as a consequence, claimants were confused and / or particularly bitter. Claimants had generally received considerable time and empathy from conciliators but their needs required more specialised help. Claimants needed guidance and help on reading and / or interpreting communications and counselling to overcome the emotions involved in the dispute.

3. TAKE UP AND PERCEPTIONS OF PCC

Chapter Summary

- Reasons for not taking up PCC tended to revolve around the employer – with the employer tending not to be willing to take part or negotiate, or the conciliator not being able to reach the employer.
- To parties it seemed that accepting PCC was the next step in the process as opposed to a decision to deliberate over.
- Both parties generally felt well informed about the process through verbal or written information but there was confusion and misunderstanding about PCC and the role of Acas. In particular, a strong tendency to view Acas as an enforcement agency on the side of the claimant, despite conciliators stressing their impartiality.
- For employers avoidance of time and cost of an employment tribunal was a strong motivation to accept PCC. Claimants had faith in Acas helping them reach a settlement with their employer and generally felt they had 'nothing to lose' in trying PCC.
- The act of being offered PCC and having 'a case' raised claimant expectations about their chances of success in an employment tribunal.

3.1 Introduction

All parties included in the *qualitative* research had accepted and been through the PCC process. The qualitative research did not include unprogressed claims. This section gives an account of claimant and employer expectations about PCC and their decision making process for accepting the service. First though, the section begins with survey responses on the reasons why PCC was *not* taken up by employers and claimants in unprogressed cases.

3.2 Unprogressed PCC referrals

Most PCC cases are referred to a conciliator from the Acas helpline. Helpline advisers will seek to identify callers who meet the relevant eligibility criteria for PCC, outline the process to them and invite the caller to consider this as an option. If the caller wishes to proceed, the case is referred to a conciliator who will contact the caller within two working days. At that stage the conciliator will verify eligibility of the case and explain the process to the caller. The caller still has the option at this point not to proceed should they choose not to and the referral would be classified as 'unprogressed'. Should the caller (usually the employee) be willing to proceed the conciliator will attempt to contact the other party (usually the employer) to secure their agreement to become involved. It may be that the other party does not wish to take part in PCC, or the conciliator may be unable to get in contact with the other party; in these situations the referral would also be 'unprogressed'. Only once the

conciliator has secured agreement from both parties to take part does the referral become a 'converted' PCC case.

Just under a third (30 per cent) in the quantitative survey were unprogressed PCC referrals. Further details about the characteristics of these referrals are included in Chapter 2.

Employers and claimants were asked what the main reason for not taking part in PCC was.

The most common reason given by claimants for why the PCC was not progressed was that **the employer was not willing to negotiate (45 per cent)**.

A small number (7 out of 64 claimants) said they were not aware of the assistance Acas could give at this stage or that there was no offer of conciliation from Acas (presumably in cases in which initial contact had been made by the employer). However, in contrast to findings reported in 2010, no claimant said that they were not willing to negotiate.¹³

Amongst employers the most common reason, cited by two fifths (44 per cent) of employers, was that **they were not contacted about possible Acas assistance or that they did not know about the dispute**.

This would imply that either after talking to the conciliator a decision was made by the claimant not to proceed, or that the conciliator was unable to make contact with the employer. Both of these reasons were found to be common reasons for failure to convert PCC referrals as recorded in the Acas Management Information (MI) data.¹⁴ A further nine per cent of employers mentioned explicitly that the employee was not willing to negotiate.

Reasons that employers gave for why they had decided not to take part in PCC themselves included:

- We were not willing to negotiate (nine per cent)
- Felt that the conciliation would not resolve the issue/ be a waste of time (four per cent)
- Internal procedures were not yet exhausted (three per cent)
- Waiting to see if the employee would make a claim (three per cent)
- Did not think the employee had a case (three per cent)

¹³ Infogroup/ORC International (2010) *Evaluation of the first years of Acas' Pre-Claim Conciliation* Acas Research Paper, p.28.

¹⁴ Davey, B. And Dix, G (2011), *The Dispute Resolution Regulations two years on: the Acas experience*. Acas Research Paper, p. 21.

3.3 Progressed PCC referrals

Claimants learnt about PCC from their call to the helpline, unless they had experience already of PCC from a friend or relative. At the start of the PCC process, claimants recalled that the conciliator offered further explanation about how it would work. Certain claimants confessed that their understanding about the process was still uncertain at this point.

"I wasn't very clear really. My brother knew more about it than I did. The only thing that I knew about Acas was that they dispute things, if you've been done wrong by things." (Claimant)

Those that received written information about the PCC process – a leaflet, letter or an e-mail, felt more confident they understood PCC and the role of Acas. However, those claimants with literacy or language difficulties struggled to engage with and understand written communications.

3.4 Claimant decision making

For claimants, there was little sense of them spending time weighing up the decision about whether to have PCC or to instantly submit a claim to an employment tribunal. They reasoned that PCC did not prevent them from submitting a claim later on.

"Yes, I thought it was the right decision, because I can fall back on the tribunal anyway." (Claimant)

The advantage for claimants in trying PCC was to avoid the potential stress of a tribunal.

Some claimants recalled previous bad experiences in court in other circumstances and they had a clearer idea about the level of stress that may be involved in a tribunal.

"I had just gone through a rotten divorce; the last thing in the world I wanted was to go to court again." (Claimant)

In the act of being offered further help, claimants perceived their dispute as 'a case'. Labels attached to this such as 'unfair dismissal' further supported their expectation that they had been 'wronged' and that they had a chance to win against their employer.

"I wanted someone to tell me I had a case" (Claimant)

"It was helpful, I got feedback that I had a case" (Claimant)

Claimants held a variety of ideas and expectations at this point about Acas and the conciliator role. These included 'personal advisor', 'legal advisor', 'evaluator', 'judge' and 'enforcer'. Previous research has pointed to claimants' expectations and their needs for greater support and a representative type of role from Acas (e.g. 15 per cent of employees felt the conciliator was 'on their side').¹⁵ Indeed, claimants wanted and expected Acas to be 'on their side'.

A strong motivation for using Acas at this point was the belief that Acas would help to influence and persuade the employer to get them what they wanted. Acas was perceived as a powerful agency that could enforce the law, especially amongst more vulnerable claimants.

"I just thought they (employer) would take more notice of them (Acas) than they would me." (Claimant)

The nature of PCC being free was further justification for proceeding and for some claimants, having Acas involved signalled to them at this point that they did not need to seek the support of a lawyer or solicitor.

"Getting a lawyer is expensive when you are unemployed, so you think who can help me? That's why I went the conciliation route." (Claimant)

3.5 Employer decision making

For employers, PCC was felt to be a way to avoid the time and cost associated with a tribunal and so they accepted the process. Employers acknowledged that the initial call from Acas inviting them to take part in PCC could be a difficult call to take and that there was the potential for them to be positioned as 'the bad guy' and feel resentful:

"They've got your back up already by someone trying to make a claim against you." (Employer)

"It was almost like 'you're guilty', prove yourself innocent." (Employer)

In one instance, a message had been left by Acas for the employer on their answer phone and the tone of this had been interpreted as formal and unfriendly. This suggested to the employer that Acas was on the side of the claimant.

"It was on the voicemail, it was very much 'respond or else'. But I thought that the tone of the message was that they had already taken sides." (Employer)

¹⁵ Infogroup/ORC International (2010) *Evaluation of the first years of Acas' Pre-Claim Conciliation* Acas Research Paper.

Employers stressed that the conciliator carefully explained their impartiality but yet they still had concerns that Acas was more on the side of the claimant, partly, because the claimant had made the initial approach to Acas.

"She explained the reason for her call and explained very clearly that they didn't pick sides and were there to get an agreement between the two sides, that's probably because I could have thought that she's got Acas on her side.... they were very clear that that's not the case." (Employer)

Conciliators themselves outlined that getting employers to engage with the process could be challenging, particularly if the employer had not heard of Acas. They felt that greater awareness of Acas amongst employers would help to make their job a little easier.

"You have to do a lot of work to win them (employers) over and tell them about Acas...sometimes they haven't even heard of Acas and then you have to sell the PCC service to them and you have to do all that before you say and by the way someone has made a claim against you....for me, the biggest issue is that people are not aware enough of Acas and the service." (Conciliator)

Employers valued receiving written information from Acas about the organisation and the PCC process. They were motivated to proceed to avoid the dispute escalating and causing a cost to the business

4. EXPERIENCE, OUTCOME AND SATISFACTION AT PCC

Chapter Summary

- Three quarters (71 per cent) of survey participants who tried to make contact with the conciliator said that the conciliator was **always or usually available when needed**. Claimants were more positive about availability than employers.
- Sixty seven per cent of service users completely **trusted their conciliator**. There were no significant differences in the proportion who said they completely trusted their conciliator by whether the outcome was that no resolution was brokered or that it ran out of time, suggesting that trust is built up in the majority of PCC cases regardless of the outcome.
- Only two per cent of cases involved **face to face communication** with the conciliator during PCC. Within the qualitative research there were no strong demands for face to face contact but a retrospective suggestion that face to face communication may have offered them greater support and / or helped to resolve the claim quicker.
- The majority (74 per cent) of service users were **satisfied** with the service received from Acas during PCC, and almost half (45 per cent) were either extremely or very satisfied. Satisfaction was higher amongst claimants than employers.
- The survey uncovered that **frequency of the conciliator being available when needed** had the greatest link to satisfaction. The qualitative research highlighted a host of other factors impacting on the parties experience and ultimate evaluation of the conciliator or service. These factors included the conciliator or service being:
 - Supportive
 - Impartial
 - Expert and knowledgeable
 - Consistent
 - Responsive

4.1 Introduction

This section examines the experience of those not represented at the PCC stage, particularly their views about the type and amount of contact with their conciliator. The section ends with survey responses for overall satisfaction and factors deemed important in evaluating conciliator skills and the PCC services.

4.2 Representation during PCC

Survey participants involved in impasse PCC cases were asked whether or not they used a representative during the PCC process. Seventeen per cent of employers used a representative as did 17 per cent of claimants. For employers the most common type of representative used was a solicitor, barrister or lawyer (77 per cent) and for claimants family or friends (32 per cent). The types of representatives used are discussed in further detail in Section 2.2.5.

4.3 Experience of the PCC process

Survey participants who did not use a representative were asked about their experiences of the PCC process, including the type of contact they had with the conciliator, whether the conciliator was available when needed, whether they were happy with the amount of contact received, and how much they trusted the information provided by the conciliator.

4.3.1 Contact with the conciliator

Only two per cent of cases (seven cases) involved face to face communication with the conciliator during PCC. Of these seven cases, none were fast track cases, six were standard and one was open, and six of the seven cases had a PCC outcome of 'no resolution brokered' which may indicate that these were more difficult cases that necessitated face to face meetings in comparison to those that had run out of time for a resolution to be reached.

Across the qualitative research, all conciliation involved telephone and email communication between conciliator and parties. There were a few instances of claimant and employer meetings being suggested by the conciliator, employer or claimant but these were not taken up.

In the qualitative research, employers tended to report less contact with the conciliator than claimants reported. This level of contact varied considerably. In a few cases, it consisted of one telephone call between conciliator and employer.

Although claimants generally felt that the conciliator spent the right amount of time with them and telephone contact was convenient and appropriate, **they thought that face to face contact would have offered them a greater level of support.**

"It would have been a bit more reassuring to be face to face." (Claimant)

Conciliators echoed the view that face to face visits, especially for more vulnerable claimants, would be useful to help establish their level of need.

Almost three quarters (71 per cent) of survey participants who tried to make contact with the conciliator said that the conciliator was always or usually available when

needed. Claimants were in general more positive about the conciliator's availability than employers with almost half (47 per cent) saying that the conciliator was always available when needed compared with just over a third of employers (34 per cent). Table 4.1 below shows the responses for employers and claimants to this question.

Table 4.1 Whether Acas conciliator was available when needed by service user type

	Employers %	Claimants %	All %
Always	34	47	42
Usually	31	27	29
Sometimes	16	18	17
Rarely	6	5	5
Never	7	2	4
Don't know	6	1	3
<i>Unweighted</i>	<i>119</i>	<i>226</i>	<i>345</i>

Base: All employers and claimants not using a representative during PCC who had contact with Acas and had tried to make contact with a conciliator

The qualitative research brought out that conciliators were not always available and that parties needed to leave a message and wait for a return call or try again to contact. Employers tended to be more passive about contacting the conciliator and therefore had more experience of waiting for conciliators to contact them.

Despite the fact that claimants were more likely than employers to say that the conciliator was available when needed, they were no less likely to say that they would have preferred more contact with the conciliator. Around a quarter of both employers (22 per cent) and claimants (27 per cent) said that they would have preferred more contact with the conciliator (as shown in Table 4.2). Seventy one per cent of both employers and claimants said they were happy with the amount of contact and only a small number would have preferred less (four per cent of employers, one per cent of claimants).

Table 4.2 Preferred amount of contact by service user type

	Employers %	Claimants %	All %
More	22	27	24
The same	71	71	71
Less	4	1	2
Don't know	4	2	3
<i>Unweighted</i>	<i>150</i>	<i>234</i>	<i>384</i>

Base: All employers and claimants not using a representative during PCC

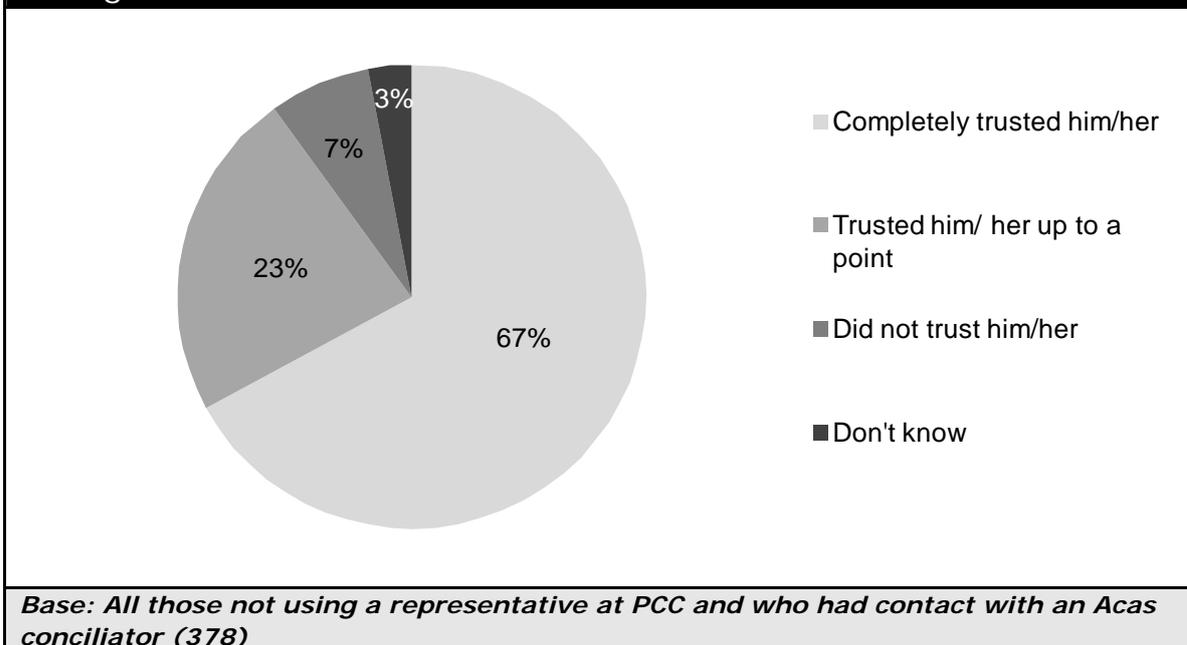
Overall in twenty four per cent of cases service users said they wanted more contact and this supports the findings from the 2010 survey of PCC service users where the

same proportion of those involved in impasse PCC cases said they had wanted more contact. In the 2010 survey it was found that, as might be expected, where the PCC case was resolved, service users were less likely to say that they had wanted more contact with the conciliator (12 per cent).¹⁶ Looking again at the 2012 survey, unsurprisingly those service users who said that the conciliator was only sometimes or less frequently available when needed were more likely to say that they would have preferred more contact than those who said the conciliator was always or usually available (56 per cent versus 14 per cent).

4.3.2 Trust in the conciliator

Service users were asked how much trust they had in the information given by the Acas conciliator at the time of PCC. Two thirds (67 per cent) of service users completely trusted their conciliator and just under a quarter (23 per cent) trusted him/her to a point, as shown by Figure 4.1. Again the results are in line with the 2010 Acas survey of PCC service users where in 62 per cent of impasse PCC cases the service user said they completely trusted the information given by their conciliator. The 2010 survey also found that where the case was resolved at PCC service users were more likely to say they completely trusted the conciliator (76 per cent).¹⁷ Interestingly in the 2012 survey there were no significant differences in the proportion who said they completely trusted their conciliator by the outcome of PCC (no resolution brokered or ran out of time), suggesting that trust is built up in the majority of PCC cases regardless of the outcome.

Figure 4.1: Level of trust in information given by the Acas conciliator during PCC



¹⁶ Infogroup/ORC International (2010) *Evaluation of the first years of Acas' Pre-Claim Conciliation* Acas Research Paper, p. 35.

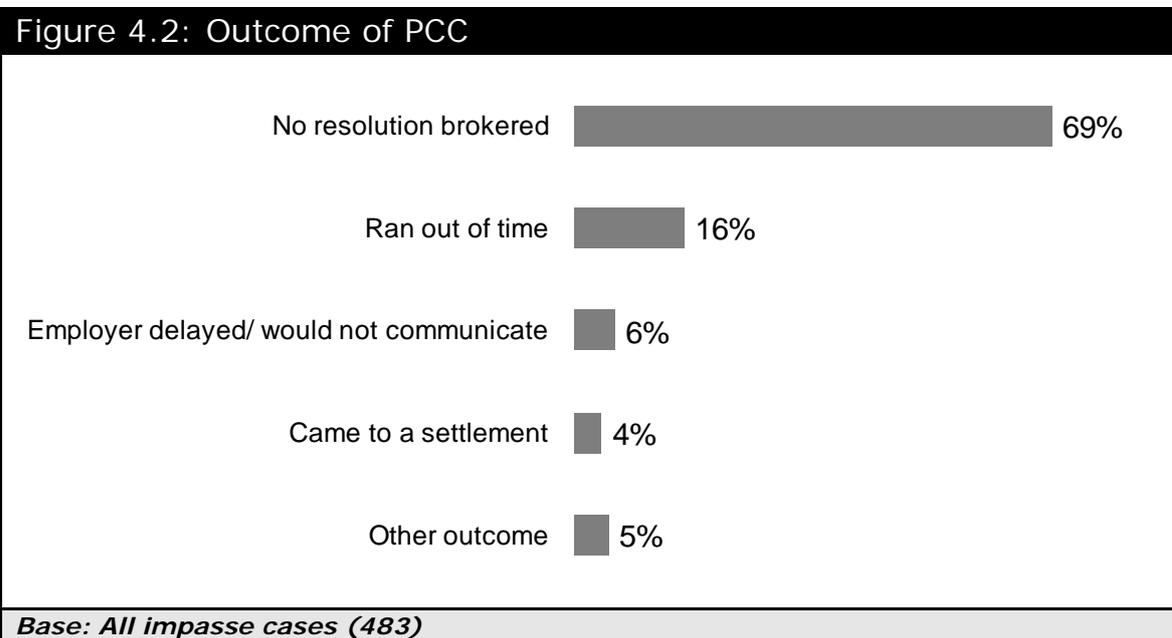
¹⁷ Infogroup/ORC International (2010) *Evaluation of the first years of Acas' Pre-Claim Conciliation* Acas Research Paper, p. 39

4.4 Outcome of PCC

Once a PCC referral is converted into a case, there are three possible main outcomes: it is resolved, no resolution is brokered, or time runs out before an ET claim must be presented. The survey sample consisted only of those cases where an ET claim was made, therefore the two main outcomes for the survey population of PCC cases were 'no resolution brokered' and 'ran out of time'. Of the cases that took part in PCC, 69 per cent were 'no resolution brokered', 16 per cent ran out of time, and 15 per cent had another outcome. The two main reasons given for 'other' outcomes were that:

- the employer delayed conciliation / would not communicate (six per cent); and
- a settlement was reached (four per cent).

Figure 4.2 shows the outcomes of PCC for all impasse cases.

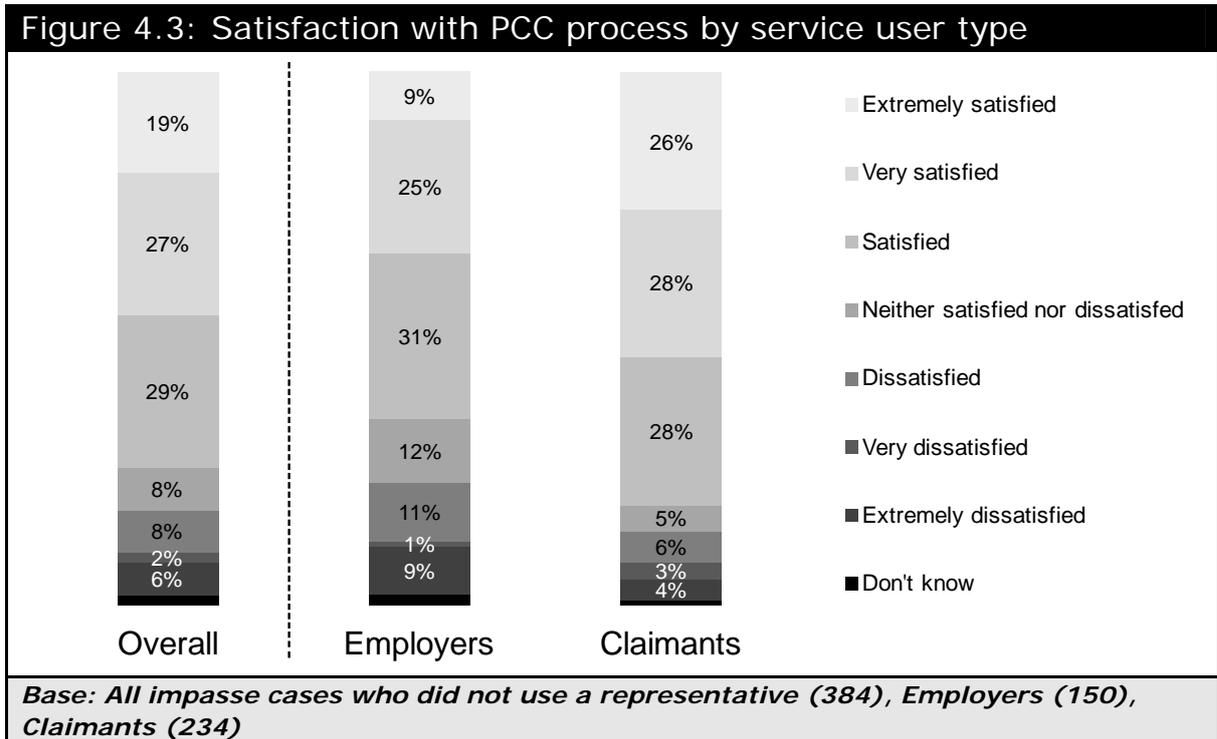


The qualitative interviews brought to light that some employers had been oblivious to the time limits placed on the PCC process. Claimants, however, were acutely aware of this because the conciliator was closely monitoring this for them and informing them about how much time they had left. This suggests a different relationship between conciliator and employer versus conciliator and employee (whose responsibility is it to lodge the ET1).

4.5 Overall satisfaction with the PCC process

Service users were asked in the survey to rate how satisfied they were with the PCC process itself, putting aside the actual outcome of the dispute. Three quarters (74 per cent) of service users were satisfied with the service received from Acas during PCC, and almost half (45 per cent) were either extremely or very satisfied.

Satisfaction levels were higher amongst claimants than employers (81 per cent claimants were 'satisfied' versus 66 per cent of employers) as shown by Figure 4.3.



The overall satisfaction level of impasse PCC cases compares to those in the 2010 survey of PCC service users, however, the 2010 survey also found that where the case was resolved at PCC, satisfaction with the service was significantly higher at 90 per cent.¹⁸ This current survey suggests that service users involved in impasse PCC cases that had run out of time before the ET claim needed to be submitted, were more positive about the service than those where no resolution could be brokered (87 per cent satisfied versus 71 per cent satisfied).

All aspects of service users' experience discussed previously (Section 4.3) had significant associations with satisfaction levels but it was the frequency of the conciliator being available when needed that seemed to have the biggest link with satisfaction, in line with previous research into both PCC and post-claim conciliation. (For example in the 2010 Acas IC satisfaction survey respondents who said that the conciliator was usually or always available were much more likely than those where the conciliator was only sometimes or rarely/never available to be satisfied (91 per cent versus 63 per cent and 28 per cent respectively). Nine in ten service users (91 per cent) who said their conciliator was always or usually available when needed were satisfied with the PCC process, compared with four in ten (40 per cent) who said their conciliator was available less frequently.

¹⁸ Infogroup/ORC International (2010) *Evaluation of the first years of Acas' Pre-Claim Conciliation* Acas Research Paper, p. 52.

4.6 Factors of importance for evaluating satisfaction

The qualitative interviews found that experience of PCC varied considerably. Where PCC had reached an impasse either because the process had run out of time or no resolution had been reached, it was difficult for some parties to see through the negativity of the dispute and value the contribution made by Acas.

Asked to think about the conciliator qualities that they most valued, employers and claimants highlighted the following conciliator skills:

- Being supportive (claimants)
- Impartiality (employers)
- Expertise and knowledge
- Consistency
- Responsiveness

We will examine each of these factors in turn below:

Being supportive

Claimants could not help but evaluate the conciliator based on the level of support they received. If claimants felt they received more support and understanding then they described their conciliator as being useful. This support included listening, sympathising and feeling that the conciliator was '**on their side**'.

"She said they've been a bit nasty so I thought thank you, at last, someone has seen my point of view so yes, I found her really supportive. (Claimant)

"I wanted them to do more. They just gave me advice." (Claimant)

"Yes, she listened, yes she understood." (Claimant)

Claimants particularly valued conciliator help and support in preparing communications. In a few cases, conciliators offered and gave assistance with reviewing and editing letters and e-mails that needed to be sent from the claimant to employer.

Claimants were looking for as much support as possible and this included meeting their **needs for emotional support**. There was a strong sense that claimants needed to work through feelings of resentment and that if they had the chance to do this, they may be less likely to proceed with making a claim. Conciliators confirmed that this was a need and that to meet this, they had to spend time listening to the claimant, otherwise the need was not met.

"I didn't feel there was any concern – it wasn't comforting – it was very formal. They listened and answered my questions... there could have been a bit more from them. (Claimant)"

Claimants also needed or wanted help and support in understanding their dispute and their chances of success and some claimants had specific needs for help reading or writing the correspondence related to their claim.

Impartiality

Both parties described conciliators as carefully explaining their role, particularly the impartiality aspect. However, although the reasoning for this was understood, claimants wanted the conciliator to be on their side. They found it difficult not to see the conciliator in the role of representative.

Employers generally felt that conciliators were more on the side of the claimant. Employers recalled conciliators verbalising their impartiality but that **conciliator actions suggested they were more on the side of the claimant.**

"They need to SHOW they are impartial." (Employer)

Specific parts of the process and or actions that suggested to employers that Acas was more on the side of claimants were:

- The fact that claimants had approached Acas
- The lack of opportunity for employer to build rapport with conciliator. More specifically, the lack of face to face contact
- The process not seeming like mediation in the sense of bringing parties together
- The lack of feedback about the progress of the case (especially the outcome).

In addition to this, employers reasoned that because employees lacked the resources of most organisations, Acas and the employment tribunal may instinctively take the side of the claimant.

"The conciliation thing is difficult because I don't think they do sit on the fence. They've got to be there to support somebody. I got the distinct impression that Acas were advising her as well as doing the conciliation." (Employer)

"The employee will always be perceived as the weaker person, up against the big employee. So they [Acas] are there to support the little man." (Employer)

Certain employers were particularly jaded about the perceived one sidedness of the support. These employers tended to be those that felt wronged by the claimant making false allegations. They were particularly aggrieved to have received a call from Acas and at being asked to consider settling.

"I always felt I was being regarded as guilty of something.... why do we have to make a settlement when we haven't done anything wrong. We thought Acas must feel she has a case to keep going with it and so we felt like they were on her side." (Employer)

Where employers felt Acas was on the side of the claimant and / or that the claimant was making false allegations, they did not engage thoroughly with the PCC process. They held back information and took their time to respond to queries. They also referred to punctuating calls and emails from Acas with advice from their HR department or advisor which potentially delayed communications.

"We were very guarded, very much so. In every conversation, at the back of my mind, I was thinking 'you could take what I say, and use it against me to support [the claimant's] case'" (Employer)

Employer expectations about the conciliation process were often different to the reality. The word 'conciliation' suggested more face to face communication and bringing parties together. The strongest criticisms voiced were about PCC seeming more of a message service on behalf of the claimant.

"To me, it wasn't a great service. In my head, conciliation is about bringing an employer and an employee together, taking on board both sides, and then going down that route, But when I spoke to the lady, she seemed to be talking just about settlement." (Employer)

"They don't bring the two sides together, they simply exchange information." (Employer)

Expertise and knowledge

Conciliators were perceived by both parties to be knowledgeable and as having a good understanding of the law. They were also commended for reporting back to each of the parties in a diplomatic way and avoiding being derogatory about the other side.

"She was very professional, a good intermediary company. They advised me of the situation from the legal side of things." (Claimant)

"Yes she was knowledgeable, answered my questions and dealt with me fairly." (Claimant)

Conciliators had also provided information to the claimant about the tribunal process and this was welcomed.

Consistency

Parties appreciated being allocated a dedicated conciliator and being given direct contact to that person. They preferred to wait to speak to this person rather than speak to a substitute if this conciliator was not available. Employers suggested that a team approach would help to address any frustration about lack of conciliator availability but that ultimately a dedicated conciliator should manage the case.

Responsiveness

Overall, conciliators were praised for being responsive. Parties claimed that if they could not reach the conciliator and left a message, the conciliator was prompt in returning their call– either the same day or usually the next day.

“My views about the person I got was extremely high, I have never not had a reply. They always got back quickly.” (Claimant)

Some parties, however, complained that it was **difficult to always reach the conciliator**, especially if the conciliator worked part time or had annual leave around the time of the conciliation.

“We kept missing each other, because she worked part time... so if you had a problem on Thursday it had to wait till Monday.” (Employer)

Equally, there was a **concern raised by some employers about not feeling they were being kept informed about the progress of the claim and the outcome**. This was often manifested in the fact that very few employers had understood that the PCC had run out of time.

5. BARRIERS AND ENABLERS TO RESOLUTION AT PCC

Chapter Summary

- Four areas were identified as helping or hindering parties to reach a resolution:
 - The concept of **tailoring assistance** rather than offering support in a 'one size fits all' model.
 - **Employer trust** in Acas and the challenge in getting employers to take part in PCC.
 - **Employer incentive** to take part, which relates to trust and engagement.
 - Beliefs, **expectations and knowledge gaps** further helped or hindered claims being resolved, including
 - a disparity in reality and expectations about length of time PCC would take and conciliator availability;
 - a belief that Acas was an enforcer;
 - level of understanding about the tribunal process; and
 - Understanding about the chances of success.
- Three key enablers were identified for helping to resolve claims earlier on:
 - More diagnosis and tailoring of PCC to meet claimant needs
 - Building trust and engaging employers
 - A focus on addressing unhelpful expectations and knowledge gaps

5.1 Introduction

This section begins by looking at the survey responses on parties' views on the main reason for not reaching a resolution or settlement during PCC. This is followed by a thematic account of the barriers and enablers for not reaching a resolution or settlement uncovered from the qualitative interviews and staff focus groups.

5.2 Main reason for not reaching a resolution or settlement

Amongst employers the most common reason given, mentioned by just under a third of employers (31 per cent), was that **they were not willing to negotiate**.

This was followed by 'the employee was not willing to negotiate' as the next most common reason, mentioned by just under one fifth of employers (18 per cent). One in ten employers (12 per cent) mentioned that from their point of view a resolution was actually reached, suggesting that either a lack of communication meant that the employee did not feel a resolution had been reached, or that the employee later changed their mind about the resolution. Other reasons mentioned by employers for not reaching a resolution included:

- Offering a settlement but the employee was not willing to accept (nine per cent).
- Being unable to reach an agreement before the time limit for presenting an employment tribunal claim (five per cent).
- Not thinking the employee had a case (three per cent).

A further six per cent (13 cases) mentioned the service received by Acas as the main reason for not reaching a resolution, including 'poor service/ incorrect information received', 'lack of communication from the conciliator'. (However, interestingly, of these 13 cases, nine of them went on to be settled by Acas at the ET stage.)

Similarly for claimants, the main reason given for why no resolution was reached during PCC was also **the employer was not willing to negotiate**, mentioned as the main reason by the majority of claimants (60 per cent).

Other reasons given by claimants included:

- The employer made an offer of a settlement which was less than acceptable (12 per cent).
- Being unable to reach an agreement before the time limit for presenting an employment tribunal claim (eight per cent).
- The employer delayed/ would not communicate (four per cent).

A further four per cent said that a resolution had actually been reached during PCC.

5.3 Barriers towards conciliation working at PCC

The following themes and issues were identified as hindering the conciliation process at PCC from being successful.

5.3.1 *Concept of 'one size fits all' – lack of tailoring towards vulnerable claimants*

Where a claimant had special needs and / or struggled to understand the process, they were more emotional, easily steered into the hands of solicitors or did not understand the PCC process properly.

"I'm not a very good writer or speller.... I was really upset, crying, because I lost my job but I had to find out what to do, so I found a solicitor." (Claimant)

Certain claimants in the qualitative sample suffered from learning difficulties, others had dyslexia or poor literacy or English was a foreign language to them. This vulnerability meant they found communicating with their employer a challenge. Some did not fully understand the PCC process and submitted the ET1 earlier than necessary. These claimants tended to be the most frustrated and also needed emotional support. Their emotions acted as a barrier in helping to resolve the claim.

5.3.2 *Employer trust in Acas*

Chapter 4 detailed the difficulty in getting employers to engage fully in conciliation if the employer felt the conciliator was more 'on the side' of the claimant.

Both employer and conciliator felt that sometimes the initial call by conciliator to the employer was not successful in establishing rapport. **Conciliators presented the task to get employers to engage with PCC as 'challenging'** in that a number of steps needed to be taken if the employer was not aware of the Acas service.

"When they were speaking to me I didn't understand everything." (Employer)

Conciliators felt part of the challenge was in the amount of information to communicate and the skill involved in selling the service to the employer.

"There isn't enough awareness of Acas which means you have to do a lot of work to win them over and tell them about Acas.... sometimes they haven't even heard of Acas and then sell the service to them and you have to do all that before you say and by the way, someone has made a claim against you... for me, the biggest issue is that people are not aware enough of Acas and the service." (Conciliator)

5.3.3 *Employer incentive*

Linked to employer trust, **was employer incentive to settle at this point.** Employers did not always understand the full process and the benefits of settling

However, there were specific reasons preventing certain employers from settling and these included:

- Insurance companies avoiding paying out until the dispute became formal.
- Employers waiting to see strength of claimant's intention to carry through to a tribunal. This was particularly the case in claims that were for a small amount.
- Employers purposely holding the money owed in their account for financial gain.
- Employers perceiving claims to be false.
- Lack of awareness of the urgency of the PCC process and the 'run out of time' element or deadline. They were genuinely surprised to receive the tribunal papers.

"A lot of employers have no incentive to settle until the claim for the tribunal goes in." (Conciliator)

5.3.4 Beliefs, expectations and knowledge gaps

Parties behaved in specific ways or made assumptions about the conciliation process and the role they believed Acas would play. These assumptions and behaviours centred on:

- Conciliator availability and the speed of the PCC process
- Acas ability to be an enforcer
- Understanding of the tribunal process
- Understanding about the chances of success

Conciliator availability and the speed of the PCC process

In certain fast track cases, claimants had become frustrated at the length of time taken in the PCC process and they submitted an ET1 to speed up the process of getting their wages or pay. In a few instances, **annual leave** had caused this delay – either the conciliator or the employer or both being on annual leave. Annual leave was given as the sole reason by some claimants for the failure of PCC to resolve the issue.

"Unfortunately, the Acas man went on holiday and there was no one else I could talk to. He went on holiday for three weeks and there was no replacement." (Claimant)

Conciliators referred to the difficulty of conducting PCC during the Christmas period and were concerned about a shorter time span for early conciliation.

Acas ability to be an enforcer

Amongst some employers and claimants Acas was perceived as a powerful agency, whose role it was to support the employee. The following quotes relate to a case study in which both claimant and employer expected Acas to enforce payment.

"She (Claimant) said we hadn't done enough... my role is not to go to the respondent and say you owe them wages, pay up. We are not an enforcement agency." (Conciliator)

"We were expecting a letter from Acas saying this is what you have to do... we never got anything in writing." (Employer)

Employers wanted Acas to have more weight in the conciliation process and in uncovering false claims. Employers were particularly aggrieved about instances where employees had lied in their claim.

"Acas doesn't have the teeth to deal with unreasonable claimants, they don't make a judgement on how to go forward, and they just want to settle." (Employer)

Understanding of the tribunal process

Where claimants felt they had a good understanding about what the tribunal process would be like, this information helped them to make an informed choice earlier on in the process about whether to settle or not. This information tended not to be given until after the ET1 had been submitted. Conciliators provided a verbal description of what would happen and how a judge would make their decision. This was usually in response to questions from the claimant rather than being provided consistently by all conciliators. One conciliator mentioned that she made a point of making sure that claimants were given a picture of what going to an employment tribunal would be like and this helped the claimant in making more of an informed choice about whether to proceed.

"I make sure they know that it's (tribunal process) not going to be a walk in the park." (Conciliator)

In understanding more about the tribunal process and how decisions are made, some claimants were less eager to take the case further.

"I thought the tribunal would give you your job back. But when I found out that they would hear both sides of the story, like a book, and I would be there and my employer would be there I thought 'no'." (Claimant)

Understanding about the chances of success

There seemed to be some inconsistency amongst conciliators about their role and ability to give information about the claimant's chances of success. Not all conciliators felt they were able to offer an indication about the strength of the potential claim. The quotation below illustrates the inconsistency with Acas policy and communications.

"There needs to be better access to CAB and employment law centres and community legal advice that can give legal opinion because we don't do that... we

can explain what the tribunal process look like but because we are impartial we can't give advice on their chances of success." (Conciliator)

Conciliators described asking claimants to seek external legal advice centres for further information about their chances of success e.g. CAB or law centres.

"We try and refer to CAB but they are usually poorly resourced and don't always have a legal representatives due to cuts." (Conciliator)

This reported conciliator behaviour and viewpoint chimes with many claimants seeming uncertain about their chances of success and this gap was brought out very strongly within the qualitative research. There was general consensus amongst all parties about the importance of information being given by conciliators to claimants about their chances of success at a tribunal hearing.

"They need better legal advice to understand their prospects of success better... it's a lot easier to negotiate with someone who knows what that are likely to achieve." (Conciliator)

"Somewhere along the line, if they (Acas) don't actually interpret the law for these people (claimants) and for ourselves (employers) then it's going to go to tribunal. If they could do this, then it would cut down tribunal time immensely. It could have saved 5 weeks of my time." (Employer)

Employers further questioned whether information about claimants' chances of success had been given to claimants. In one instance, a case was disputed by the judge in a pre hearing review and the claimant was informed they did not have a case. The employer was angry and confused as to how the case had progressed and wondered whether Acas had spent time helping the claimant to see the chance of success.

"Acas should have spent their time trying to convince the claimant that they didn't stand much of a chance in a tribunal. Our solicitors will say to us that we have an 85 per cent chance of winning, I think that Acas could do that for employees." (Employer)

In previous PCC research, 72 per cent of participants felt that Acas helped them to understand the strength of their potential claim¹⁹ which suggests that conciliators have provided this information and service in the past.

5.4 Enablers towards reaching a resolution or settlement

With these barriers in mind, a number of solutions and suggestions were offered for helping claims to resolve earlier in the process:

¹⁹ Infogroup/ORC International (2010) *Evaluation of the first years of Acas' Pre-Claim Conciliation* Acas Research Paper.

5.4.1 *More diagnosis and tailoring of PCC service to meet claimant needs*

Acas tailor resources to each claim type based on a identification of jurisdiction (fast track, standard and open). Beyond this, **a number of other diagnostics were uncovered to allow further tailoring of assistance rather than employing a 'one size fits all' approach to PCC.** These diagnostics included:

- Whether claimant had special needs / assessing their level of vulnerability
- Claimant and employer desire and need for face to face conciliation
- The amount of the claim
- The strength of the claimants intention to make a claim

A detailed diagnosis of the claimants needs may have allowed the conciliator to offer more support in helping them to privately settle with their employer and / or to provide **face to face conciliation** to establish trust and ensure the claimant understood the process. Conciliators were aware of the time resource and therefore cost, of face to face conciliation but those with more experience, recalled specific open cases that they had resolved either by meeting with the claimant or by arranging joint meetings between claimant and employer.

"If you've met someone face to face they trust you a little more." (Conciliator)

"It [face to face conciliation] is just more conducive to resolution and building trust between you and them. (Conciliator)

Claimants recognised that a better understanding of their dispute may have helped them realise that their claim was invalid.

"Maybe if I had spoken to someone and had a read of the papers [the employment contract] rather than them trying to explain everything over the phone. I think we needed to sit down face to face." (Claimant)

Employers also noted that a face to face meeting may have helped to convince them of the conciliators impartiality.

"We would have accepted [a meeting] I think, and then depending on the outcome, how they [Acas] came across, if we built up a relationship and we thought that they were impartial, and then we might have met with [Claimant] and resolved things then. The way they [Acas] did it, they were never going to be able to mediate with us." (Employer)

"When it's on the phone, it's very impersonal. When you're in person, you can build a rapport, relax a bit, and probably become more open. They can listen to the facts. It makes a big difference." (Employer)

Conciliators also suggested more tailoring within fast track cases for **claims of a small amount**. A number of the cases in the qualitative research involved claims under £100 or £50. Conciliators were empathetic towards the claimants in these situations but mindful of the resource spent on small claims in term of their time. They suggested a different system, one that was more about enforcement. There were mixed views about the proposals being put forward for the claimant paying a fee in to lodge a claim to the Employment Tribunal. The benefits were cited as helping to eradicate 'cowboy claimants' and those not serious about going to a tribunal. However, the proposal was felt to be heavily on the side of employers and would prevent access to justice for claimants with limited funds and make it more difficult to get employers to settle.

"A fee will only really put the claimant off because the respondent will say let's see if he puts his money where his mouth is... you can hear them now saying, 'I'll just wait to see if he does.'" (Conciliator)

Conciliators suggested that strength of intention to proceed to an employment tribunal be a part of the diagnosis and that the proposal to ask claimants to complete a form upfront would help to do this. They reasoned that more resource could be allocated to those with stronger intentions. Those with the weaker intentions might leave the process to avoid completing a form.

5.4.2 Building trust and engaging employers

Both conciliators and employers suggested **face to face contact may have been useful in helping to establish rapport with employers**. Strategies and tactics to demonstrate impartiality would also help employers to feel more likely to engage fully in the process.

Conciliators argued that Acas needed to promote themselves and the PCC service more widely. Conciliators felt this would support communications with employees and employers and help to get more employers on board with the PCC process and the benefits to them in using Acas.

"If you could raise awareness amongst employers about how it can save them money on having to use a solicitor to go to a tribunal... that would be good." (Conciliator)

Smaller, less established employers also suggested that Acas needed to be more proactive in communicating their services and wondered whether they could market themselves to all new companies by getting lists from Companies House.

The research highlighted that employers lacked an incentive to settle earlier and that certain employers were unclear about there being a deadline for submission of an ET claim. Stronger communication about this may help to provide more of an incentive to resolve the issue.

5.4.3 A focus on addressing unhelpful expectations and knowledge gaps

Parties behaved in unhelpful ways and held assumptions and expectations. **Areas were identified as hindering resolution due to knowledge gaps or misconceptions.**

These included:

- Conciliator availability and the speed of the PCC process
- Belief that Acas is an enforcement agency
- Understanding of the tribunal process
- Understanding about the chances of success

6. EXPERIENCE, OUTCOME AND SATISFACTION AFTER AN ET CLAIM

Chapter Summary

- In 14 per cent of cases where PCC had taken place, additional jurisdictions were listed on the ET1 form than were raised during PCC.
- Around two fifths of claimants and employers (39 and 44 per cent respectively) had a day-to-day representative during the ET. This is substantially higher than at the PCC stage (where 17 per cent of both claimants and employers had a representative). Use of representation at the ET stage was high amongst cases where a representative was used during PCC.
- Evaluation of the conciliator in terms of their availability, role and qualities was largely positive. There was little difference between cases where PCC has taken place before and those where it had not. Where it had taken place, evaluation tended to be more positive where the same conciliator was used in PCC and IC compared to those where it differed.
- The mean number of days spent on the ET claim by employers was seven and the median was three. For claimants, the mean number of days was 21.6, and the median was three. For claimants where PCC took place before submission of the claim, the time spent on the ET claim was reduced.
- Amongst cases where PCC took place prior to the ET claim compared to cases where it did not, the Acas settlement rate was higher (63 per cent versus 54 per cent).
- A host of factors were highlighted by the qualitative work as contributing to cases being withdrawn, settled or going to a hearing including:
 - Reasons for withdrawal focusing around inaccuracies in the claimant's claim.
 - The stress, time and cost (for employers) involved in a hearing were the main reasons for parties coming to agreements.
 - A sense of injustice was often the force in propelling parties not to settle
- Six in ten survey participants (59 per cent) were satisfied with the case outcome. Satisfaction with the case outcome was higher in cases that had taken part in PCC beforehand (62 per cent compared with 51 per cent).
- Three quarters (76 per cent) were satisfied with the IC service they received. As well as satisfaction being higher in Acas settled cases (compared to those that went to a hearing), levels were higher in cases where PCC had taken place (compared to where it had not). This trend remained true within outcome type.
- Looking to the future, 79 per cent of claimants and 56 per cent of employers recommended future use of Acas. Recommendations were stronger in cases where PCC had taken place.

6.1 Introduction

This section explores cases at the ET stage, in particular the experience, outcomes and satisfaction of individual conciliation (IC). The experiences of survey participants in the quantitative survey are examined, with comparisons to the 2010 Acas IC satisfaction survey where possible. In particular, this section attempts to explore the IC experiences of those where PCC has taken part prior to IC with those where it had not, to examine if differences in experiences and outcomes emerge. This section also draws in detail from the qualitative interviews about IC experience, outcomes and satisfaction, including case studies for each of the outcome types – withdrawn, settled and went to hearing.

6.2 Addition of further jurisdictions at the ET

All survey participants who had taken part in PCC were asked whether any additional problems or issues were listed on the ET1 form when it was submitted. Fourteen per cent reported that there were. Employers were more likely to mention this than claimants were themselves (18 per cent compared with 11 per cent). Those involved in cases with a day-to-day representative at the ET stage were no more likely than those without a day-to-day representative to report additional jurisdictions being added on the ET1 form. When examining the track of cases (at the ET stage), additional jurisdictions were most likely to be added in open track cases (26 per cent), followed by standard track cases (17 per cent), and least likely in fast track cases (eight per cent).

Table 6.1 below compares the track recorded at the PCC and ET stages amongst cases where additional jurisdictions were listed on the ET1 form. Whilst the data must be treated with caution due to limited base sizes, the table indicatively suggests that the majority of cases recorded as standard or open track at the PCC stage remained with the same track at the ET stage when additional jurisdictions were added (82 per cent (9 cases) of PCC standard track cases and 74 per cent (23 cases) of PCC open track cases). However, in PCC fast track cases, only half (52 per cent, 13 cases) remain as fast track cases at the ET stage, with 44 per cent (11 cases) becoming open track cases.

Table 6.1 Addition of further jurisdictions at the ET by Track

	TRACK AT PCC					
	Fast		Standard		Open	
TRACK AT ET	%	n	%	n	%	n
Fast	52	13	9	1	10	3
Standard	4	1	82	9	16	5
Open	44	11	9	1	74	23
Unweighted		24		11		31

Base: All cases where additional jurisdictions had been added to the ET1 form

6.3 Use of representation at the ET stage

6.3.1 *At submission of the claim*

Sixteen per cent of claimants nominated a professional representative on the ET1 form, compared with 32 per cent of employers on the ET3 form. For both respondent types, the proportion using professional representation was lower than that reported in SETA 2008, where the equivalent figures were 32 per cent for claimants and 54 per cent for employers. Unsurprisingly nomination of a representative varied by track; being lowest amongst fast track cases (14 per cent), and highest among open (38 per cent) and standard track cases (30 per cent)..

6.3.2 *Day-to-day representation*

Claimants and employers were asked whether they received any advice after they submitted their claim. They were asked whether anyone helped them with the day-to-day handling of the case, defined as 'handling paperwork answering letters, dealing with the Employment Tribunal Service, dealing with the other party and so on'. They were asked not to include any assistance they may have received from Acas. Thirty nine per cent of claimants and 44 per cent of employers used a day-to-day representative.

For both parties, this was substantially lower than amongst all ET cases (46 per cent of claimants and 60 per cent of employers reported a day-to day representative in SETA 2008). However, because the use of day-to-day representation varied by track (with representation substantially lower in fast track cases (26 per cent) compared with open (59 per cent) and standard track cases (51 per cent)) this difference could be related to the differences in track between the cases included in the current survey and SETA 2008 (as identified in Section 2.2.1, the current survey had a higher proportion of fast track cases and a lower proportion of open track cases in comparison to SETA 2008).

There were limited differences in the use of day-to-day representation amongst unprogressed PCC referrals and impasse PCC cases, with 45 per cent of unprogressed PCC referrals and 40 per cent of impasse PCC cases using a day-to-day representative.

Table 6.2 displays the type of day-to-day representative for claimants and employers. For claimants the two most common representatives were a solicitor, barrister or some other kind of lawyer (43 per cent), and family or friends (38 per cent). CAB was used in 12 per cent of cases. This breakdown is similar to the breakdown of representatives used during PCC; as described in Section 2.2.5; the two most common representatives at PCC were solicitors (32 per cent) and family or friends (29 per cent). However, it differs to the breakdown found in all ET cases; as reported in SETA 2008, the most common claimant day-to-day representative was a solicitor, barrister or lawyer used by just over half of claimants (52 per cent), with family or friends being used by 15 per cent of claimants.

Amongst employers, three quarters used a solicitor, barrister or some other kind of representative. This again is broadly in line with representatives used at the PCC stage (as reported in Section 2.2.5, 77 per cent of employers represented at PCC were represented by a solicitor, barrister or lawyer), but more prevalent than amongst all ET cases (in SETA 2008, 66 per cent of employers with a representative used a solicitor, barrister or lawyer). Due to limited base sizes it is not possible to analyse day-to-day representative type by participation in PCC.

Table 6.2 Who acted as the day-to-day representative for claimants and employers

	Claimants %	Employers %
Solicitor, Barrister or some other kind of lawyer	43	75
Family or friends	38	2
Citizen's Advice Bureau	12	-
Legal specialist in company	-	8
Personnel / HR	-	6
Employment Rights Advisor	3	1
Trade union representative / worker	3	-
Employer's Association / Trade Association	-	3
Owner / Manager	-	2
Someone else in organisation	-	2
Other	1	3
Unweighted	150	143

Base: All claimants who had a day-to-day representative / All employers who had a day-to-day representative

6.3.3 Representation at the ET hearing

Nearly half (47 per cent) of employers interviewed whose case went to a tribunal hearing, reported having a representative at the full tribunal hearing. However, only one fifth (20 per cent) of such claimants reported using representation at the full tribunal hearing. In comparison to all ET cases (as reported in SETA 2008), employers were also more likely than claimants to have representation, however, both parties were more likely to have someone acting for them than in the current survey (73 per cent of employers and 34 per cent of claimants).

6.3.4 Representation at ET stage following PCC

As reported earlier, during PCC 17 per cent of both claimants and employers who took part in PCC had a representative, with 83 per cent not having representation.

Use of day-to-day representation at the ET stage was high amongst those who used a representative at the PCC stage; over nine in ten employers (93 per cent) who were represented during PCC had a day-to-day representative at the ET, and three quarters of claimants (74 per cent) who were represented during PCC also had a day-to-day representative at the ET.

Of claimants and employers who took part in PCC but did not have a representative, around a third (31 per cent of claimants and 34 per cent of employers) chose to have a day-to-day representative at the ET stage. These survey respondents were more likely to be from open track cases (49 per cent), and standard track cases (43 per cent). Only 18 per cent were from fast track cases. However, these findings are broadly consistent with the breakdown of all representation by track at the ET stage (reported in Section 6.3.2).

When these respondents were asked why they chose to have a representative at the ET stage, both parties gave a range of reasons. Amongst claimants, the most common three reasons were:

- needing help with the forms and paperwork (15 per cent);
- needing a representative's knowledge/professional advice (15 per cent);
- not knowing anything/enough about the ET (13 per cent).

Amongst employers the three most common reasons were:

- that it is was their usual process/procedure (24 per cent);
- needing a representative's knowledge/professional advice (19 per cent);
- insured/paid a regular fee for legal representation (11 per cent).

6.4 Acas contact

6.4.1 Initial Contact

When a claimant submits an ET claim, Acas contacts both parties involved in the dispute offering their conciliation service. Seven in ten claimants and employers (72 per cent and 71 per cent, respectively) recalled receiving an introductory letter from Acas after the application was submitted. This is broadly in line with the recall in SETA 2008 (76 per cent of claimants and 78 per cent of employers). Amongst employers, recall of the letter was lower amongst employers who nominated a representative on the ET3 form compared to those who did not (68 per cent versus 76 per cent). However, no such difference was apparent amongst claimants (72 per cent of claimants who nominated a representative on the ET1 form recalled receiving the letter, compared to 73 per cent of those who did not).

6.4.2 Personal Contact

Following the letter of introduction, seven in ten claimants (70 per cent) reported having personal contact with Acas, as did half of employers (52 per cent). As would be expected, this was lower amongst claimants and employers who had a day-to-day representative. There was little variation in personal contact by whether PCC had preceded the ET case or not (the small differences shown in Table 6.2 are not statistically significant) (Table 6.3).

Table 6.3 Personal contact with Acas during the ET claim

	All %	Whether PCC took place prior to ET		Whether had a day-to-day representative	
		Yes %	No %	Yes %	No %
Claimants					
Yes	70	55	49	60	77
No	25	42	43	35	19
Don't Know	5	3	7	5	5
Unweighted	370	183	131	150	219
Employers					
Yes	52	71	66	37	65
No	43	25	27	61	28
Don't Know	5	5	6	3	7
Unweighted	314	300	70	143	168

Base: All interviews (employers and claimants)

Claimants and employers who did not have personal contact but had a day-to-day representative were asked if their representative had contact with an Acas conciliator. Six in ten of such claimants (62 per cent) reported that they did, as did 54 per cent of employers. Table 6.4 shows overall contact with Acas, either personal contact or contact via the representative. Reported contact rates were higher amongst claimants than employers, with eight in ten claimants (79 per cent) reporting any contact, compared to just under seven in ten employers (68 per cent).

Table 6.4 Contact with Acas (either personal or day-to-day representative)

	Claimants %	Employers %
Personal contact with Acas	70	52
Day-to-day representative in contact with Acas	10	15
No contact with Acas	15	21
Don't know	6	11
Any contact (NET)	79	68
Unweighted	370	314

Base: All interviews (employers and claimants)

The most common reason cited for an absence of Acas involvement by both claimants and employers was that they did not need Acas to be involved (18 per cent of claimants and 26 per cent of employers). Other reasons given varied considerably between claimants and employers, and these are shown in Table 6.5 below.

Table 6.5 Reasons why Acas did not get involved with the case

	Claimants %	Employers %
Did not need Acas to be involved	18	26
There was no contact from Acas	14	11
Acas said that they couldn't help	12	-
Did not want Acas involved	5	11
Neither side wanted Acas involved	2	11
Other party did not want Acas involved	2	2
Other	25	20
Don't Know	22	19
Unweighted	52	64

Base: All employers and claimants in cases where Acas was not involved in the case.

6.5 Evaluation of the conciliator

The next section of this chapter focuses views of the Acas conciliator at the ET stage. When views from the quantitative survey are examined, they are based upon only those claimants and employers who had personal contact with Acas.

6.5.1 Conciliator consistency

In around half of cases (49 per cent) where PCC had taken place prior to the ET claim, it was reported that the conciliator post-claim IC was the same as in PCC. Two fifths of survey participants (41 per cent) reported it was a different conciliator, with 10 per cent unsure whether or not this was the case.

In the qualitative interviews it emerged that parties generally thought that conciliation was a single process rather than distinct PCC and IC processes. It was only when parties received a different conciliator for IC that some parties realised that they were separate processes. However, where parties did not realise this, some of the employers thought that the arrival of a new conciliator implied a lack of competence on the part of the previous conciliator. For example:

"I don't know why one person started it and then it was passed to another. What was the intention? If one person was capable of handling it, why should it be passed to another? This just confirmed my suspicion that she (the first conciliator) hadn't been up to the job." (Employer)

Most claimants preferred the continuity of having the same conciliator for PCC and post claim IC, where a good rapport had been established and the conciliator had understood their case. This preference was stronger when the claimant felt they had managed to get the conciliator to be 'on their side'.

"I'd felt I'd built up a bit of a rapport with her and I thought that's a shame and so there was a break in continuity and I had to explain things again to another person." (Claimant)

From the conciliators' perspective they could see the rationale for having continuity of conciliators in cases that had 'run out of time' but a different person in 'no resolution' cases. They referred to no resolution cases where they felt they had offered everything they could and where a different personality and or the freshness of a new pair of eyes could have helped. Conciliators suggested that the parties sometimes needed to hear the same settlement terms from another conciliator to add credibility.

"I do think sometimes it isn't appropriate to do the IC case if you've been doing the PCC, because sometimes it takes another person saying the same things, you know, for it to really sink in." (Conciliator)

6.5.2 Voice contact from the conciliator

In just over half of cases (54 per cent), it was reported that Acas made the first 'voice contact'. This is in line with the 2010 individual conciliation (IC) satisfaction survey (56 per cent). Recall was higher amongst employers (66 per cent) than claimants (45 per cent). No differences in this initial voice contact were apparent between cases where PCC had and had not taken place.

6.5.3 Availability of the conciliator

In line with the 2010 IC satisfaction survey, the majority of survey participants were positive about the availability of the conciliator; seven in ten (70 per cent) reported that the conciliator was always or usually available (the equivalent figure was 72 per cent in the 2010 IC satisfaction survey). Claimants were slightly more positive than employers (75 per cent versus 64 per cent). Whilst minor differences were apparent in the views of participants in cases where PCC had and had not taken place before (72 per cent versus 65 per cent reported that the conciliator was always/usually available), they did not reach conventions of statistical significance. Interestingly in cases where PCC had taken place before the ET claim, and the conciliator was the same at both stages, survey participants were more likely to report the Acas conciliator being 'always' available at IC (49 per cent versus 32 per cent), and less likely to rate them as only available 'sometimes' (seven per cent versus 22 per cent).

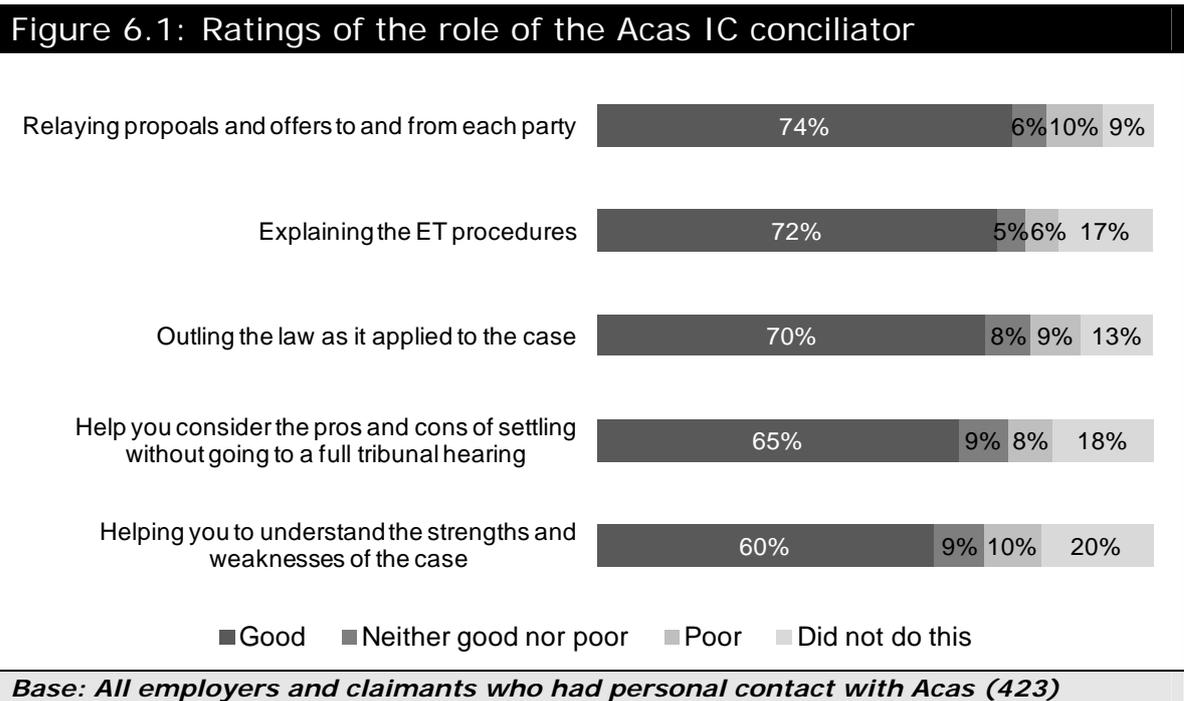
6.5.4 Perceived level of contact

Just over four fifths of survey respondents (83 per cent) felt they had enough contact with Acas which mirrors the views expressed in the 2010 IC satisfaction survey (where 79 per cent of survey respondents felt that they had received enough contact). Views were consistent between claimants and employers (82 per cent and 84 per cent respectively). Additionally in line with the IC 2010 research, survey participants whose cases were settled by Acas were more likely to report enough contact with Acas compared to those whose cases went to an ET hearing (85 per cent versus 72 per cent). Perceptions on the level of contact were consistent between those who had experienced PCC prior to the ET claim and those that had not. In line with some of the findings above; in cases where PCC had taken place and the same conciliator was used at PCC and IC, ratings were more positive than when a different conciliator was used (92 per cent of those who had the same conciliator felt that they

had enough contact, compared 69 per cent cases where the conciliator was different).

6.5.5 Role of the conciliator

Survey participants were asked to rate the Acas conciliator on different aspects of their job. Ratings are shown in Figure 6.1. Strongest ratings were given for 'relaying proposals and offers to and from each party' (74 per cent rating this 'very' or 'fairly' good), followed by 'explaining tribunal procedures' (72 per cent) and 'outlining the law as it applied to the case' (70 per cent).



Looking at the relationship between whether PCC had taken place prior to the ET and conciliator views, where it had had taken place ratings were more positive for 'outlining the law as it applied to your case' (73 per cent versus 61 per cent), and 'helping you understand the strengths and weaknesses of your case' (63 per cent versus 52 per cent). Again, amongst cases where PCC had taken place and the Acas conciliator was the same, ratings of the conciliator were higher on all aspects compared to cases when the conciliator was different (Table 6.6).

Table 6.6 Ratings of the role of the IC conciliator amongst cases where the conciliator was the same / different at PCC and IC

	Same conciliator at PCC and IC %	Different conciliator at PCC and IC %
Outlining the law as it applied to your case		
Good	81	67
Neither good nor poor	6	14
Poor	6	14
Did not do this	8	4
Explaining the ET procedures		
Good	84	68
Neither good nor poor	4	7
Poor	4	12
Did not do this	8	13
Relaying proposals and offers to and from each party		
Good	83	70
Neither good nor poor	5	5
Poor	9	18
Did not do this	3	7
Helping you to understand the strengths and weaknesses of your case		
Good	72	58
Neither good nor poor	5	10
Poor	8	18
Did not do this	16	14
Helping you consider the pros and cons of settling the case without going to a full tribunal hearing		
Good	77	61
Neither good nor poor	3	10
Poor	4	15
Did not do this	16	14
Unweighted	151	129

Base: All employers and claimants in cases where PCC took place and had personal contact with Acas

When ratings were examined by other key characteristics the following findings were apparent:

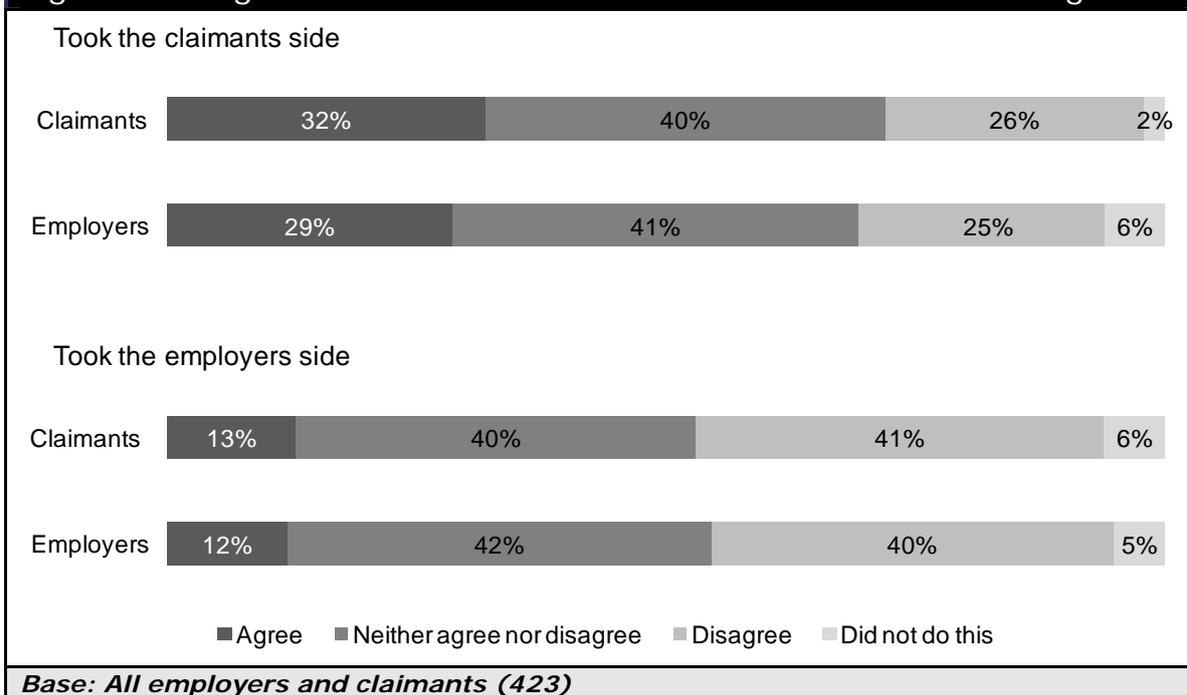
Across all ratings, claimants tended to hold more positive views than employers (except for 'relaying proposals and offers to and from each party', where views did not significantly vary). This broadly reflects the 2010 IC survey

6.5.6 Conciliator qualities

Just over half of survey participants (53 per cent) strongly agreed that the Acas conciliator was knowledgeable, with a quarter (25 per cent) tending to agree. This was higher than recorded in the 2010 IC satisfaction survey (where 37 per cent strongly agreed, with 33 per cent tended to agree). Views were consistent between those who had taken part in PCC compared with those that had not. Focusing on only those respondents who had previously taken part, where the conciliator was the same, ratings were again more positive compared with cases where the conciliator differed (85 per cent versus 75 per cent).

As shown in Figure 6.2, when asked about the conciliator taking sides, three in ten claimants (32 per cent) and employers (29 per cent) agreed either strongly or slightly that the claimant's side was taken. Agreement on taking the employer's side were lower with 13 per cent of claimants, and 12 per cent of employers agreeing strongly or slightly that this happened. These agreement levels are slightly higher than those which were evident in the 2010 IC satisfaction survey, particularly for taking the claimant's side (where 16 per cent agreed strongly or slightly that the conciliator took the claimant's side, and nine per cent the employer's side). Views did not differ between cases where PCC had taken place before compared to those that had not.

Figure 6.2: Agreement with which side the conciliator took during IC



6.5.7 Conciliator influence

In two thirds of cases (66 per cent), survey participants reported that the conciliator helped them to make a decision about settling without undue influence. Fifteen per cent felt that they tried too hard to influence parties to settle, with nine per cent reporting that they did not try hard enough. This varies slightly to the 2010 IC satisfaction survey where 52 per cent of respondents felt the Acas conciliator helped them make their decision without undue influence.

In the current survey, claimants were slightly more likely than employers to feel that the Acas conciliator did not try hard enough to influence them to settle the case (11 per cent compared with five per cent). However, both parties had similar opinions about the conciliator helping them to make their decision without undue influence, with 64 per cent of claimants reporting that the conciliator did this as did 70 per cent of employers.

Views of influence again did not vary between cases where PCC had and had not taken place. Additionally, unlike many of the conciliator ratings previously examined, amongst cases where PCC had taken place, the use of the same conciliator in both PCC and IC did not appear to impact upon perceptions held about conciliator influence on settlement.

Six in ten survey participants (60 per cent) agreed (either strongly or slightly) that Acas helped move parties closer towards resolving the case. **Agreement was higher amongst cases where PCC had taken place prior to the IC (64 per cent versus 50 per cent).**

Unsurprisingly agreement was high in cases which were settled by Acas (69 per cent) and settled privately (83 per cent)²⁰, and lower in cases which were withdrawn (38 per cent)²¹ and those that went to a full tribunal hearing (28 per cent).

Amongst cases where the ET claim was settled, seven in ten survey participants (68 per cent) agreed (either strongly or slightly) that the Acas conciliator helped speed up the resolution, and six in ten (59 per cent) agreed that the conciliator was a factor in the decision to resolve the case. Agreement was consistent between claimants and employers, and amongst those whose cases had been preceded by PCC and those that had not.

6.5.8 Conciliator workload

During the qualitative interviews, conciliators expressed concerns about having to neglect their IC cases in favour of responding to their PCC cases within 48 hours,

²⁰ Figure must be treated with caution n=28

²¹ Figure must be treated with caution n=33

which was one of their targets. They strongly argued for the ability to prioritise their own workload.

"You can't prioritise [at present]... if someone is ringing you about a small value dispute and you've got a meaty discrimination case where a tribunal hearing is looming you are having to put that aside to deal with this to call someone within 48 hours for someone who is claiming £50.... It's taking the judgement away from us.... I would think that the open cases are my priority..... PCC turns the table on that." (Conciliator)

"I hardly ever call my new cases [IC] but because of the pressure of PCC you just do not have the time to do that so you are reactive rather than proactive on your IC cases..... It's a poorer service." (Conciliator)

6.6 The end of IC

The qualitative research found that employers expected to be informed about the final outcome of the ET claim, but were disappointed not to have been notified by Acas if the case had been withdrawn. At the time of the research interview many employers did not know the outcome of conciliation at the ET stage. This lack of contact and lack of closure to the case had the effect of strengthening employers' beliefs that Acas was not impartial and was therefore a less professional organisation than they had thought.

"It would have been nice if they'd have come back and said what had happened.... it left me feeling like they were advising her." (Employer)

"After we had that long discussion on the phone, I thought, 'they really mean business'. I expected that they'd get back to me, but they didn't. So I was left to think that my views were not considered seriously, the whole process was just a formality. They [Acas] had an outcome in mind, and it had made no difference what I had said." (Employer)

"Two or three emails later, he just left me there, and I didn't know what was happening after that." (Employer)

6.7 Time spent of ET case

Within the quantitative survey claimants were asked how long they spent on the ET claim, from the time the application was submitted to when the ET case finished. Employers were also asked the same, but to include time spent by all members of staff who were involved in the case.

Table 6.7 Time spent on ET case (in days)

	Claimants				Employers	
	ALL	Did PCC take place prior to ET		ALL	Did PCC take place prior to ET	
		Yes	No		Yes	No
Mean	21.6	20.0	28.3	7.2	7.0	7.3
Median	3.0	3.0	4.0	3.0	3.0	3.0
Unweighted	325	262	63	299	123	17

Base: All employers and claimants who knew how much they/the organisation spent on the case

As shown in Table 6.7, across all employers the mean number of days spent on the case was seven, and the median was three. For claimants, the mean number was higher at 21.6 days, but the median number of days was also three. Examining the split between cases where PCC took place beforehand, for employers there was no difference to the amount of time spent on the claim, but for claimants those who had taken part in PCC spent less time on the ET claim itself compared with those involved claims where PCC did not take place. This might be because some of the time spent (e.g. preparation time), might have already taken place prior to the ET claim (and during PCC itself).

6.8 Outcome of the case

Figure 6.3 shows the outcome of the ET claim in all surveyed cases. Six in ten (60 per cent) were Acas settled, two in ten (21 per cent) went to a hearing, one in ten (10 per cent) were withdrawn and eight per cent were privately settled. As shown in Figure 6.3 the presence of PCC prior to the case appears to be linked with the outcome at ET.

Amongst cases where PCC did take place, a higher proportion of these were settled by Acas than those where it did not take place (63 per cent compared with 54 per cent). This is an encouraging finding suggesting that even when PCC takes place (but does resolve the issue prior to the ET claim) these cases are more likely to be settled by Acas at IC. This finding was echoed by conciliators within the qualitative research, where they confirmed that PCC had a useful role in helping resolve claims at IC (that otherwise may not have reached resolution). In particular, they referred to cases with representatives or more complex cases that needed a sufficient time period to resolve.

The presence of PCC did not influence whether or not a case progressed to a full ET hearing:

- 20 per cent of cases where PCC took place resulted in a full ET hearing compared to 22 per cent of cases where PCC did not take place.

However it did have an influence on the proportion of withdrawn cases:

- Only eight per cent of case where PCC took place were withdrawn compared with 14 per cent of cases where PCC did not occur.

Figure 6.3: ET case outcome

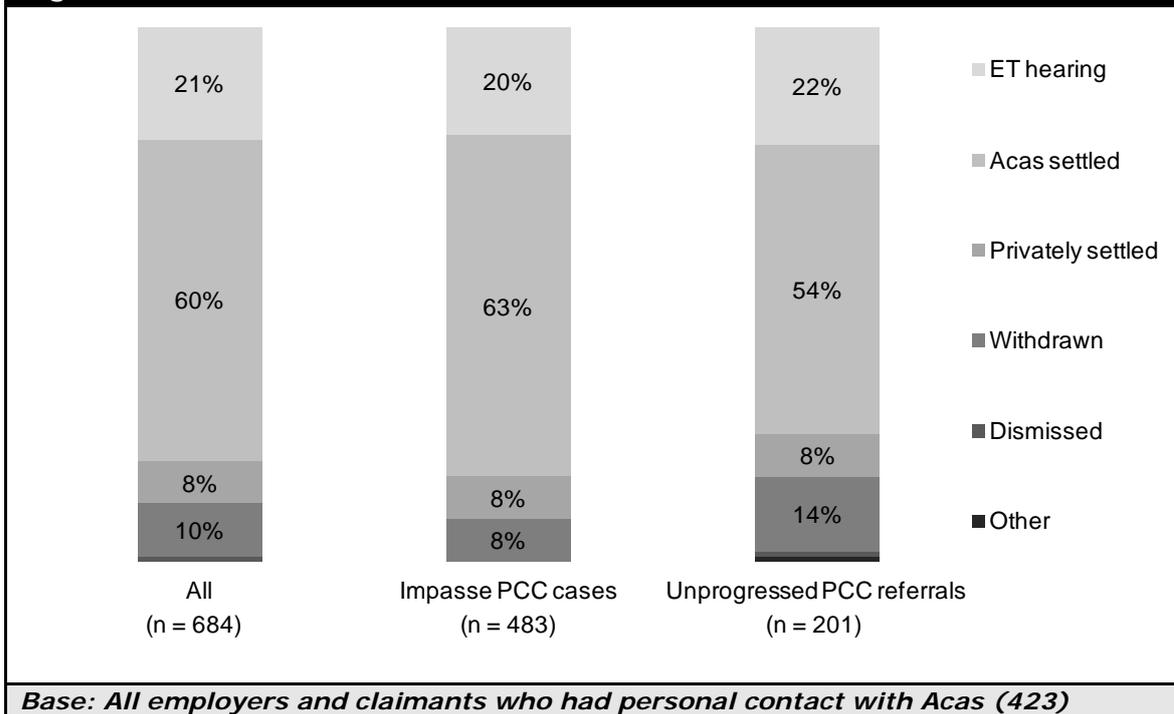


Table 6.8 below compares the ET outcome in this survey with that recorded in the 2010 IC satisfaction survey and SETA 2008. In the current survey the proportion of Acas settled cases is higher (amongst both impasse PCC cases and unprogressed PCC referrals) than the other two surveys, and the proportion of privately settled cases is lower. When looking at 'any settlement' (by Acas or privately), the settlement rate of unprogressed PCC referrals (i.e. those where PCC has not taken place) is aligned with the other two surveys, however, in impasse PCC cases (i.e. those cases where PCC has taken place) it remains approximately 10 per cent higher.

Table 6.8 ET case outcome - comparison across surveys

	Current Survey		2010 IC Satisfaction Survey	SETA 2008	
	Impasse PCC case %	Unprogressed PCC referral %	All %	Claimant %	Employer %
ET hearing	20	22	19	22	18
Acas settled	63	54	45	40	39
Privately settled	8	8	16	16	21
Withdrawn	8	14	14	15	14
Dismissed	*	1	-	7	8
Other / Don't know	*	1	6	-	-
ANY SETTLED	71	63	61	56	60
Unweighted	483	201	2337	2020	2007

Base: All survey participants in each survey

The qualitative research highlighted a host of factors that contributed to cases being withdrawn, settled or going to hearing at IC stage. These are discussed fully in the next sections:

Cases withdrawn

Reasons for cases being withdrawn at IC were mostly around inaccuracies in the claimant's claim. These were often uncovered from conciliator analysis of their employment contract. The other reasons related to the stress of or time involved in preparing for a hearing. Claimants were either concerned about the preparation and time needed to prepare for this and / or the reality of having to be face to face with the employer. One claimant specifically referred to the fear of missing the deadline for preparing the 'bundle' as there would be court costs.

Pen portrait 1 – Claimant, Employer and Conciliator

- **Background:** Fast track case. Small company. Employee made redundant. Employer gave employee an extra 4 weeks' notice but did not make it clear that this was instead of paying holiday pay owed. Employee claimed for lost holiday pay and lost redundancy pay. The redundancy part of the claim was withdrawn by claimant and the holiday pay settled a few days before the hearing. The employee was motivated to go to ET and felt that redundancy had been handled insensitively.

"I was marched out of the building" (Claimant)

- **PCC experience and outcome:** Ran out of time: Employee happy with the level of support received from the conciliator but felt frustrated at the amount of time PCC was taking (employer had a 3 week holiday during the process). The

employer did suggest that the conciliator should have asked about annual leave during the PCC period and informed the employer of the deadline for PCC.

"She gave me tips on how to construct a letter to them and she checked through it before she sent it." (Claimant)

"They'd taken 3 weeks to answer a letter – they'd dragged it out before they were going on holiday. I felt they were being dishonest." (Claimant)

"It wasn't unreasonable of her [to submit the ET1] – he should have informed us that he was going away" (Conciliator)

- **Final outcome:** Withdrawn. IC conciliator requested employment contract and this resolved the issue around claimant's rights and invalidated her claim for more redundancy pay. Employer did not feel supported or informed about the outcome.

"On reflection. If they had been advising [claimant] and said you are not entitled to it, if they'd fed that back it would have been nice. On both occasions when we sent information in it left me feeling like they were advising her more than they were helping us." (Employer)

- **Satisfaction:** Employer unhappy that contract was not investigated earlier in the process. Employee felt supported by Acas.

Cases settled

There were various reasons provided for cases getting settled. For employers, the stress, time and cost involved in a hearing was the main reason for reaching an agreement. There were also fears about the unknown element of an employment tribunal, both the verdict and the potential reputational damage that going to a tribunal could cause. Employers also cited the threat of personal attack by the claimant as a driving factor in their decision to settle. Claimants also referred to the stress and time involved in going to a hearing and the risk of getting less of an award if the case went to a hearing.

For employers, the costs for being out of the business and hiring a solicitor were sometimes considered to be more than the amount of the claim and it made better business sense not to proceed.

"I know people who have settled because it's cheaper even though they are in the right – when it hits tribunal you think this is now going to cost us money." (Employer)

Employers bemoaned the fact that the costs were one sided and that claimants had 'nothing to lose' in taking the case to a hearing.

Parties referred to the unknown aspect of the verdict and that there was no guarantee they would get what they wanted and this risk was sufficient to deter the more risk averse from taking the case to a tribunal.

"So you get nothing or a big earner.... I didn't want to take the chance."
(Claimant)

Employers feared that the verdict would more likely favour the employee because employees would be perceived as the more vulnerable party regardless of the case.

"You think in a tribunal they will lean heavily towards the employee because they are an individual." (Employer)

Smaller employers tended to worry more about the potential reputational damage of going to an employment tribunal and did not know if this information would affect their chances of hiring staff and / or the value of the business.

Finally, one employer settled in part, due to fear of personal attack. The claimant's relatives had threatened them and their staff. There were three cases in the qualitative research of claimants behaving in a threatening way to an employer during the case. These included a range of different sized employers.

Pen portrait 2 – Employer

- **Background:** Fast track case. Owner of a hairdressing salon that employed an apprentice. The apprentice left without giving notice so the employer withheld their pay and holiday money.
- **PCC experience and outcome:** PCC conducted by telephone and emails. No resolution brokered. Employer did not realise that the conciliation had not been successful initially and had moved into a second stage. Employer viewed the conciliation as successful.

"She [Acas] was very professional... advised me about the legal side of things."

"If Acas had not provided the service it would have gone to court."

- **Final outcome:** Settled. Employer felt that Acas helped them to realise the costs and hassle of going to an ET. Employer was also concerned about the fear of personal attack and this motivated the payment of pay and holiday money in full.

"He would have had to pay my £800 solicitors fees but would I have got that

from an 18 year old boy? Mum's on the dole, dad doesn't exist, that kind of background. Unfortunately he had an aunt that was a horrible piece of work and kept threatening my staff. I could have won the case but I didn't need the agro."

- **Satisfaction:** Employer happy with outcome and will now always draw up a written contract for all staff. Should the need arise the employer would use Acas again.

Cases that went to hearing

A sense of injustice was often the force propelling parties not to settle. This stance was taken more by those in small family run businesses.

"In a small business, you start to feel personal about it." (Employer)

Pen portrait 3 – Employer

- **Background:** Standard track case. Small family run company (fewer than 10 employees) made a group of employees redundant due to restructuring. Employer was intent on taking the case to hearing because the claimant had made false allegations in their claim.

"He wanted to settle out of court, but because of the comments he had made in his statement, we felt 'right, we are going to court, because you've blatantly lied and we can win this.....we are a family business so everything is very personal"

- **PCC experience and outcome:** A conciliation mediation meeting was offered to the employer but they declined out of anger towards the claimant. The employer recalls the PCC as 3-4 conversations totalling about 20 minutes. They did not engage with PCC and did not understand that Acas was impartial.

"We weren't going to settle. I appreciated what they were trying to do, to mediate this, but we didn't want to mediate, we wanted to take this further"

"I know they are in a position where they have to support the employee, because that's what they are there for."

- **Final outcome and satisfaction:** Went to hearing. Employer and claimant represented themselves. Claimant retracted parts of statement during hearing. Company failed to offer employee a witness during the redundancy meetings so lost at hearing. The fine was less than the settlement fee being negotiated. The employer felt neutral towards Acas and considered they took the right course of action in going to hearing.

"But we don't mind, because we looked at it and thought, he was looking for £6,500, he got £5,000, so we saved £1,500 and we learnt from it as well."

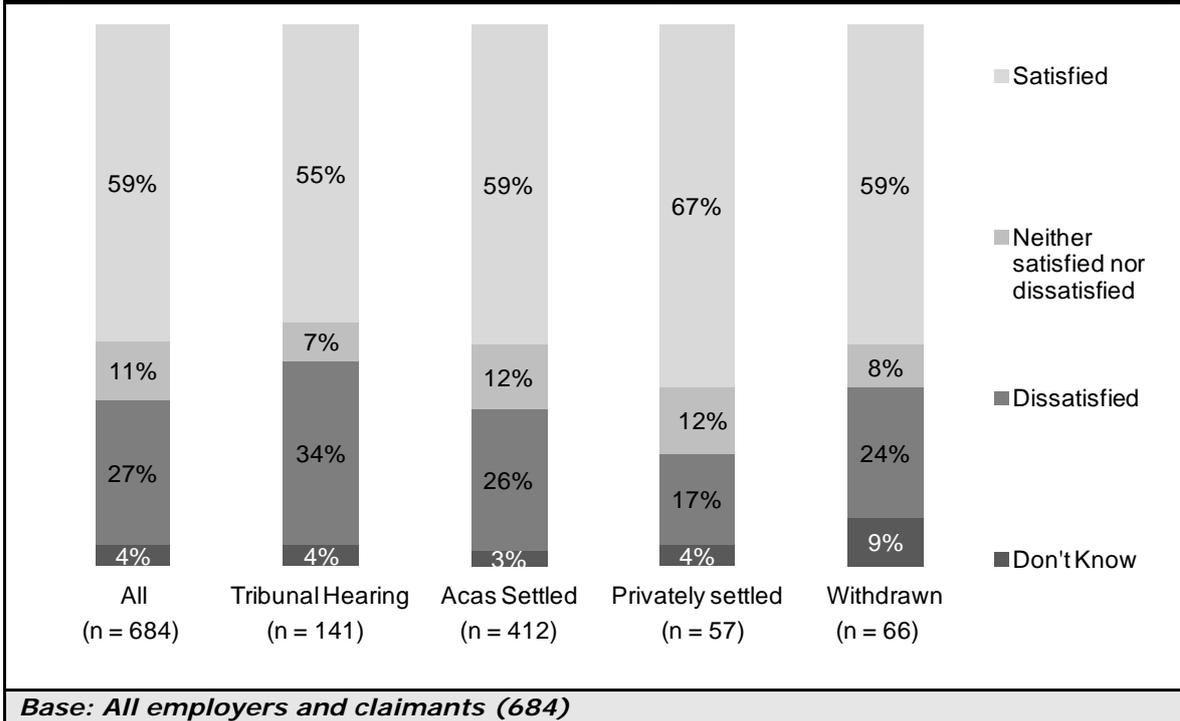
Barriers to settlement were also explored amongst cases that went to a hearing in the quantitative survey. Claimants and employers were given a list of reasons and asked whether any applied to why a settlement was not reached. The feeling of the sense of injustice was echoed amongst employers, with their most common reason being 'we were not willing to negotiate because we believed we had not done anything wrong' (63 per cent). This was reflected amongst claimants, with their main reason mentioned 'the employer was not willing to negotiate' (69 per cent). This cannot be explored by the size of the organisation due to limited base sizes.

A further common reason emerging for employers was that the 'claimant was not willing to negotiate' mentioned by 56 per cent. Claimants did not share this view, with only 23 per cent mentioning this as a reason.

6.9 Satisfaction with case outcome

Satisfaction with the case outcome was mixed, with 59 per cent cases satisfied (either 'extremely satisfied', 'very satisfied' or 'satisfied'), 27 per cent dissatisfied (either 'extremely dissatisfied', 'very dissatisfied' or 'dissatisfied'), 11 per cent neither satisfied or dissatisfied and four per cent not sure. As has been shown in previous research such as SETA 2008 and the 2010 IC satisfaction survey, satisfaction with the case outcome is largely related to the outcome itself. Satisfaction by case outcome is shown in Figure 6.4, however the link between the two is not as clearly shown in the data here, as the successful party at the tribunal is not shown and the limited base sizes of some of the groups restricts more detailed analysis.

Figure 6.4: Satisfaction with outcome by case outcome



Satisfaction with case outcome was higher amongst respondents from cases where PCC had taken place beforehand; 62 per cent of participants in such cases were satisfied, compared with 51 per cent of those in cases where it had not taken place. However, it is important to bear in mind that this may be related to case outcome as the settlement rate is higher amongst these type of cases. This can be examined by exploring satisfaction within each case outcome. Amongst cases which were settled by Acas, the difference was still apparent, with 63 per cent of impasse PCC cases and 49 per cent of unprogressed PCC referrals satisfied. It is difficult to make firm conclusions amongst the other outcomes due to limited base sizes, however, the same trend appears evident. Satisfaction levels were higher amongst claimants than employers with 63 per cent of claimants reporting they were satisfied compared with 55 per cent of employers.

6.9.1 Satisfaction with the IC process

Three quarters of survey participants (76 per cent) were satisfied with the conciliation service received from Acas during the claim (17 per cent 'extremely satisfied', 33 per cent 'very satisfied' and 26 per cent 'satisfied'). This is broadly in line with the satisfaction level reported in the 2010 IC satisfaction survey (80 per cent).

Despite asking survey participants to disregard the case outcome when thinking about their satisfaction of the conciliation service, ratings appear to be linked. Amongst Acas settled cases, eight in ten survey participants (82 per cent) were satisfied, compared to six in ten (59 per cent) in cases that went to an ET hearing. Additionally looking at satisfaction with the outcome ratings, those who were satisfied with the case outcome were more likely to be satisfied with the Acas service (86 per

cent), than those who were dissatisfied with the case outcome (56 per cent). This is illustrated in Table 6.9 below.

Table 6.9 Satisfaction with IC by case outcome and satisfaction with case outcome

	All	ET case outcome				Satisfaction with case outcome		
		Tribunal Hearing	Acas Settled	Privately settled	Withdrawn	Satisfied	Neither satisfied nor dissatisfied	Dissatisfied
	%	%	%	%	%	%	%	
Satisfied	76	59	82	86	59	87	63	56
Neither satisfied nor dissatisfied	9	13	8	10	11	5	24	14
Dissatisfied	14	28	10	-	31	8	12	29
Don't Know	*	-	*	3	-	*	-	1
Unweighted	423	67	293	28	33	261	43	113

Base: All claimants and employers who had personal contact with Acas

Respondents involved in ET claims where PCC had taken place beforehand tended to have higher satisfaction levels than those in cases where it had not taken place (80 per cent versus 67 per cent).

When this is examined within outcome type, this pattern remains amongst Acas settled cases (87 per cent versus 69 per cent). Again due to limited base sizes it is difficult to make firm comparisons within the other case outcomes, but the data suggests this trend is still evident.

Parties interviewed in the qualitative research tended to rate Acas according to the role they wanted Acas to play rather than the service that was explained to them. Claimants were more favourable towards Acas if they felt they had received sufficient support in the form of feeling listened to, Acas helping them with communications, Acas seeming to be 'on their side'. Employers were more favourable if Acas had demonstrated that they were impartial in their communication with the employer and if the employer felt they were kept informed at all stages of the claim (particularly the latter stages).

Employers with greater experience of the conciliation process were more likely to be positive towards Acas. These tended to be larger organisations with HR departments. They were able to relay a number of cases that Acas had helped to successfully resolve, and this provided evidence of a good track record of case resolution.

"I've always found them to be very helpful, willing to listen and not take sides.... they play a major part in conciliation. I hold them in high esteem." (Employer)

"I would without doubt, use Acas again in the future.... You would be foolish to say 'no' because the advice is free and the conciliators very good." (Employer)

6.9.2 Use of Acas in the future

Survey participants who had personal contact with Acas were asked whether they would recommend the use of Acas to either a friend or relative (claimants), or the organisation (employers) if they were involved in a similar dispute in the future. Four fifths of claimants (79 per cent) said they would 'definitely' recommend Acas, with a further 12 per cent saying that they 'probably' would. Willingness to recommend Acas was slightly lower amongst employers, with equivalent figures of 56 per cent and 22 per cent. Eight six per cent of claimants said that on reflection they felt Acas' involvement was helpful, and for employers this was again slightly lower at 70 per cent.

Inevitably respondents in cases which were settled by Acas, were highly likely to recommend Acas and to agree that their involvement was helpful - in 72 per cent of settled cases respondents said they would definitely recommend the services of Acas, with 83 per cent agreeing their involvement was helpful. It is encouraging that the equivalent figures were high amongst privately settled cases (90 per cent and 94 per cent), suggesting that participants valued the help of Acas even if the final settlement was made privately.²² Amongst cases that went to a hearing, recommendation figures were lower, with 57 per cent reporting that they would recommend Acas in the future, and 65 saying they thought Acas' involvement was helpful.

Recommendations and values were higher amongst cases where PCC had taken place prior to the claim being submitted (71 per cent would recommend Acas, and 82 per cent reflected their involvement was helpful), compared with when it had not (61 per cent and 70 per cent). When examined within outcome type, these differences remained amongst Acas settled cases. (It is not possible to examine this within other outcome types.)

Amongst cases where it was reported there was no contact with Acas (either personally or through a representative), recommendation of the future use of Acas was high. Three quarters of claimants (74 per cent) reported that they would recommend Acas to a friend or relative in the future (if faced with a similar dispute) and 69 per cent of employers would recommend their organisation used Acas if they were involved in a similar dispute again. The large majority of claimants (85 per cent) said on reflection they would have liked Acas to have been involved in the case. The equivalent figure for employers was 50 per cent.

²² This must be treated with caution as n=32.

7. CONCLUSIONS AND SERVICE IMPROVEMENT RECOMMENDATIONS

PCC has previously been shown to be successful²³ and it is estimated that approximately 75 per cent of PCC referrals do not go on to become ET claims.

The current research explores the PCC process itself and helps to identify what happens at the ET stage when PCC is either unsuccessful or unprogressed. Firstly, in terms of the PCC process, the research indicates the main reasons for PCC referrals not being progressed focus around employers; with the employer either not willing to take part/negotiate or the conciliator being unable to reach them. Organisations involved in unprogressed PCC referrals in comparison to impasse PCC cases, tended to be larger and more likely to have an internal HR and/or legal department. This could suggest that these organisations may have chosen not to progress with PCC because they felt they had procedures in place to deal with the issue internally.

Amongst those who took part in PCC, but did not reach a resolution, relatively positive views of the PCC process were held, with three quarters satisfied with the service they received from Acas at this stage.

In terms of the ET stage, parties who used a representative during PCC tended to also use one at the ET stage (over nine in ten employers, and three quarters of claimants). Amongst those who did not use a representative at the PCC stage, around a third went on to use representation at the ET stage. At the time of the interview, over eight in ten of claimants no longer worked for the employer against whom they made they claim, and of these, over eight in ten left prior to submitting the ET claim. In cases where PCC failed to resolve the dispute, and the claimant went on to submit an ET claim, additional jurisdictions were found to be listed on the ET1 form in one in seven cases. This did not vary between those who used a day-to-day representative and those who did not. The data also indicatively suggested that when further jurisdictions were listed to the ET1 form (in addition to those raised during PCC), the majority of cases deemed as standard or open track at PCC, remained as the same track at the ET stage. However, amongst cases deemed as fast track at the PCC stage, only half remained as fast track at the ET stage, with just under half being recorded as standard track.

In cases where PCC was unsuccessful the research indicated a number of positive impacts on resolution of the case at the ET stage. Firstly, the research uncovered that amongst cases where PCC did take place, a higher proportion of these were settled by Acas at IC than those where it did not take place (63 per cent compared with 54 per cent). This was also reflected in the views of parties, with those who had

²³ B Davey and G. Dix (2011) The Dispute Resolution Regulations two years on

taken part in PCC agreeing more strongly than those who had not that Acas helped move parties closely towards a resolution (64 per cent versus 50 per cent).

Satisfaction with the service received from Acas in post claim conciliation was higher in cases where PCC had taken place beforehand, with six in ten expressing satisfaction compared to five in ten when it had not taken place. This pattern was evident amongst Acas settled cases.

Building on this success, the research has highlighted a number of areas that could hinder early resolution and that could feed into the design of the early conciliation service. Drawing the findings together, these have been presented as **five key service improvement recommendations**.

The Five Key Service Improvement Recommendations

1. More diagnosis (beyond jurisdiction) early on in the process around type of claimant, their needs and the size of claim and tailoring of service based on this. This might be to understand whether the claimant has any learning difficulties and or gauging the extent of their needs for emotional support to help design the right conciliation package for their needs (including the format of conciliation and whether face to face) and or ensure they are referred to a third party to be supported.
2. Consideration of interventions that will **help to engage employers** such as raising awareness of Acas and the PCC service and the benefits to the employer of learning about employment law and taking up PCC if offered. This includes a focus on information and or processes that will help to show the impartiality of conciliators e.g. face to face meetings and making sure employers are aware of the timetable, deadlines and outcomes.
3. Ensuring that **conciliators be easy to contact and / or responsive** as this was a key indicator that was linked to satisfaction.
 - a. Where a conciliator is taking annual leave then processes or resource is set up to avoid the claimant becoming impatient.
 - b. Employers expect the end of the conciliation to be signalled and an outcome communicated to them. This also helps to demonstrate the conciliators impartiality.
4. Parties perceived PCC and IC to be one conciliation process and there was a higher settlement rate and more positive perception when the conciliator was the same throughout PCC and IC. If a different conciliator is used for IC then consideration could be given to providing a reason for this to avoid the assumptions that this is due to poor practice of any kind.
5. Providing consistent information about **the tribunal process** to address gaps in knowledge and perceptions and providing information about the claimant's chances of success as early as possible to avoid raising expectations. In cases where more information was provided about a hearing and how the judge would make a decision, this helped claimants to evaluate the cost versus benefit of continuing with their claim.

APPENDIX 1 - Survey Questionnaire

Acas PCC Survey

Thank you for agreeing to participate in this study. Everything you say will be treated in the strictest confidence and no individuals or organisations will be identifiable in the results of this study.

SECTION A: EMPLOYMENT DETAILS

ASK ALL

To start with we would like to ask a few questions around the background to the dispute.

[EMPLOYEE: First of all I would like to ask you about the job related to the problem you had. /

EMPLOYER: So first of all, I would like to ask you a few questions about {employee}.]

ASK ALL

Q6. [EMPLOYEE: Can I check, did you work for {employer} or were you applying for a job with them? /

EMPLOYER: Can I check, did {employee} work for {employer} or was he/she applying for a job with {employer}?

[QSTATUS]

Worked for them 1

Job Applicant 2

Don't know

IF NOT JOB APPLICANT AT QSTATUS [QSTATUS = 1]

Q7. [EMPLOYEE: And do you work for them now /

EMPLOYER: And does {employee} work for {employer} now?] [QWNOW]

Yes 1

No 2

Don't Know

Details of job separation

IF FORMER WORKER AT QWNOW [QWNOW = 2]

Q8. [EMPLOYEE: How did your employment with {employer} come to an end? Were you dismissed or made redundant, did you resign or leave without resigning, or did you leave for some other reason? /

EMPLOYER: How did {employee}'s employment with {employer} come to an end? Were they dismissed or made redundant, did they resign or leave without resigning or did they leave for some other reason?] [QENDR]

Dismissed 1

Made redundant / 'Laid off' 2

Resigned 3

Left without resigning 4

Retired 5

Some other reason 6

Don't Know

Refused

Nature of the workplace problem

ASK ALL

Q9. [EMPLOYEE Can you sum up in a few words why you brought this application? What was the nature of the dispute you had with {employer}? /

EMPLOYER: Can you sum up in a few words why {employee} brought this application?] [QWHY]

IF NECESSARY: I only need a brief summary; how would you sum it up in one sentence?

OPEN-ENDED

Don't Know

SECTION B: TAKE UP AND OUTCOME OF PCC

ASK ALL

The next part of the interview is about what happened before the Employment Tribunal claim was submitted.

In some disputes, Acas provides assistance and conciliation before Employment Tribunal claims are made. This is known as pre-claim conciliation.

Please answer the next questions in relation to any conciliation or assistance that may have been provided by Acas before this claim was submitted and not conciliation that may have been provided after.

We will be taking about what happened during the Employment Tribunal case itself later in the interview.

IF RESULT = UNPROGRESSED – EMPLOYER UNWILLING OR EMPLOYEE UNWILLING ON SAMPLE

Q10. Our records show you and [EMPLOYEE: {employer} / EMPLOYER: {employee}] did not use Acas to try and resolve the matter before the Employment Tribunal claim was submitted. Is this correct? [QOUT1]

INTERVIEWER: RESPONDENT MAY NOT HAVE BEEN AWARE OF THE ISSUE, IF SO CODE 'YES' HERE

Yes 1
No 2

IF RESULT = IMPASSE NO RESOLUTION BROKERED ON SAMPLE

Q11. Our records show before the Employment Tribunal claim was submitted an Acas conciliator spoke to [EMPLOYEE: you and {employer} / EMPLOYER {employee} and {employer}], but that you did not reach a resolution or settlement. Is that correct? [QOUT2]

Yes 1
No 2

IF RESULT = IMPASSE RAN OUT OF TIME ON SAMPLE

Q12. Our records show before the Employment Tribunal claim was submitted an Acas conciliator spoke to [EMPLOYEE: you and {employer} / EMPLOYER {employee} and {employer}] to try and resolve the matter. Is that correct? [QOUT3]

Yes 1
No 2

IF DID TAKE PART IN PCC [QOUT3 = 1]

Q13. And our records show that the Acas assistance could not be continued because the time limit for presenting a tribunal claim was near. Is that correct? [QOUT3a]

INTERVIEWER IF NECESSARY: By this I mean that you took part in conciliation but it could not be completed because you ran out of time before the tribunal claim had to be submitted.

Yes 1
No 2
Don't know

IF RESULT = OTHER ON THE SAMPLE OR
IF SAMPLE OUTCOME CHECKED AND RESPONDENT DID NOT AGREE WITH
SAMPLED OUTCOME AT QOUT1, QOUT2 [IF SAMPLED OUTCOME = OTHER OR
QOUT1 = 2 OR QOUT2 = 2]

Q14. Did you take part in pre-claim conciliation? [QOUT4]

IF NECESSARY: Pre-claim conciliation is conciliation or assistance provided by Acas before an employment tribunal claim is submitted.

IF THE RESPONDENT HAS NO RECOLLECTION OF PRE-CLAIM CONCILIATION
THIS WILL PROBABLY BE BECAUSE THEY DID NOT TAKE PART IN IT.

Yes 1
No 2

IF TOOK PART IN CONCILIATION AT QOUT4 [QOUT4 = 1]

Q15. And could you tell me what happened during the conciliation? Was there... [QOUT5]

Some negotiation with both you and the other party, but the Acas assistance could not be continued because the time limit for presenting an employment tribunal claim was too close 1

Was there was some negotiation between both you and the other party but the issue was not able to be resolved because a settlement could not be agreed on 2
Or did something else happen (specify) 3

DERIVED VARIABLE OF OUTCOME AT PCC (PCCOUT)

To be used for the filtering of outcome in the rest of the questionnaire²⁴

1. UNPROGRESSED

[IF QOUT1 = 1 OR QOUT3 = 2 OR QOUT4 = 2]

2. IMPASSE

[IF QOUT2 = 1 OR QOUT3 = 1 OR QOUT4 = 1]

²⁴ A more detailed breakdown of PCC outcomes will be derived at the analysis stage

IF PCC OUTCOME IS UNPROGRESSED AT PCCOUT AND EMPLOYER [PCCOUT = 1
AND EMPLOYER RESPONDENT FROM SAMPLE]

Q16. What was the main reason why Acas assistance was not used to try to
resolve the matter before {employee} submitted the Employment Tribunal claim?
[QWNOA1]

PROBE FOR MAIN REASON ONLY – IF THE RESPONDENT CAN NOT GIVE ONE
MAIN REASON THEN RECORD THIS IN THE OTHER CODE

Was not contacted about Acas assistance/ Did not know about the issue 1
We were not willing to negotiate 2
{Employee} was not willing to negotiate 3 Felt that the conciliation would not
resolve the issue / be a waste of time 4
Felt that the process wouldn't be impartial / Acas would be on the side of
{employee} 5
Other (specify) 6
Don't Know
Refused

IF PCC OUTCOME IS UNPROGRESSED AT PCCOUT AND EMPLOYEE [PCCOUT = 1
AND EMPLOYEE RESPONDENT FROM SAMPLE]

Q17. What was the main reason why Acas assistance was not used to try to
resolve the matter before you submitted the Employment Tribunal claim?
[QWNOA2]

PROBE FOR MAIN REASON ONLY – IF THE RESPONDENT CAN NOT GIVE ONE
MAIN REASON THEN RECORD THIS IN THE OTHER CODE

I was not willing to negotiate 1
{Employer} not willing to negotiate 2
{employer} could not be contacted 3
Felt that the conciliation would not resolve the issue / be a waste of time 4
Too much hassle / Too complicated / Too stressful 5
Felt that the process wouldn't be impartial / Acas would be on the side of
{employer} 6
Other (specify) 7
Don't Know
Refused

IF PCC OUTCOME IS IMPASSE AT PCCOUT AND EMPLOYER [PCCOUT = 2 AND
EMPLOYER RESPONDENT FROM SAMPLE]

Q18. What was the main reason for not reaching a resolution or settlement?
[QWNOR1]

PROMPT TO PRECODES

- We were not willing to negotiate 1
- {Employee} was not willing to negotiate 2
- We offered a settlement but {employee} was not willing to accept 3
- We were unable to reach agreement before the time limit for presenting an
employment tribunal claim 4
- Acas was on the side of the {employee} 5
- Other (specify) 6
- Don't know
- Refused

IF PCC OUTCOME IS IMPASSE AT PCCOUT AND EMPLOYEE [PCCOUT = 2 AND
EMPLOYEE RESPONDENT FROM SAMPLE]

Q19. What was the main reason for not reaching a resolution or settlement?
[QWNOR2]

PROMPT TO PRECODES

- I was not willing to negotiate 1
- {Employer} was not willing to negotiate 2
- {employer} made an offer of settlement which was less than I would accept 3
- We were unable to reach agreement before the time limit for presenting an
employment tribunal claim 4
- Acas was on the side of the {employer} 5
- Other (specify) 6
- Don't know
- Refused

SECTION C: PCC EXPERIENCE

IF PCC OUTCOME IS IMPASSE AT PCCOUT [PCCOUT = 2]

Q20. [EMPLOYEE: Before you submitted the Employment Tribunal claim / EMPLOYER: Before the Employment Tribunal claim was submitted], did you use a representative to deal with Acas during the pre-claim conciliation? [QREP]

Yes 1
No 2
Don't know
Refused

IF EMPLOYEE AND USED A REPRESENTATIVE AT QREP [IF EMPLOYEE AND QREP = 1]

Q21. Who was your representative? [QREPW1]
PROMPT TO PRECODES

Work colleague 1
Trade Union representative / Worker Representative at workplace 2
Citizens Advice Bureau 3
Employment Rights Advisor / Employment Consultant 4
Solicitor, Barrister or some other kind of lawyer 5
Family or Friends 6
Equality and Human Rights Commission 7
Somebody else (specify) 8
Don't Know

IF EMPLOYER AND USED REPRESENTATIVE AT QREP [IF EMPLOYER AND QREP = 1]

Q22. Who did the organisation use as their representative? [QREPW2]
PROMPT TO PRECODES

Owner / Senior Manager / General Manager 1
Personnel or human resources specialist 2
Legal specialist in company / Company Lawyer 3
Employers' Association / Trade Association 4
Employment Rights Advisor / Employment Consultant 5
Solicitor, Barrister or some other kind of lawyer 6
Family or Friends 7
Someone else in organisation 8
Somebody else (specify) 9
Don't Know

IF PCC OUTCOME IS IMPASSE AT PCCOUT AND DID NOT HAVE REPRESENTATIVE [(PCCOUT = 2) and QREP <> 1]

I would now like to ask about your experience of this Acas assistance and in particular your views of the Acas conciliator. Please just think about the assistance that was provided before the Employment Tribunal application was submitted, and not any assistance that may have been provided later.

IF PCC OUTCOME IS IMPASSE AT PCCOUT AND DID NOT HAVE REPRESENTATIVE QREP [(PCCOUT = 2) and QREP <> 1]

Q23. Did you meet with the Acas conciliator face-to-face at any point?
[QCONTACT]
READ OUT

INTERVIEWER: THIS QUESTION IS REFERRING TO ASSISTANCE PROVIDED BEFORE THE ET CLAIM

Yes 1

No 2

SPONTANEOUS ONLY Had no contact with the Acas conciliator3

Don't know

IF HAD CONTACT WITH ACAS AT QCONTACT [IF CONTACT = 1 OR 2 OR DK]

Q24. Was the Acas Conciliator available when needed? [QNEED]
READ OUT

INTERVIEWER: THIS QUESTION IS REFERRING TO ASSISTANCE PROVIDED BEFORE THE ET CLAIM

Always 1

Usually 2

Sometimes 3

Rarely 4

Never 5

SPONTANEOUS ONLY Never tried to make contact 6

Don't know

IF PCC OUTCOME IS IMPASSE AT PCCOUT AND DID NOT HAVE REPRESENTATIVE QREP [(PCCOUT = 2) and QREP <> 1]

Q25. Would you have preferred more contact with the Acas conciliator, less contact, or about the same? [QMORE]
READ OUT

INTERVIEWER: THIS QUESTION IS REFERRING TO ASSISTANCE PROVIDED BEFORE THE ET CLAIM

More 1

The same 2

Less 3

Don't know

IF HAD CONTACT WITH ACAS AT QCONTACT [CONTACT = 1 OR 2 OR DK]

Q26. At the time how much did you trust the information given by the Acas conciliator...? [QTRUST]

READ OUT

INTERVIEWER: THIS QUESTION IS REFERRING TO ASSISTANCE PROVIDED BEFORE THE ET CLAIM

- Completely trusted him/her 1
- Trusted him/her up to a point 2
- Did not trust him/her 3
- Don't know
- Refused

IF PCC OUTCOME IS IMPASSE AT PCCOUT AND DID NOT HAVE REPRESENTATIVE QREP [(PCCOUT = 2) and QREP <> 1]

Q27. Thinking about the pre-claim conciliation process, and disregarding the actual outcome, how satisfied or dissatisfied are you with the service you received from Acas before the Employment Tribunal application was submitted? Would you say you were... [QSAT1]

READ OUT

- Extremely satisfied 1
- Very satisfied 2
- Satisfied 3
- Neither satisfied nor dissatisfied 4
- Dissatisfied 5
- Very dissatisfied 6
- Extremely dissatisfied 7
- Don't know

SECTION D: ET OUTCOME

Outcome – Employee respondents²⁵

IF EMPLOYEE:

In the next part of the interview I now want you to think about what happened after the Employment Tribunal claim was submitted. This will be everything that happened after you submitted the Employment Tribunal application form (also known as an 'ET1' form).

First of all I want to ask you about how the Employment Tribunal claim was resolved.

IF EMPLOYEE AND ET OUTCOME FROM SAMPLE IS HEARING

Q28. Our records show that the case went to a full tribunal hearing. Is this correct? [QCHEAR]

Yes 1

No 2

IF EMPLOYEE AND CONFIRMED THAT WENT TO HEARING AT QCHEAR [IF QCHEAR = 1]

Q29. And was the hearing decided in your favour or {employer}'s favour? [QCHEAR1]

Decided in favour of respondent 1

Decided in favour of {employer} 2

SPONTANEOUS ONLY Dismissed 3

IF EMPLOYEE AND ET OUTCOME FROM SAMPLE IS SETTLED

Q30. Our records show that you SETTLED with {employer} for a sum of money or something else, such as an apology, a reference, or an offer of employment, rather than your case being decided at a full tribunal hearing. Is this correct? [QCSET]

INTERVIEWER NOTE: IN SOME CASES THE SETTLEMENT MAY TAKE PLACE ON THE DAY OF THE HEARING BEFORE THE HEARING OFFICIALLY TAKES PLACE. IF THIS IS THE CASE, CODE 1.

Yes 1

No 2

²⁵ Note: ET outcome is asked separately depending on whether the respondent is an employee or employer

IF EMPLOYEE AND ET OUTCOME FROM SAMPLE IS WITHDRAWN

Q31. Did you decide to withdraw or drop the case at some point rather than go to a full tribunal hearing? By this I mean that you withdrew the case without receiving any money or anything else such as an apology or a reference? [QCWITH1]

INTERVIEWER: IF YES, PROBE TO CHECK THAT THE RESPONDENT DID NOT RECEIVE ANY MONEY, AN APOLOGY OR ANYTHING ELSE FROM THE EMPLOYER IN RETURN FOR WITHDRAWING THE CASE. IF ANYTHING RECEIVED THEN CODE NO.

Yes 1
No 2

IF DID NOT WITHDRAW AT QCWITH1 [IF QCWITH1 = 2]

Q32. Did you SETTLE with {employer} for a sum of money or something else, such as an apology, a reference, or an offer of employment, rather than your case being decided at a full tribunal hearing? [QCWITH2]

INTERVIEWER: IF YES, PROBE TO CHECK THAT SOMETHING WAS RECEIVED. IF NOT, CODE NO.

Yes 1
No 2

IF EMPLOYEE AND DISAGREEMENT BETWEEN RESULT/SUBJECTIVE OUTCOME AT QCHEAR/QCSER/QCWITH2 [IF QCHEAR = 2 OR QCSET = 2 OR QCWITH2 = 2]

Q33. I'm going to read out the different ways in which Employment Tribunal applications can be resolved. Please tell me which best describes what happened in this case. [QCOOUT]

READ OUT

ALLOW RESPONDENT TIME TO RESPOND TO EACH OPTION BEFORE READING NEXT ONE

- You SETTLED with {employer} for a sum of money or something else, such as an apology, a reference, or an offer of employment, rather than your case being decided at a full tribunal hearing 1
- You decided to withdraw or drop the case at some point rather than go to a full tribunal hearing. By this I mean that you withdrew the case without receiving any money or anything else such as an apology or a reference 2
- The case went to a full tribunal hearing and was decided in your favour 3
- The case went to a full tribunal hearing and was decided in favour of [EMPLOYER ORGANISATION NAME] 4
- The case was dismissed by the Employment Tribunal Service by letter or at a case review hearing of some kind 5
- None of the above 6
- Don't Know
- Refused

IF NONE OF THE ABOVE AT QCOOUT [IF QCOOUT = 6]

Q34. Can I check, did your case go to a full tribunal hearing? [QCHEARC]

Yes 1

No 2

IF NONE OF THE ABOVE AT QCOOUT [IF QCOOUT = 6]

Q35. Please could you describe how your case was resolved? [QCRDESC]

OPEN-ENDED

Outcome – Employer respondents

IF EMPLOYER

In the next part of the interview I now want you to think about what happened after the Employment Tribunal claim was submitted. This is everything that happened after {employee} submitted the ET1 form and the organisation submitted the Notification of Appearance form (also known as the 'ET3' form).

First of all I want to ask you about how the Employment Tribunal claim was resolved.

IF EMPLOYER AND ET OUTCOME FROM SAMPLE IS HEARING

Q36. Our records show that the case went to a full tribunal hearing. Is this correct? [QEHEAR]

READ OUT

Yes 1

No 2

IF EMPLOYER AND CONFIRMED THAT WENT TO HEARING AT QEHEAR [IF QEHEAR = 1]

Q37. And was the hearing decided in the organisation's favour or {employee}'s favour?[QEHEAR1]

Decided in favour of organisation 1

Decided in favour of {employee} 2

SPONTANEOUS ONLY Dismissed 3

IF EMPLOYER AND ET OUTCOME FROM SAMPLE IS SETTLED

Q38. Our records show that you SETTLED with {employee} for a sum of money or something else, such as an apology, a reference, or an offer of employment, rather than the case being decided at a full tribunal hearing. Is this correct? [QESET]

INTERVIEWER NOTE: IN SOME CASES THE SETTLEMENT MAY TAKE PLACE ON THE DAY OF THE HEARING BEFORE THE HEARING OFFICIALLY TAKES PLACE. IF THIS IS THE CASE, CODE 1.

Yes 1
No 2

IF EMPLOYER AND ET OUTCOME FROM IS WITHDRAWN

Q39. Did you SETTLE with {employee} for a sum of money or something else, such as an apology, a reference, or an offer of employment rather than the case being decided at a full tribunal hearing ? [QEWITH2]

INTERVIEWER: IF YES, PROBE TO CHECK THAT SOMETHING WAS RECEIVED BY THE EMPLOYEE. IF NOT, CODE NO.

Yes 1
No 2

IF DID NOT SETTLE WITH EMPLOYEE AT QEWITH2 [IF QEWITH2 = 2]

Q40. Did {employee} decide to withdraw or drop the case at some point rather than go to a full tribunal hearing? By this I mean that {employee} withdrew the case without receiving any money or anything else such as an apology or a reference? [QEWITH1]

INTERVIEWER: IF YES, PROBE TO CHECK THAT THE EMPLOYEE DID NOT RECEIVE ANY MONEY, AN APOLOGY OR ANYTHING ELSE FROM THE EMPLOYER IN RETURN FOR WITHDRAWING THE CASE. IF ANYTHING RECEIVED THEN CODE NO.

Yes 1
No 2

IF EMPLOYER AND DISAGREEMENT BETWEEN RESULT/SUBJECTIVE OUTCOME
AT QEHEAR/QESER/QEWITH1 [IF QEHEAR = 2 OR QESET = 2 OR QEWITH1 = 2]

Q41. I'm going to read out the different ways in which Employment Tribunal applications can be resolved. Please tell me which best describes what happened in this case. [CEOOUT]

ALLOW RESPONDENT TIME TO RESPOND TO EACH OPTION BEFORE
READING NEXT ONE

You SETTLED with {employee} for a sum of money or something else, such as an apology, a reference, or an offer of employment rather than the case being decided at a full tribunal hearing 1

{employee} decided to withdraw or drop the case at some point rather than go to a full tribunal hearing. By this I mean that {employee} withdrew the case without receiving any money or anything else such as an apology or a reference 2

The case went to a full tribunal hearing and was decided in your favour 3

The case went to a full tribunal hearing and was decided in favour of {employee} 4

The case was dismissed by the Employment Tribunal Service by letter or at a case review hearing of some kind 5

None of the above 6

Don't Know

Refused

IF NONE OF THE ABOVE AT QEOOUT [IF QEOOUT = 6]

Q42. Can I check, did your case go to a full tribunal hearing? [QEHEARC]

Yes 1

No 2

IF NONE OF THE ABOVE AT QEOOUT [IF QEOOUT = 6]

Q43. Please could you describe how your case was resolved? [QERDESC]

OPEN ENDED

SECTION E: JURISDICTIONS AND REPRESENTATION AT ET

IF IMPASSE AT PCCOUT (IF PCCOUT = 2)

Q44. [EMPLOYEE: Thinking about the nature of the dispute, when you submitted your Employment Tribunal application, did you include any additional problems or issues on the application form that had not been previously raised or discussed during the pre-claim conciliation? /

EMPLOYER: Thinking about the nature of the dispute, when {employee} submitted the Employment Tribunal application, were there any additional problems or issues listed in their application form that had not previously been raised or discussed during the pre-claim conciliation?] [QJURA]

Yes 1

No 2

Don't Know

ASK ALL

Q45. [EMPLOYEE: On the Employment Tribunal application form (also known as the ET1 form) there is the option to name a representative to handle the case on your behalf. Did you nominate a representative on the form or was this left blank? /

EMPLOYER: On the Notification of Appearance form (also known as the ET3 form) there is the option to name a representative to handle the case on your behalf. Did you nominate a representative on the form or was this left blank?] [QETREP]

Yes – nominated representative 1

No – left blank 2

Don't Know

ASK ALL

Q46. [EMPLOYEE: And after you put in your application, did anyone help you with the day-to-day handling of the case, for example handling paperwork, answering letters, dealing with the Employment Tribunal Service, dealing with {employer} and so on? Please do not include any assistance you may have received from Acas.

PROMPT IF NECESSARY: This may have been the person who was nominated on the application form /

EMPLOYER: And thinking about after {employee} put in his/her Employment Tribunal application, did anyone help you with the day-to-day handling of the case, for example handling paperwork, answering letters, dealing with the Employment Tribunal Service, dealing with {employee} and so on? Please do not include any assistance you may have received from Acas.] [QHAND]

PROMPT IF NECESSARY: This may have been the person nominated of the Notice of Appearance form

Yes 1

No 2

Don't Know

IF EMPLOYEE AND HAD A DAY TO DAY REPRESENTATIVE [IF EMPLOYEE AND QHAND = 1]

Q47. Who helped you with the day to day handling of your case? [QHAND2]
PROMPT TO PRECODES

IF MORE THAN ONE PERSON HELPED RECORD THE PERSON THAT HELPED THE MOST.

- Work colleagues 1
- Trade Union representative / Worker Representative at workplace 2
- Citizens Advice Bureau 3
- Employment Rights Advisor / Employment Consultant 4
- Solicitor, Barrister or some other kind of lawyer 5
- Family or Friends 6
- Equality and Human Rights Commission 7
- Somebody else (specify) 8
- Don't Know
- Refused

IF EMPLOYER AND HAD A DAY TO DAY REPRESENTATIVE[IF EMPLOYER AND QHAND = 1]

Q48. Who helped you with the day to day handling of the case? [QHAND3]
PROMPT TO PRECODES

IF MORE THAN ONE PERSON HELPED RECORD THE PERSON THAT HELPED THE MOST.

- Owner / Senior Manager / General Manager 1
- Personnel or human resources specialist 2
- Legal specialist in company / Company Lawyer 3
- Employers' Association / Trade Association 4
- Employment Rights Advisor / Employment Consultant 5
- Solicitor, Barrister or some other kind of lawyer 6
- Family or Friends 7
- Someone else in organisation 8
- Somebody else (specify) 9
- Don't Know
- Refused

IF ET CASE WENT TO TRIBUNAL HEARING (IF QCHEAR = 1 OR QCOOUT = 3 OR QCOOUT = 4 OR QCHEARC = 1 OR QEHEAR = 1 OR QEEOOUT = 3 OR QEEOOUT = 4 OR QEHEARC = 1)

Q49. [EMPLOYEE: Did you have anyone to represent you at the full tribunal hearing, that is to speak on your behalf? / EMPLOYER: Did anyone represent the organisation at the full tribunal hearing, that is to speak on the organisation's behalf and present the case?] [QHREP]

Yes 1
No 2
Don't Know
Refused

IF CHOSE NOT TO HAVE REPRESENTATIVE DURING PCC AT QREP BUT DID HAVE A DAY TO DAY REPRESENTATIVE DURING THE ET [IF QREP = 2 AND QHAND = 1]

Q50. You mentioned earlier that [EMPLOYEE: you / EMPLOYER: the organisation] did not have a representative during the pre-claim conciliation that occurred before the Employment Tribunal claim was submitted. Why did [EMPLOYEE: you / EMPLOYER: the organisation] decide to have someone to help you with the day-to-day handling of the case after the Employment Tribunal application was submitted? [QHW1]

OPEN ENDED
Don't Know
Refused

IF UNPROGRESSED AT PCC AND DID HAVE A DAY TO DAY REPRESENTATIVE AT THE ET
OR IMPASSE AND HAD REPRESENTATIVE DURING PCC AND ALSO HAD A DAY TO DAY REPRESENTATIVE AT THE ET.
[IF ((PCCOUT = 1) AND (QHAND = 1)) OR (QREP = 1 AND QHAND = 1)]

Q51. Why did [EMPLOYEE: you / EMPLOYER: the organisation] decide to have someone to help with the day-to-day handling of the case? [QHW2]

OPEN ENDED
Don't Know
Refused

IF SOMEONE HELPED THEM WITH THE DAY TO DAY HANDLING OF THE ET CASE
[IF QHAND = 1]

Q52. And did you have to pay this person for their help with the day-to-day handling of the case? [QHW3]

INTERVIEWER: IF REP WAS PAID BUT COVERED BY RESPONDENT'S INSURANCE CODE PAID FOR ALL OR PAID FOR SOME WHERE RELEVANT

Paid for all 1
Paid for some 2
All free 3
Don't Know
Refused

SECTION F: ACAS IC

I would like now to ask you about the involvement of Acas during the Employment Tribunal case. Please do not think about any Acas involvement you may have received prior to the ET claim being submitted.

ASK ALL

Q53. After [EMPLOYEE: you sent in your application/ EMPLOYER: {employee} put in their application] to the Employment Tribunal, did you receive a letter from Acas? [QALET]

Yes 1
No 2
Don't Know

ASK ALL

Q54. [IF YES AT QALET: [Apart from this letter of introduction,]²⁶ did you personally have any contact with an Acas conciliator, either by letter, fax, telephone, face-to-face or e-mail after you put in your application? [QACON]

Yes 1
No 2
Don't Know

IF DID NOT HAVE ANY PERSONAL CONTACT WITH ACAS AND HAD A DAY TO DAY REPRESENTATIVE [IF QACON <> 1 AND QHAND = 1] [QACON2]

Q55. Do you know if anyone acting on your behalf had any contact with an Acas Conciliator, either in writing, by telephone or in a face-to-face meeting? [QACON2]

Yes – someone was in contact with Acas 1
No – No contact with Acas 2
Don't Know

IF NO CONTACT WITH ACAS (PERSONAL OR BY REP) [(IF QHAND = 1 AND QACON= 2 AND ACON2 = 2) OR (IF QHAND <> 1 AND QACON = 2)]

Q56. Why did Acas not get involved in this case? [QNOACAS]
READ OUT

You did not want Acas involved 1
The other party did not want Acas involved 2
Neither side wanted Acas involved (single coded) 3
Other (specify) 4
Don't Know
Refused

²⁶ Text fill appear is QALET = yes.

IF HAD PERSONAL CONTACT WITH ACAS AND TOOK PART IN PCC [IF QACON = 1 AND PCCOUT = 2]

Q57. Was the Acas conciliator that gave assistance during the Employment Tribunal case the same conciliator who carried out the pre-claim conciliation? [QCSAME]

IF NECESSARY: Pre claim conciliation is the conciliation that Acas provided earlier in the case before the ET claim was submitted.

Yes – conciliator was the same 1
No – the conciliator was different 2
Don't Know

IF HAD PERSONAL CONTACT WITH ACAS [IF QACON = 1]

Q58. Thinking about this assistance, who made the first voice contact?

IF NECESSARY: That is, excluding the Acas letter between you and Acas?
[QCONFIR]
PROMPT TO PRECODES

The Acas Conciliator contacted me 1
[EMPLOYEE: I / EMPLOYER: the organisation] contacted the Acas Conciliator 2
Don't Know

IF HAD PERSONAL CONTACT WITH ACAS [IF QACON = 1]

Q59. As the case proceeded was an Acas conciliator available when needed?
[QANEED]
READ OUT

Always 1
Usually 2
Sometimes 3
Rarely 4
Never 5
SPONTANEOUS ONLY – NOT APPLICABLE, I NEVER TRIED TO MAKE CONTACT 6
Don't Know

IF HAD PERSONAL CONTACT WITH ACAS [IF QACON = 1]

Q60. Did you feel you had enough contact with the conciliator? [QAENO]

Yes 1
No 2
Don't Know

IF HAD PERSONAL CONTACT WITH ACAS [IF QACON = 1]

Q61. How would you rate the Acas conciliator at outlining the law as it applied to the case? Was he/she... [QLAW]

READ OUT

Very good 1
Fairly Good 2
Neither good nor poor 3
Fairly Poor 4
Very poor 5
Did not outline the law as it applied to your case 6

IF HAD PERSONAL CONTACT WITH ACAS [IF QACON = 1]

Q62. How would you rate the Acas conciliator in terms of explaining the Employment Tribunal procedures? Was he/she... [QEXP]

Very good 1
Fairly Good 2
Neither good nor poor 3
Fairly Poor 4
Very poor 5
Did not explain the Employment Tribunal procedures 6

IF HAD PERSONAL CONTACT WITH ACAS [IF QACON = 1]

Q63. How would you rate the Acas conciliator in terms of relaying proposals and offers to and from [EMPLOYEE: {employer} / EMPLOYER: {employee}]'s side? Was he/she... [QRELAY]

Very good 1
Fairly Good 2
Neither good nor poor 3
Fairly Poor 4
Very poor 5
Did not relay proposals and offers 6

IF HAD PERSONAL CONTACT WITH ACAS [IF QACON = 1]

Q64. How would you rate the Acas conciliator at helping you understand the strengths and weaknesses of your case? Was he/she... [QSTREN]

Very good 1
Fairly Good 2
Neither good nor poor 3
Fairly Poor 4
Very poor 5
Did not explain the strengths and weaknesses of your case 6

IF HAD PERSONAL CONTACT WITH ACAS [IF QACON = 1]

Q65. How good was the Acas conciliator at helping you to consider the pros and cons of settling the case without going to a full tribunal hearing? Was he/she... [QPROS]

- Very good 1
- Fairly Good 2
- Neither good nor poor 3
- Fairly Poor 4
- Very poor 5
- Did not explain the pros and cons of settling the case without going to a full tribunal hearing 6

IF HAD PERSONAL CONTACT WITH ACAS [IF QACON = 1]

Q66. And could you now tell me, to what extent do you agree or disagree that the Acas Conciliator...? [QQUAL]

(Repeat for each of the following statements)

- Was knowledgeable
- Took your side
- Took the other party's side

READ OUT

- Strongly agree 1
- Tend to agree 2
- Neither agree nor disagree 3
- Tend to disagree 4
- Strongly disagree 5
- Don't know

IF HAD PERSONAL CONTACT WITH ACAS [IF QACON = 1]

Q67. Thinking about the influence of the Acas Conciliator, could you tell me which of the follow applies? Do you think they [QUAL2]

- Tried too hard to influence you to settle the case 1
- Didn't try hard enough to influence you to settle the case 2
- Or did they help to make your decision without undue influence 3
- Don't know

IF HAD PERSONAL CONTACT WITH ACAS [IF QACON = 1]

Q68. To what extent do you agree or disagree that the Acas Conciliator...?
[QUAL3]

(Repeat for each of the following statements)

- Helped move parties closer towards resolving the case
- Helped speed up the resolution of the case *[will only appear if ET case is settled]*
- Was a factor in the decision to resolve the case *[will only appear if ET case is settled]*

READ OUT

Strongly agree 1
Tend to agree 2
Neither agree nor disagree 3
Tend to disagree 4
Strongly disagree 5
Not applicable 6
Don't know

IF EMPLOYEE AND ET CASE WENT TO HEARING (IF EMPLOYEE AND QCHEAR = 1
OR QCOOUT = 3 OR QCOOUT = 4 OR QCHEARC = 1)

Q69. You mentioned earlier that your case went to an Employment Tribunal hearing. Could you tell me if any of the following reasons apply to why the case was not settled? [QBSET1]

READ OUT

Acas did not contact me to talk about settling 1
I talked to Acas about settling but I did not hear from them further 2
I was not willing to negotiate because I wanted my case to be heard by the tribunal 3
I was not willing to negotiate because my case was too strong to compromise 4
{Employer} was not willing to negotiate 5
{employer} made an offer of settlement which was less than I would accept 6
Negotiations were in progress, but we were unable to reach agreement before the hearing 7
Other (specify)
None of these

IF EMPLOYER AND ET CASE WENT TO HEARING (IF EMPLOYER AND QEHEAR = 1
OR QEOOUT = 3 OR QEOOUT = 4 OR QEHEARC = 1)

Q70. You mentioned earlier that your case went to an Employment Tribunal hearing. Could you tell me if any of the following reasons apply to why the case was not settled? [QBSET2]

READ OUT

Acas did not contact us to talk about settling 1

We talked to Acas about settling but we did not hear from them further 2

We were not willing to negotiate because we never settle employment tribunal claims 3

We were not willing to negotiate because we believed we had not done anything wrong 4

{ Employee } was not willing to negotiate 5

We offered a settlement but { employee } was not willing to accept 6

Negotiations were in progress, but we were unable to reach agreement before the hearing 7

Our financial position precluded any offer acceptable to the claimant 8

Our insurers were not willing to settle the claim 9

Other (specify)

None of these

SECTION G - TIME SPENT ON CASE

Time spent by employer respondents

IF EMPLOYER:

I'd like to ask you how much time staff in the organisation spent on this Employment Tribunal case, from the time you received the Notification (ET3) until the case finished.

IF NECESSARY: Please do not include any time you may have spent prior to the Employment Tribunal claim being submitted.

IF EMPLOYER:

Q71. In total, how many people were involved in the case once the ET claim was submitted? Please include yourself, other directors and senior managers and any other staff. Please only include staff in the organisation. Do not include any time spent by representatives or advisers who may have helped with the case. [QSTAFF]

ENTER NUMBER OF PEOPLE

NUMERIC 1-20

Don't Know

IF ONLY ONE PERSON SPENT TIME ON CASE AT QSTAFF [QSTAFF = 1]

Q72. INTERVIEWER CODE WHETHER THIS PERSON WHO SPENT TIME IS THE RESPONDENT. ASK IF UNSURE [QSTAFF2]

Respondent spent time on case 1

Other staff member spent time on case 2

IF ONLY ONE PERSON SPENT TIME ON CASE AT QSTAFF [QSTAFF = 1]

Q73. And how much time in total did [you/ this person]²⁷ spend on the ET case? [QPERST]

ENTER TIME IN HOURS OR DAYS. 1 DAY = 8 HOURS.

ENTER TIME IN HOURS

ENTER TIME IN DAYS

Don't Know

IF ONLY ONE PERSON SPENT TIME ON CASE AT QSTAFF [QSTAFF = 1]

Q74. Can I just check, [would you classify yourself as / was this person] a Director or Senior Manager within the organisation? [QPERSM]

Yes 1

No 2

Don't Know

²⁷ Text fill dependent on answer at QSTAFF2. Remaining text fills in this section are set in the same way.

IF MORE THAN ONE PERSON SPENT TIME ON CASE AT QSTAFF [QSTAFF > 1]
Q75. And how much time in total did you spend on the case? [QRESPT]

ENTER TIME IN HOURS OR DAYS. 1 DAY = 8 HOURS.

SPENT NO TIME
ENTER TIME IN HOURS
ENTER TIME IN DAYS
Don't Know

IF MORE THAN ONE PERSON SPENT TIME ON CASE AT QSTAFF [QSTAFF > 1]
Q76. E14. Can I just check, would you classify yourself as a Director or
Senior Manager within the organisation? [QRESPM]

Yes 1
No 2
Don't Know

IF MORE THAN ONE PERSON SPENT TIME ON CASE AT QSTAFF [QSTAFF > 1]
Now thinking of the different staff involved.....

IF MORE THAN ONE PERSON SPENT TIME ON CASE AT QSTAFF [QSTAFF > 1]
Q77. [Apart from yourself,]²⁸ How much time in total did Directors and
Senior management spend on this case? [TMAN]

ENTER TIME IN HOURS OR DAYS. 1 DAY = 8 HOURS.

SPENT NO TIME
ENTER TIME IN HOURS
ENTER TIME IN DAYS
Don't Know

IF MORE THAN ONE PERSON SPENT TIME ON CASE AT QSTAFF [QSTAFF > 1]
Q78. How much time in total did other staff spend on this case? [QTOTH]

ENTER TIME IN HOURS OR DAYS. 1 DAY = 8 HOURS.

SPENT NO TIME
ENTER TIME IN HOURS
ENTER TIME IN DAYS
Don't Know

²⁸ Text fill will only appear if QRESPM = 1.

IF MORE THAN ONE PERSON SPENT TIME ON CASE AT QSTAFF [QSTAFF > 1]
Q79. Thinking about the time spent, by all people at the organisation including yourself, can I just check the following is correct: [QTCHK]

INTERVIEWER: SELECT ANY THAT ARE INCORRECT AND RE-ENTER NEW TOTAL. IF ALL CORRECT, CODE "ALL INFORMATION CORRECT".

[IF DAYS/HRS MENTIONED AT QRESPT] You spent [DAYS/HOURS] 1
[IF DAYS/HRS MENTIONED AT QTMAN] Directors and Senior Management spent [INSERT DAYS/HOURS] 2
[IF DAYS/HRS MENTIONED AT QTOTH] Other staff spent [INSERT DAYS/HOURS] 3
All information correct (single coded) 4

IF EMPLOYER AND HAD PERSONAL CONTACT WITH ACAS [IF EMPLOYER AND QACON = 1]

Q80. Did the Acas conciliator provide you with any information or advice which you believe will help you avoid having to deal with another case of this type in the future?

Yes 1
No 2
Don't know

Time spent by employee respondents

IF EMPLOYEE

I'd like to ask you how much time you spent on the case, from the time you started to complete the Employment Tribunal application form to when the Employment Tribunal case finished. Please do not include any time you may have spent before you completed and submitted the Employment Tribunal application form.

Q81. How much time would you estimate you spent on the case? Please include time spent travelling, at the hearings, on the telephone or writing letters.

PROMPT FOR THE TOTAL TIME THE RESPONDENT ACTUALLY SPENT ON THE CASE, NOT THE TOTAL LENGTH/DURATION OF THE CASE.

ENTER TIME IN HOURS
ENTER TIME IN DAYS
Don't Know

SECTION H: SATISFACTION

ASK ALL

Q82. Putting Acas' service to one side and focusing on the Employment Tribunal outcome, how satisfied or dissatisfied were you with the outcome? [QSAT3]

READ OUT

INTERVIEWER: THIS IS A QUESTION ON OUTCOME AND NOT SERVICE

- Extremely satisfied 1
- Very satisfied 2
- Satisfied 3
- Neither satisfied nor dissatisfied 4
- Dissatisfied 5
- Very dissatisfied 6
- Extremely dissatisfied 7
- Don't know

IF HAD PERSONAL CONTACT WITH ACAS [IF QACON = 1]

Q83. Thinking about the process involved, and disregarding the actual outcome of your dispute, how satisfied or dissatisfied are you with the service you received from Acas in this case? [Please only think about the involvement you had with Acas during the case itself and not any assistance received before the Employment Tribunal claim was actually submitted.]²⁹ [QSAT2]

READ OUT

INTERVIEWER: SATISFACTION ABOUT THE PRE CLAIM CONCILIATION SHOULD NOT BE INCLUDED.

- Extremely satisfied 1
- Very satisfied 2
- Satisfied 3
- Neither satisfied nor dissatisfied 4
- Dissatisfied 5
- Very dissatisfied 6
- Extremely dissatisfied 7
- Don't know

²⁹ Text fill will only appear if PCCOUT = 4 or 5.

IF HAD PERSONAL CONTACT WITH ACAS OR DAY TO DAY REPRESENTATIVE HAD CONTACT WITH ACAS [IF QACON = 1 OR QACON2 = 1]

Q84. [EMPLOYEE: If a friend or relative was involved in a similar dispute, would you advise them to make use of the services of Acas? / EMPLOYER: If your organisation got involved in a similar dispute with an employee in the future would you recommend involving Acas?] [QRECOM]

Definitely Yes 1
Probably Yes 2
Probably No 3
Definitely No 4
Don't Know

IF HAD PERSONAL CONTACT WITH ACAS OR DAY TO DAY REPRESENTATIVE HAD CONTACT WITH ACAS [IF QACON = 1 OR QACON2 = 1]

Q85. On reflection, do you think that Acas's involvement was helpful? [QHELP]

Yes 1
No 2
Don't Know

IF HAD NO CONTACT WITH ACAS (OR NOT KNOWN) [IF QACON <> 1 and QACON2 <> 1]

Q86. [EMPLOYEE: Thinking about your experience in this case, if a friend or relative was involved in a similar dispute, would you advise them to not use Acas, or would you recommend to them that they should make use of their services? / EMPLOYER: Thinking about your experience in this case, if your organisation got involved in a similar dispute with an employee in the future would you recommend not involving Acas, or would you suggest making use of their services?] [QRECOMX]

Would recommend NOT to use Acas 1
Would recommend to use Acas 2
Don't know

IF HAD NO CONTACT WITH ACAS (OR NOT KNOWN) [IF QACON <> 1 and QACON2 <> 1]

Q87. On reflection, would you have liked Acas to have been involved in this case?[QHELPX]

Yes 1
No 2
Don't Know

SECTION I – EMPLOYER DETAILS / EMPLOYEE PROFILE

ASK ALL

[EMPLOYEE: I'd now like to ask you some more classification questions about yourself and your employer at the time of the dispute. This helps us get a better understanding of the benefits of Acas conciliation. /

EMPLOYER: I'd now like to ask you some more classification questions about your organisation and {employee} at the time of the dispute. This helps us get a better understanding of the benefits of Acas conciliation.]

ASK ALL

Q88. Was [EMPLOYEE: {employer} / EMPLOYER: Is your organisation] a private sector organisation, a public sector body or a non-profit or voluntary organisation? [QSEC]

Private sector 1

Public sector 2

Non-profit / voluntary sector 3

Don't know

ASK ALL

Q89. [EMPLOYEE: At the time you received assistance from Acas did {employer} have a single workplace in the UK or more than one workplace in the UK? / EMPLOYER: Does the organisation have a single workplace in the UK or more than one workplace in the UK?] [QWPNO]

Single workplace in UK 1

More than one workplace in UK 2

Don't know

{ALL}

Q90. [EMPLOYEE: To the best of your knowledge how many people were working at or from the workplace you [were at / were applying to]

EMPLOYER: To the best of your knowledge how many people were working at or from the workplace {employer} [worked at / was applying to]? [QPEOPLE]

INTERVIEWER: PROBE FOR BEST GUESS ON BELOW 25 OR BELOW 50 WORKERS.

IF RESPONDENT / EMPLOYEE DID NOT WORK FROM ONE MAIN SITE THEN PROBE FOR THE NUMBER OF PEOPLE WORKING AT THE SITE THE RESPONDENT / EMPLOYEE MAINLY REPORTED TO.

1-9 1

10-19 2

20-24 3

25-49 4

50-99 5

100-249 6

250-499 7

500+ 8

Don't know but less than 25 9

Don't know but between 25 and 49 10

Don't know but 50 or more 11

IF EMPLOYER

Q91. And how many people worked for the whole organisation in the UK?
Please include all contracted, non-contracted, agency, freelance and temporary workers. [QPEOPL2]

INTERVIEWER: PROBE FOR BEST GUESS ON BELOW 25 OR BELOW 50 WORKERS

1-9 1
10-19 2
20-24 3
25-49 4
50-99 5
100-249 6
250-499 7
500+ 8
Don't know but less than 25 9
Don't know but between 25 and 49 10
Don't know but 50 or more 11

IF EMPLOYER

Q92. Does your organisation have an internal Human Resources or Personnel Department that deals with personnel issues? [QINHR]

Yes 1
No 2
Don't Know

IF EMPLOYER

Q93. Does the organisation have an internal legal department that deals with any personnel or employment issues, for example relating to employment tribunal applications? [QINLEG]

Yes 1
No 2
Don't Know

IF EMPLOYER

Q94. Is the organisation a member of an Employer's or Trade Association which gives advice on personnel or employment relations matters? [QTAMEM]

Yes 1
No 2
Don't Know

ASK ALL

Q95. [EMPLOYEE: What was [your job title/ the title of the job you were applying for], that is the title of the job related to the workplace problem that Acas assisted with? /

EMPLOYER: What was the name or title of the job {employee} [had / applied to do], that is the job related to the employment dispute?] [QJOBT]

OPEN ENDED

Don't Know

CURRENT AND FORMER WORKERS ONLY at QSTATUS [IF QSTATUS = 1]

Q96. [EMPLOYER: Did you have any managerial duties, or were you supervising any other employees? /

EMPLOYEE: Did {employee} have any managerial duties, or was he/she supervising any other employees? [QMANX]

CODE ONE ONLY

Manager 1

Foreman/Supervisor 2

No 3

Don't Know

IF EMPLOYEE AND WORKED FOR EMPLOYER AT QSTATUS [IF EMPLOYEE AND QSTATUS = 1]

Q97. At the time of the dispute were you a member of a trade union or staff association? [QTUM]

Yes 1

No 2

Don't Know

IF FORMER WORKER AT QNOW [QNOW = 2]

Q98. [EMPLOYEE: Did you stop working for {employer} before or after you submitted the Employment Tribunal claim? /

EMPLOYER: Did {employee} stop working for {employer} before or after they submitted the Employment Tribunal claim? [QENDW]

Before Employment Tribunal claim was submitted 1

After employment tribunal claim was submitted 2

Don't Know

SECTION J – EMPLOYEE DEMOGRAPHICS

ASK ALL

Next a few questions about {EMPLOYEE: yourself} / EMPLOYER: {employee}

ASK ALL

Q99. [EMPLOYEE: ASK OR RECORD GENDER

Are you... /

EMPLOYER: Was {employee}...] READ OUT [QGEN]

Male 1

Female 2

Refused

ASK ALL

Q100. [EMPLOYEE: Could you tell me your age last birthday? /

EMPLOYER: To the best of your knowledge how old is {employee}? [QAGE]

RECORD AGE

ENTER NUMBER

Don't know

Refused

IF REFUSED OR DID NOT KNOW AGE AT QAGE [IF AGE = DK OR REF]

Q101. [EMPLOYEE: Can you please tell me in which age group you would place yourself? /

EMPLOYER: Can you please tell me in what age group {employee} is?]

[QAGEB]

READ OUT

Under 20 1

20 to 24 2

25 to 34 3

35 to 44 4

45 to 54 5

55 to 64 6

65 and over 7

Don't know

Refused

IF EMPLOYEE

Q102. At the time you applied for the Employment Tribunal, did you have any longstanding physical or mental impairment, illness or disability? By longstanding I mean something that had troubled you over a period of at least 12 months or that is likely to affect you over a period of 12 months.

[QDIS]

Yes 1

No 2

Don't Know

Refused

IF DOES HAVE A IMPAIRMENT, ILLNESS OR DISABILITY

Q103. At the time you made your application did this impairment, illness or disability limit your activities in any way? [QDISL]

- Yes 1
- No 2
- Don't Know
- Refused

IF EMPLOYEE

Q104. To which of the following groups do you consider you belong? [QETH]
READ OUT

- White 1
- Black 2
- Asian 3
- Mixed ethnic group 4
- Other (specify) 5
- Don't Know
- Refused

SECTION K – FOLLOW UP

ASK ALL

Thank you for your help and assistance in completing this survey. As I mentioned earlier everything that you have said will be treated in the strictest confidence, and no organisations or individuals will be identifiable in the results of the survey.

ASK ALL

Q105. It is possible that we may want to contact you again for additional information. Would you be willing to be contacted again by TNS-BMRB in relation to this survey? [QRECON1]

Yes 1
No 2

IF AGREED TO BE RE-CONTACTED BY TNS-BMRB

Q106. It is possible that Acas may undertake some further research to follow up on particular issues arising from this survey. Would you be willing to be re-contacted by Acas for this purpose? Acas will use your personal data for research purposes only. [QRECON2]

Yes 1
No 2

IF AGREED TO BE RE-CONTACTED BY TNS-BMRB AND/OR ACAS
CONFIRM RESPONDENT NAME AND CONTACT DETAILS

APPENDIX 2 – Topic Guide: Claimant and Employer Depth Interviews

Acas pre-claim conciliation and Employment Tribunals Topic Guide

Employees and employers – depth interviews

- Show card
- A3 paper and pens for journey planner
- PCC booklet (if you have one) to flash rather than giving respondent to read if you think this will be helpful

Aims

- To explore the progression of a dispute through to its conclusion
- To explore reasons for choosing pre-claim Conciliation
- To identify the barriers to a successful resolution of a dispute via PCC
- To investigate the factors that lead to ET claims
- To explore decision making process and choices regarding Individual Conciliation (IC)
- To identify which factors lead to different Employment Tribunal outcomes (Acas settled; withdrawn; privately settled; going to hearing)
- To understand which conciliation skills or behaviours lead to successful resolution of cases at IC and the factors that contributed to this
- To explore whether anything could have been done to settle the case earlier
- To identify ways in which the PCC service could be enhanced or improved

Introductions

- About TNS-BMRB – independent research agency who carry out research for government departments and bodies, as well as national charities
- Research being conducted on behalf of Acas
- Topic – why some cases go through Pre-claim conciliation continue on to Employment Tribunal
- Following MRS guidelines – recording, confidentiality
- Length of interview: 1 hour
- Reassurances – nothing will be attributable to named individuals / organisations

The context (5 minutes)

- About the organisation/company [name organisation] involved in the dispute
 - What does the organisation make or do
 - Probe for whether private, public or voluntary sector
 - Size of the organisation/company – about how many employees overall, how many at employee's workplace
 - Probe for how structured eg one location, branches, regional offices, international

- How is HR handled in the organisation, eg internal HR department, external person/'company handles HR, legal department
- About interviewee
 - Their role in [name organisation] around the time of the dispute
 - Length of time in organisation and in that role
 - Describe their responsibilities
 - Was there a trade union or other employee representative arrangement at the time of the dispute
 - Employee member of Trade Union?
 - If interviewing employee:
 - Age
 - Ethnicity
- Working relationships – how would they describe these around the time of the dispute

Overview of the case (10 minutes)

- What was the problem/dispute (spontaneous description), then probe if necessary from Showcard1 (there may be more than one)
 - Showcard1: unfair dismissal, workplace discrimination, redundancy payments or selection procedures, deductions from wages or unpaid notice / holiday pay, rights to time off or flexible working, equal pay
- When did it happen/start – over what time period (one-off or continuous problem)

NOTE TO RESEARCHER: CREATE A JOURNEY PLANNER WITH INTERVIEWEE TO MAP OUT TIME-SPAN AND KEY EVENTS

- Explain helpful to get a brief overview of the case, use timeline sheet to identify progression of the dispute over time
 - What the dispute was about, how it was handled
 - How and when Acas became involved
 - Pre-claim conciliation (PCC) – what happened / how it went, who was involved
 - Submission of the claim (ET1 form) from employee for Employment Tribunal
 - Response from employer (ET3 form)
 - Individual conciliation (IC) – what happened / how it went, who was involved
 - Was the dispute resolved – in what way
 - Is employee still with the employer
 - If yes, explore whether in same job with same responsibilities, working with same people
 - If no, when and why did employee leave the employer – pinpoint this in the timeline and remember to explore in more depth at relevant stage in the process
- Who was involved (get an indication of different people, and at what points in process, for following up later in the interview)

Period before contact with Acas conciliator (very briefly)

- What happened when the problem first occurred
 - Who did the employee speak to in the organisation initially (eg colleague, HR, line manager, probe for others)

- Did employee speak to anyone else about the problem (including trade union, solicitor etc)
- Who was involved from employer side at this stage
- Was there an informal attempt to resolve the problem
- Was there a formal grievance process

Initial contact with Acas

- Awareness of Acas – how did they hear about Acas, how was it viewed (image)
- What did they know about Acas – what the organisation does
- Explain now want to explore their initial contact with Acas
- Who contacted Acas first (employee or employer) – how did Acas become involved in the case
 - If interviewee contacted Acas first: clarify if this was the Acas helpline and then explore
 - Why they contacted Acas
 - What did they expect from Acas
 - What was discussed
 - How was pre-claim conciliation described – explore initial reactions to helpline advisor’s description, probe for
 - Whether PCC seemed suitable for them
 - What PCC would involve – what were they expecting to happen
- Thinking back, what were you expecting to happen (process and outcome)
 - ... also hoping would happen
- At this early stage, what did they envisage Acas’ role to be

Experience of pre-claim conciliation

- NOTE TO RESEARCHER: FLESH OUT TIMELINE SHEET WITH KEY ISSUES AS YOU GO ALONG
- What happened when they first spoke to the (PCC) conciliator
 - What was discussed
 - Did they explain the PCC process – how was it described
 - Explore thoughts on the service at this point, particularly whether seemed suitable to them
 - If contacted helpline: did view / understanding change when conciliator explained PCC
 - If did not contact Acas first about case (Note to researcher: this is most likely to be the employer/’other party’):
 - Understanding of PCC
 - Views of PCC – what did they expect
- Ask all: Why did they choose to use pre-claim conciliation, gather spontaneous reactions and then probe for:
 - Minimise stress (concerns over emotional side of submitting a claim to a Tribunal)
 - Strength of the case
 - Time burden involved in taking case to a Tribunal
 - Save money (eg costs of being represented at a Tribunal)
 - Prospect of a quick solution
 - Being in control of the decision
 - Being able to shape / resolve the dispute and have possibility of a decision that suits them
 - Avoid formality (and possible discomfort) of a Tribunal hearing
 - Avoid permanent breakdown between employer and employee

- Choosing PCC - explore decision-making – quick ('on the spot') or considered decision, did they take advice, gather information, weigh up benefits/drawbacks, did they feel they had a choice
- Contact with the pre-claim conciliator
 - Types of contact, prompts: telephone, face-to-face, email, other
 - Any preferences for type of contact
 - How often did they have contact with conciliator
 - Views on availability of conciliator (could they speak to the conciliator when they needed to)
 - Views on frequency of contact (would they have liked more or less contact, or about right) – how proactive was the conciliator
 - Views on time conciliator spent on the case, probe for sense of getting right amount of time spent on each phone call/contact
 - Probe for issues discussed at PCC stage (identifying how the case progressed) – using timeline sheet as appropriate
 - Opportunities to ask questions / explore fears or concerns
 - Probe for questions they asked
 - Probe for fears / concerns they had and whether explored with pre-claim conciliator
 - Understanding / views of how the case was progressing and how the other party was reacting to the PCC process (eg suggestions made by the conciliator for resolving the dispute)
- Did the nature of the dispute change at this time (ie other issues arose, such as, discrimination, loss of wages added to original case) – if yes, how were other issues identified and by whom
- How did the pre-claim conciliator come across, probe for
 - Neutrality – did they ever seem to be on one side or the other
 - Fairness to both parties
 - Knowledge – outlining the law, explaining the procedure
 - Trust – did they trust the conciliator and did they trust information they provided
 - Communication skills – relaying proposals, helping you to understand strengths and weaknesses of the case, thinking through the options, considering pros and cons of settling
 - Listening skills
 - Understanding – of the case
 - Empathy towards those involved
- Outcome of PCC
 - Explore why the case was not resolved through pre-claim conciliation, gather spontaneous views and then probe for
 - Ran out of time
 - Would having more time have made a difference in their view (how much time?)
 - Lack of progress
 - Unwillingness of employee or employer to resolve case
 - Approach of the conciliator
 - Any other reasons
 - Did the employer and employee resolve or come closer to agreeing any issues

Progression of the case after PCC - submitting an ET claim

- Did anything happen after PCC but before ET claim submitted
 - For example, employee left employer
- How long after PCC was the Employment Tribunal claim (ET1 form) submitted by the employee
- If employee interview:
 - Why did they decide to make an Employment Tribunal claim
 - Did they appoint a representative
 - What prompted this, who were they (eg Trade Union, lawyer, CAB, friend, family etc), and what advice / support did representative give, did they pay representative
 - Level of contact rep had with Acas and then, in turn, with employee – did they feel informed on case progression, did they feel 'in control' of the case
 - Did they take advice from others
 - Did the case change at this point (ie other issues added)
 - What were their expectations of the process
 - What were they hoping to achieve (ie outcome they wanted)
 - Examples might include reinstatement, money, a reference, an apology, letter of explanation, legal fees paid, proving case, justice and so on
 - How did the employer respond to the claim
- If employer interview:
 - Views on receiving copy of the ET1 and the employee's decision to go to Employment Tribunal
 - Did they feel the dispute had changed from the original grounds by this point (ie different from the focus at the PCC stage)
- Explore contact with Acas after claim submitted
- Did they accept conciliation at this stage
 - Explore why they did or did not want to use conciliation service at this point
 - Was it the same or different conciliator to one involved at PCC stage – probe to see if this affected their decision to accept or not accept conciliation
 - If accepted conciliation:
 - How did the conciliation process work at the Employment Tribunal stage
 - Probe for similarities / differences with PCC conciliation
 - How did the conciliator come across
 - Views on their input into the case (exploring issues of neutrality, skills, fairness, communication, empathy, trust and anything else interviewee wishes to raise)

Outcome of the case

- What happened in the end, prompt for
 - Case went to hearing – what was the outcome (in favour of employer or employee)
 - Employee withdrew, probe for reasons
 - Acas brokered a settlement between the employer and employee
 - How much of a factor was Acas (involvement) in settling the dispute
 - Reached a private settlement (Acas not involved)

- Did the prior involvement of Acas influence the settlement in any way
- Views on the outcome of the case
 - Elements satisfied / not satisfied with
 - What do they see as key reasons(s) for outcome – which factors were influential
- Could the case have been resolved differently – what could have made a difference
- Could the case have been resolved / settled earlier – at what point
- Looking back, could Acas have done anything else to resolve the case earlier
- Probe for how things could have been different at the PCC stage – could an ET claim have been avoided
- Since the case finished: explore affect of the outcome on the employee and the employer (eg workplace changes, affect on obtaining other work, relationships at work)
- Ask employers whether Acas advised about avoiding future disputes and their views on this

Views of the Acas service

- Spontaneous views of the Acas service
- What aspects of Acas conciliation worked well
- What could be improved / done differently
- If there was a need, would they use Acas in the future
- Would they recommend conciliation to those involved in an employment dispute (for example, friends or family)
 - Probe for whether they would recommend pre-claim conciliation and/or Individual Conciliation (post-claim)
 - Explore reasons for recommending / not recommending

Summing up

- Review the timeline sheet – ensure that it accurately captures the case from interviewee’s perspective
- Reiterate, that the research is about shaping Acas services in the future, is there anything else they would like to add about the service provided by Acas
- Does interviewee have any questions for the researcher
- THANK AND CLOSE.

CARD 1

What was the nature of the dispute?

- unfair dismissal
- workplace discrimination
- redundancy payments or selection procedures
- deductions from wages or unpaid notice
- holiday pay
- rights to time off or flexible working
- equal pay
- anything else?

APPENDIX 3 – Topic Guide: Acas Conciliators Depth Interviews

Acas pre-claim conciliation and Employment Tribunals Topic Guide

Acas conciliators – case study depth interviews

Aims

- To explore the progression of a dispute through to its conclusion
- To identify the barriers to a successful resolution of a dispute via PCC
- To investigate the factors that lead to Employment Tribunal (ET) claims
- To explore decision making process and choices regarding Individual Conciliation (IC)
- To identify which factors lead to different Employment Tribunal outcomes (Acas settled; withdrawn; privately settled; going to hearing)
- To understand which conciliation skills or behaviours lead to successful resolution of cases at IC and the factors that contributed to this
- To understand which conciliation skills or behaviours lead to successful resolution
 - Where settled at IC, to identify which factors contributed to this and whether anything could have been done to settle the case earlier

- To explore whether anything could have been done to settle the case earlier
- To identify ways in which the PCC service could be enhanced or improved in preparation for Early Conciliation service

Introductions

- About TNS-BMRB – independent research agency who carry out research for government departments and bodies, as well as national charities
- Research being conducted on behalf of Acas
- Topic – why some cases go through Pre-claim conciliation continue on to Employment Tribunal
- Following MRS guidelines – recording, confidentiality
- Length of interview: 1 hour
- Reassurances – nothing will be attributable to named individuals

Warm-up

- Length of time in role; previous work; interests etc
- Describe a typical day:
- Describe their role:
- What are their responsibilities; which parts of their role do they see as most and least important
- Proportion of their work focused on PCC

The context (5 minutes)

- About the organisation/company [name organisation] involved in the dispute
 - What does the organisation make or do
 - Probe for whether private, public or voluntary sector
 - Size of the organisation/company – about how many employees overall, how many at employee's workplace
 - Probe for how structured eg one location, branches, regional offices, international
 - What was the role of the main contact (eg internal HR department, external person/'company handles HR, legal department)
- About the claimant
 - Their role in [name organisation] around the time of the dispute
 - Any other relevant background information about the claimant
conciliator recalls

Overview of the case (10 minutes)

- What was the problem/dispute – original jurisdiction
- When did it happen/start – over what time period (one-off or continuous problem)

NOTE TO RESEARCHER: CREATE A JOURNEY PLANNER WITH INTERVIEWEE TO MAP OUT TIME-SPAN AND KEY EVENTS

- Explain helpful to get a brief overview of the case, use timeline sheet to identify progression of the dispute over time
 - What the dispute was about, how it was handled
 - How and when Acas became involved
 - Pre-claim conciliation (PCC) – what happened / how it went, who was involved
 - Submission of the claim (ET1 form) from employee for Employment Tribunal
 - Response from employer (ET3 form)
 - Individual conciliation (IC) – what happened / how it went, who was involved
 - Was the dispute resolved – in what way
 - Is employee still with the employer
 - If yes, explore whether in same job with same responsibilities, working with same people
 - If no, when and why did employee leave the employer – pinpoint this in the timeline and remember to explore in more depth at relevant stage in the process
- Who was involved (get an indication of different people, and at what points in process, for following up later in the interview)

Initial contact with Acas

- Prior to contact with Acas: what happened when the problem first occurred
 - Was there an informal attempt to resolve the problem
 - Was there a formal grievance process
- Who contacted Acas first (employee or employer) – how did Acas become involved in the case

- Conciliator impressions of employee and employer expectations of Acas at the outset ... and of what PCC would involve / achieve for them.

Pre-claim conciliation

- NOTE TO RESEARCHER: FLESH OUT TIMELINE SHEET WITH KEY ISSUES AS YOU GO ALONG
- Which party contacted the helpline
- Employee
 - Did conciliator explain the PCC process to the employee – how was it described
 - As far as they were aware, did employee fully understand what would be involved
 - How did they react to idea of PCC and using the service
 - Did the employee express any concerns
 - Could any other information have been provided (eg by helpline)
- Employer
 - Did conciliator explain the PCC process to the employer – how was it described
 - As far as they were aware, did employer fully understand what would be involved
 - How did they react to idea of PCC and using the service
 - Did the employer express any concerns
 - Could any other information have been provided
- Does conciliator have a sense of why a) employee and b) employer chose to use PCC, explore which of the following seemed to be driving the use of the PCC service
 - Minimise stress (concerns over emotional side of submitting a claim to a Tribunal)
 - Strength of the case
 - Time burden involved in taking case to a Tribunal
 - Save money (eg costs of being represented at a Tribunal)
 - Prospect of a quick solution
 - Being in control of the decision
 - Being able to shape / resolve the dispute and have possibility of a decision that suits them
 - Avoid formality (and possible discomfort) of a Tribunal hearing
 - Avoid permanent breakdown between employer and employee
- Choosing PCC - explore decision-making for each party: quick ('on the spot') or considered decision
- Employer and employee contact with the pre-claim conciliator
 - Types of contact, prompts: telephone, face-to-face, email, other
 - Explore use of different types of contact and which conciliator felt worked best in this case
 - How often did employer and employee contact with conciliator
 - Was conciliator able to respond to each party as needed – in terms of
 - a) being available to respond to requests and
 - b) as often as each party seemed to want
 - How proactive was conciliator able to be in this case
 - Views on time conciliator spent on the case, probe for sense of getting right amount of time spent on each phone call/contact
 - Probe for issues discussed at PCC stage (identifying how the case progressed) – using timeline sheet as appropriate
 - Opportunities to ask questions / explore fears or concerns

- Probe for questions each party asked
 - Probe for fears / concerns they explored with pre-claim conciliator
- Understanding / views of how the case was progressing and how the other party was reacting to the PCC process (eg suggestions made by the conciliator for resolving the dispute)
- Did the nature of the dispute change at this time (ie other issues arose, such as, discrimination, loss of wages added to original case) – if yes, how were other issues identified and by whom
- How would the conciliator describe their relationship with the employee
- How would the conciliator describe their relationship with the employer
- Did each party fully understand / respect your role – being impartial
- Was conciliator able to communicate a sense of fairness to both parties
- Did they feel that both parties understood the law in relation to their case
- Were the employer and the employee clear about the procedure
- Trust – did they seem to trust the conciliator and did they trust information they provided
- How much time did they need to spend explaining different aspects of the case, probing for
 - relaying proposals
 - helping each party to understand strengths and weaknesses of the case
 - thinking through the options, considering pros and cons of settling
- Did conciliator feel they had all the information they needed to fully understand the case
 - Did anything emerge later that it would have been helpful to have known earlier on
- Did they feel any empathy towards the different parties involved in the case
- Outcome of PCC
 - Explore why the case was not resolved through pre-claim conciliation, gather spontaneous views and then probe for
 - Ran out of time
 - Would having more time have made a difference in their view (how much time?)
 - Lack of progress
 - Unwillingness of employee or employer to resolve case
 - Approach of the conciliator (eg time they could spend on the case)
 - Any other reasons
 - Did the employer and employee resolve or come closer to agreeing any issues

Progression of the case after PCC - submitting an ET claim

- Did anything happen after PCC but before ET claim submitted
 - For example, employee left employer
- How long after PCC was the Employment Tribunal claim (ET1 form) submitted by the employee
- Understanding of why employee decided to make Employment Tribunal claim
- Did employee appoint a representative
 - Who were they (eg Trade Union, lawyer, CAB, friend, family etc)
 - Level of contact rep had with Acas
 - Conciliator perceptions of employee representation on this case
 - Sense of employee being kept informed/involved in the case
- Did the case change at this point (ie other jurisdictions added)

- Was conciliator able to clarify outcome(s) employee wanted from ET
 - Examples might include reinstatement, money, a reference, an apology, letter of explanation, legal fees paid, proving case, justice and so on
- Perception of employer views on receiving copy of the ET1 and the employee's decision to go to Employment Tribunal
 - Did employer use a representative – who, perceptions of employer representation on the case (eg rep's approach, impact on the case)
- Explore contact with Acas after claim submitted
- Did the parties to the case accept conciliation (IC) at this stage
 - Explore why they did or did not want to use conciliation service at this point
 - Did conciliator continue to be involved in the case via IC
 - If yes and the parties accepted Individual Conciliation (or 'no' but feels able to comment):
 - How did the conciliation process work at the Employment Tribunal stage
 - Probe for similarities / differences with PCC conciliation
 - Did the relations between employer and employee change
 - Views on their input into the case (exploring issues of neutrality, skills, fairness, communication, empathy, trust and anything else interviewee wishes to raise)

Outcome of the case

- What happened in the end, prompt for
 - Case went to hearing – what was the outcome (in favour of employer or employee)
 - Employee withdrew, probe for reasons
 - Acas brokered a settlement between the employer and employee
 - How much of a factor was Acas (involvement) in settling the dispute
 - Any awareness that the parties reached a private settlement (Acas not involved)
 - Did the prior involvement of Acas influence the settlement in any way
- Views on the outcome of the case
 - Elements satisfied / not satisfied with
 - What do they see as key reasons(s) for outcome – which factors were influential
- Could the case have been resolved differently – what could have made a difference
- Could the case have been resolved / settled earlier – at what point
- Looking back, could Acas have done anything else to resolve the case earlier
- Probe for how things could have been different at the PCC stage – could an ET claim have been avoided
- Any awareness of what happened after the case
- Was the employer advised about avoiding future disputes

Views of the Acas service

- What aspects of Acas conciliation worked well
- What could be improved / done differently
- How did this case compare to other cases conciliator has been involved in
- Why do some PCC cases go on to Employment Tribunal (ET1) claims and not others
- Reflections on how IC only cases progress when compared to
 - Successful PCC cases
 - Unresolved PCC to ET cases
- Explore range of factors that can impact on resolution of a case
 - Time
 - For PCC: time limit on putting in ET claim
 - Personalities
 - Conciliator skills
 - Involvement of representatives
 - Any other factors
- Explore views on take up of IC
 - Do claimants / respondents using PCC seem more or less likely to take up IC
 - Similarly, do those not using PCC seem more or less likely to take up IC
- Thinking of cases where IC is taken up:
 - Does previous use of PCC have any impact
 - Are PCC to ET cases easier or more difficult to resolve
- Are there aspects of Individual Conciliation (IC) that could be incorporated into PCC
- Is there anything about PCC that could be refined or adapted to reduce the number of cases going on to an ET claim

Summing up

- Explore awareness, understanding and views of the planned Early Conciliation service
- Reiterate, that the research is about shaping Acas services in the future, is there anything else they would like to add about the service provided by Acas
- Does interviewee have any questions for the researcher
- THANK AND CLOSE.

APPENDIX 4 – Topic Guide: Acas Conciliator Group Discussions

Acas pre-claim conciliation and Employment Tribunals Topic Guide

Acas conciliators – group discussions

Aims

- To identify the barriers to a successful resolution of a dispute via PCC
- To investigate the factors that lead to ET claims
- To identify which factors lead to different Employment Tribunal outcomes (Acas settled; withdrawn; privately settled; going to hearing)
- To understand which conciliation skills or behaviours lead to successful resolution
 - Where settled at IC, to identify which factors contributed to this and whether anything could have been done to settle the case earlier
- To identify ways in which the PCC service could be enhanced or improved in preparation for Early Conciliation service

Introductions

- About TNS-BMRB – independent research agency
- Topic – why some cases that go through Pre-claim conciliation continue on to Employment Tribunal
- Following MRS guidelines – recording, confidentiality
- Length of discussion approx. 90 minutes
- Reassurances re. reporting – nothing will be attributable to named individuals

Warm-up

- Names; length of time in role; previous work; interests etc
- Describe a typical day:
- Describe their role:
- What are their responsibilities; which parts of their role do they see as most and least important
- Proportion of their work focused on PCC

Pre-claim conciliation

- Which types of people take up PCC
- Does PCC seem to work better for some groups than others, gather examples of where it works well/not well
 - Probe for views on how PCC works in relation to the different tracks
 - Fast
 - Standard
 - Open
 - Probe for views on how PCC works in relation to the different jurisdictions
 - Unfair dismissal
 - Redundancy
 - Discrimination
 - Pay / holiday
 - Others
- What do they see as a successful outcome for PCC
 - Provide examples of cases where it has gone really well
- What about cases where it hasn't gone so well – can they give examples of where conciliation could have been handled differently
- What do they see as the benefits and weaknesses of conciliation at PCC stage
 - Probe in detail and explore how issues can be used to inform development of Early Conciliation service
- What impact does the 3 month time limit have on cases where discussions are already underway (particularly interested in cases that ran out of time)
 - Gather views on time limits more generally and 1 month time limit proposed for Early Conciliation
- Have they observed differences when representatives are involved in a case – does this depend on the type of representative (types of professionals, friends/family)

PCC to Employment Tribunal claim

- Why do some PCC cases go on to Employment Tribunal (ET1) claims and not others – probe for as many types of cases and factors involved
 - Do they have a sense of any trends in relation to jurisdiction
 - Also multiple jurisdictions – when and how additional jurisdictions are added and the impact of this on case progression
 - ... and track (fast, standard and open)
- Explore views on take up of IC
 - Do claimants / respondents using PCC seem more or less likely to take up IC
 - Similarly, do those not using PCC seem more or less likely to take up IC
- Thinking of cases where IC is taken up:
 - Does previous use of PCC have any impact
 - Are PCC to ET cases easier or more difficult to resolve
- Are there aspects of Individual Conciliation (IC) that could be incorporated into PCC
- Is there anything about PCC that could be refined or adapted to reduce the number of cases going on to an ET claim

Individual conciliation without PCC

- Can they talk through some cases involving Individual Conciliation where there was no preceding PCC
- Reflections on how IC only cases progress when compared to
 - Successful PCC cases
 - Unresolved PCC to ET cases
- Explore range of factors that can impact on resolution of a case
 - Time
 - Personalities
 - Conciliator skills
 - Involvement of representatives
 - Any other factors

Case studies/scenario testing – conciliator skills

- Suggest break-out groups of 2-3 conciliators per group
- Each break-out group member
 - To identify a difficult/challenging case to discuss
- Task is to consider how they respond to each case, using post-it notes to identify
 - Factors most important to the case
 - Conciliator behaviours that would be likely to contribute to a successful resolution at PCC
- Each break-out group to report back on their 3 case studies/scenarios and others encouraged to comment after each scenario is presented
 - Gather spontaneous comments and
 - Explore learning for development of Early Conciliation service
- To reflect on the discussion and consider which conciliator skills are most important at PCC

Summing up

- Explore awareness, understanding and views of the planned Early Conciliation service
- Go round group identifying each individual's 'top 3 learning's' from the discussion to aid development of the Early Conciliation service
- Anything else participants would like to add
- Any questions for the researcher

THANK AND CLOSE.

