

Research Paper

Evaluation of the Acas pilot of mediation, appeals and employment law visit services to small firms

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1. Executive Summary

Introduction

In September 2003 Acas took forward the recommendations made by the Employment Tribunal and Better Regulations Taskforces that Acas should pilot mediations, appeals and employment law advice visits (ELVs) free of charge to businesses with less than 50 employees. The pilot ran until September 2004.

Mediation fell into two categories – one in which it was possible to provide formal recommendation (directive mediation) and one which facilitated agreements between the parties (facilitative mediation). Acas staff delivered the latter and Employment Law Visits (ELVs) and members of the Acas panel of independent persons delivered the directive mediations and appeals.

To limit the costs, the pilot was restricted to two geographic locations initially. These were Yorkshire and Humberside and London, which were chosen as they had a vibrant community of small businesses and a high density of ethnic minority groups.

The pilot was publicised on the Acas website, via the Acas helpline and in a publicity campaign run in partnership with the Regional Development Agency in Yorkshire and Humberside and with the Chamber of Commerce in London.

A multi method approach was taken to evaluate the pilot:

- Two waves of telephone interviews with employers taking up ELVs. One was conducted immediately after the ELV and another three months later to assess short and medium term impacts of the intervention.
- In depth interviews with parties participating in mediations were carried out three months after the intervention.
- Monitoring data was collected throughout the pilot to enable a cost benefit analysis of providing the service.

In all there were 160 interventions provided under the pilot. Twenty four were mediations (seven with formal recommendations and 17 were facilitated agreement), 109 were employment law visits, 25 were in depth employment law advice provided over the phone and two were appeals

Results from the evaluation of Employment Law Visits

The majority of employers wanted help with either implementing (39 per cent) or developing (29 per cent) procedures and information or advice about employment law regulations (29 per cent). A third of employers also wanted advice about a problem they were experiencing with individual employees.

The majority of employers reported that they had received all the help and advice they needed. Eight in ten employers reported that the advice and information received was easy to understand and the vast majority of those requesting help with implementing or developing policies or procedures had either fully or partially implemented these policies or procedures three months after the ELV.

The majority of those wanting help or advice with individual problems with employees felt that the problem could have escalated and led to a tribunal; in the follow up survey the majority of employers reported that the information they had received had helped to prevent the dispute escalating and had helped them to avoid an employment tribunal application being made against them. These employers were more likely than those solely

wanting help with implementing policies or procedures or seeking information about employment regulations to report that employment relations had improved in the workplace since the ELV.

Just over half of the employers felt that the information received in face to face meetings could have been provided over the phone.

Results from in depth interviews with parties taking up mediation

In nearly all of the mediations some progress was made in bringing parties closer together and in reaching agreements. Some disputes were more appropriate to mediation than others, but it was found that even the most intractable, longstanding and deeply emotive disputes benefited from mediation.

In addition to resolving the dispute or improving the situation a wide range of benefits were reported by both employers and employees. For instance, employers reported that they had gained more confidence in their ability to manage conflict and to use their own internal workplace procedures. Employers also reported enormous savings in time and money as mediation led to quicker resolutions than internal discipline and grievance procedures and also reduced the costs of seeking external advice from employer associations and accountants. The majority of employers were also of the opinion that the mediation had helped to prevent employment tribunal applications.

Employees valued the opportunity to air their grievances in a non-confrontational and safe environment and felt that the employer valued them by providing the opportunity for mediation.

Many of the parties reported that they would use mediation should they face a similar situation in the future and employers said they would be willing to pay a fee for using mediation. Employers taking up mediation showed an appreciation of the cost of providing the service, and while they could not envisage meeting the full costs, they were prepared to pay up to £300 for mediations in the future.

Diversity

Over 75 percent of the employers and over half of employees taking up mediation were females. This is in direct contrast to the gender composition of applicants in employment tribunals, where around 60 per cent are males. The ethnic composition of the areas in which the pilot ran was reflected in the take up of mediation, with around a quarter of parties categorising themselves in an ethnic minority group.

Conclusion

The feedback from employers taking up ELVs and parties taking up mediation was very positive. The vast majority of parties taking up pilot interventions were highly satisfied with the service they received from Acas and reported a wide range of benefits, from the smooth running of the business to savings in costs of disputes (including the costs of employment tribunals and protracted internal procedures). Mediation worked well in nearly all disputes, including those which were highly complex and deeply entrenched. A significant minority of ELVs were used to address problems with individual employees and they were beneficial in terms of improving employment relations and prevention of employment tribunal applications.

1. Introduction

In 2002 The Better Regulation Task Force (BRTF) recommended that Acas should 'pilot the provision of free employment advice visits to employers of less than 50 employees' (*Employment Regulation: striking a balance* May 2002, p26) and a mediation service for businesses of the same size (IBID p28). The Employment Tribunal System Task Force (ETSTF) set out similar recommendations, in their report *Moving Forward* (2002), that research should be conducted by Acas to 'determine when it may be appropriate to use mediation in order to settle individual employment disputes and the types of cases that may benefit from this' (7.39). This report also recommended that Acas should pilot an arbitration service in individual employment rights disputes to be used before an application was made to an employment tribunal. The ETS Taskforce was interested in assessing whether mediation could effectively reduce the number of employment tribunal applications brought against small businesses each year. The Better Regulations Taskforce was interested in assessing whether employment advice visits and mediation could help increase performance in small businesses and would help to avoid the costs of employment tribunal applications. These objectives are also of interest to Acas, who were keen to take on the challenge of piloting this service, which also sits well with its commitment to improve organisations and working life through better employment relations. Acas are also keen to ensure that services are accessible to all members of the working population and that exclusions on the grounds of gender, race or disability are avoided at all costs. Acas continually evaluates its services and strives to explore ways of improving and tailoring them to meet the needs of its customers efficiently and effectively with the optimum use of public money.

1.1 Mediation within Acas

Acas is ideally placed to carry out research into the benefits of providing mediation in workplaces, as it has a long history of providing impartial third party help in employment disputes. As part of its statutory duty Acas offers conciliation in both collective trade disputes and in individual employment disputes which potentially or do lead to employment tribunal applications. Acas also offers an Arbitration service in collective trade disputes and in individual disputes involving claims of unfair dismissal or flexible working practices. The process of conciliating in collective disputes is very similar to that of mediation; a neutral third party works with employer and employee representatives to identify the problems at the centre of the dispute and to explore ways in which they can move forward towards a mutually acceptable solution. Initially, conciliators in collective disputes tend to work with each party separately on a one-to-one basis with the aim of bringing them together at some point thereafter. In individual employment rights disputes conciliation largely takes place over the telephone and usually uses a shuttle process, whereby the conciliator deals with the parties separately throughout the case, identifying and clarifying issues, exchanging information, exploring options and discussing the strengths and weaknesses of the case, with the aim of settling the dispute without recourse to a tribunal. Conciliators in both collective and individual disputes will act as devil's advocate, probing and challenging the views and positions of each side to test the strength and validity of their arguments. In both collective and individual conciliation the parties take part in conciliation on a voluntary basis, with no other commitment than an agreement to talk. In both types of dispute conciliation generally takes place once formal internal procedures have been exhausted.

Arbitration takes the form of a formal hearing, where each side puts their case before an independent arbitrator, who then considers the facts and makes a judgement about the outcome of the case. A prerequisite to arbitration in collective disputes is that both parties agree terms of reference and accept that the award will be binding. In arbitration in individual disputes the Terms of Reference are fixed and the final decision of the arbitrator is legally binding.

Between the years 2001 and 2004, Acas received on average 90,000 employment tribunal applications per annum and around 1,300 organisations in collective trade disputes asked Acas for help each year. Providing these services has given Acas staff a wealth of experience and knowledge of dispute resolution which places Acas in a strong position to pilot mediation.

1.2 The Pilot Provisions

Acas took forward the ETSTF and BRTF recommendations in September 2003. Acas funded the pilot with a budget of £100k to cover set-up, running and evaluation costs. The pilot has been evaluated in terms of the costs and benefits to employers, employees and the public purse. The evaluation has also aimed to make some assessment of the cost of rolling out this service on a national basis.

Acas piloted three types of intervention. These were:

A - Mediation service. In this service an impartial third party provided mediation in individual employment disputes in which the parties had not yet invoked formal procedures or had done so but agreed to put these into abeyance. A flexible approach was taken to the provision of mediation. It was anticipated that parties would require a wide spectrum of services; most parties taking up mediation would want help in identifying the issues and options for resolving their differences; in some the parties would want the mediator to make formal recommendations about the way forward; in others parties would prefer to reach their own mutually acceptable decision on how to improve the situation. Therefore mediations with recommendations and without recommendations were provided for. As the latter type of mediation did not conflict with Acas' statutory role of individual conciliation in employment tribunal claims, as recommendations were not required, it was carried out by Acas conciliators. Where formal options or formal recommendations were required by the parties, mediation was carried out by members of the Acas panel of independent persons.

Throughout the report mediations without recommendations will be referred to as 'facilitative mediation' and mediations with recommendations will be referred to as 'directive mediation'. Acas internal mediators (ie conciliators) will be referred to as Acas staff and members of the Acas panel of independent persons will be referred to as mediators.

B - Employment law advisory visits. This service was carried out by Acas staff. The purpose of this intervention was to give information on employment law and promote good practice in individual rights issues. These visits were also anticipated as a method for promoting the mediation service. Throughout the report employment law advisory visits will be referred to as ELVs.

C - An independent appeal service. This service was provided to hear an appeal against an employer's decision at the final stage of an internal discipline or grievance procedure. Where appeals were provided parties agreed the Terms of Reference in advance, setting out the issues in dispute and the hearing process and agreeing to accept the recommendations made by the mediator. Members of the Acas panel of independent persons heard appeals. As with directive mediations, this arrangement was made to remove the risk of compromising Acas' role in conciliating in employment tribunal applications.

1.3 Design of the Pilot

The pilot ran between October 2003 and September 2004. For both financial and ethical reasons (limiting cost of public spending) Acas decided to confine the pilot to two geographical areas: Yorkshire and Humberside and the East of London. This limited the cost of publicising the pilot, the cost of training and releasing Acas staff to provide the interventions and the cost of evaluating the pilot. These areas were also considered appropriate as they had a high volume of vibrant small businesses across the range of industry, including significant numbers of ethnic minority run businesses. The pilot aimed to examine diversity issues in providing services.

Another reason for limiting the scope of the pilot was that there was no way of accurately predicting what the likely take-up of the pilot provisions might be. This pilot was aimed at small firms, which are notably difficult to reach via any one marketing tool. Previous Acas research has shown that owners of small businesses are very pragmatic and reactive in their use of public services; small business owners tend to want an immediate response tailored to their specific problems. The pilot could therefore be used as a tool for gathering information about the likely take-up of the service.

1.4 Publicity and Promotion

➤ *Publicity*

Publicity plans were drawn up for each region in consultation with the Chambers of Commerce in London and Business Link in Yorkshire and Humberside. The campaigns comprised postcard mail-shots to small businesses in each area, articles in trade and professional journals, press coverage, presentations to business and professional organisations, and an Acas drafted information letter, supported by the Advice Services Alliance, was sent to Citizen Advice Bureaux in each area. An information leaflet was produced for potential clients and information was posted on the Acas website.

In addition, in March 2004 an organisation specialising in publicity and marketing to small businesses, Business Hotline Publications, were commissioned by Acas to boost the publicity campaign in London. Press articles were produced and mail shots were sent to small businesses.

➤ *Promotion by the Acas helpline*

Helpline officers in London and Leeds were fully briefed about the pilot and given guidance about identifying potential cases and referring employers to the pilot.

1.5 Evaluation

A multi-stranded approach was taken, using both quantitative and qualitative research methods. At the early stages the design of the evaluation was sufficiently flexible to allow for changes as the pilot evolved.

The main objectives of the evaluation were to collect data to:

- Assess the impact of mediation in preventing employment tribunal claims
- To assess what types of cases were suitable for mediation
- To assess whether mediation helped improve productivity
- To throw some light on what type of help employers required in ELVs
- To assess the costs and benefits of mediation and ELVs for employers, individuals and the public purse.
- To assess the accessibility of services to all minority groups

Methodology

➤ *Employment Law Visits*

As part of the pilot, each employer taking up an Employment Law Visit (ELV) was asked to take part in two telephone interviews with an independent research company, BMRB International, Social Research. The first interview aimed to collect data about the types of help employers wanted from Acas, to evaluate the ELV, to monitor the short term impact of the visit and to give a brief history of business performance. Employers were asked what type of help they expected from Acas, what the nature of the problems were that they required help with, such as help with implementing procedures, developing good workplace practices, or dealing with disputes with or between employees. Those requesting help with individual employees were asked if they wanted help to prevent a situation from escalating and if that situation could have led to an employment tribunal application being made against them. Employers were also asked about the state of their employment relations within the workplace and whether the help they received from Acas had improved the smooth running of their business.

Three months later employers were interviewed again to gather data about the longer term impact of the visit. They were asked whether they had implemented any of the workplace policies and procedures which were discussed at the ELV; had the advice they received helped them to prevent a situation escalating into a dispute and to avoid an employment tribunals; and to assess whether there had been any changes in business performance in terms of improved employment relations. Employers were also asked at this stage whether they felt the help they received could have been provided over the phone.

➤ *Evaluation of the Mediations*

A further study was commissioned to gather in depth qualitative data from employers and employees involved in mediations. The interviews aimed to collect information about what types of disputes were most suitable to mediation; what the impact of the mediation was for the parties involved; whether mediation was a suitable tool for resolving disputes and to assess the costs and benefits of mediation to the organisation. They were also aimed at assessing employers' willingness to pay for this service (for a full report see Seargeant (2005)).

In depth interviews were conducted with two members of Acas staff who had facilitated mediations and three focus groups were conducted with administrators, pilot coordinators, Acas staff and mediators from the Acas panel of independent persons. The findings from this research were used to contextualise the findings from the research with users of the service provided under the pilot and to inform policy and practice in providing Acas conciliation and mediation services.

➤ *Cost of delivering the service*

To assess the cost to Acas of providing mediations and ELVs, forms were designed to record all activities which Acas staff undertook in completing the provisions under the pilot. As stated above, directive mediation was provided by members of the Acas panel of independent persons and for a standard fixed fee. Acas incurs costs for administering the service. ORC International, an independent research organisation, was commissioned to analyse this data.

2 Evaluation Findings

2.1 Take up of the provisions under the Pilot

In all, 160 provisions were delivered under the pilot. The frequency of each provision overall and in each region is set out in Table A. It was originally envisaged that Acas staff would identify the need for mediations and appeals at ELVs. However, in practice, it was clear to the pilot coordinator when the employer initially contacted Acas for help under the pilot, what type of intervention was appropriate. At the close of the pilot a total of 109 ELVs and 26 mediations (including two appeals, seven 'Directive' mediations and 17 'Facilitative' mediations) had been completed. As part of the pilot it was suggested that a set-up meeting with all parties to mediations should take place prior to the mediation. This occurred in 18 of the 26 mediations. In 25 cases, all of the information and advice required by employers was supplied over the telephone.

Table A – Take up of the provisions under the pilot overall and in each region

	All cases	Yorkshire and Humberside	London
Employment Law Advice - Visit	109	71	38
Employment Law Advice - Telephone	25	17	8
Appeal	2		2
Directive mediation with a set-up meeting	7	4	3
Facilitative Mediation without a set-up meeting	6	1	5
Facilitative Mediation with a set-up meeting	11	7	4
Total	160	100	60

There were some regional differences in providing set-up meetings, with the majority of set-up meetings taking place in Leeds.

Table B sets out the types of issues addressed under each intervention. A wide range of issues were addressed; and employers often sought help with more than one issue. In total 387 issues were dealt with in the 160 provisions completed under the pilot. Employers taking up ELVs mostly wanted practical help with the development or implementation of workplace procedures and information and advice about employment law regulations, although a significant minority also wanted help with dealing with problems with individual employees as did the majority of employers receiving all the information they required over the phone.

Table B - Issues presented for help by employers in ELVs and Mediations - Cell %

Issue or type of help required	Employment law advice – Visit	Employment law advice - Telephone	Appeals/ Directive mediation	Facilitative mediation
Base ¹	109	25	9	17
Contract/Terms and conditions	49		10	13
Problems with individual employees	31	80	80	100
Review of discipline and grievance procedures	29	20	20	
Implementing a discipline/grievance procedure	25			
Sickness/absence	28	16		12
Redundancy/dismissal	21	12	30	
Employment law advice	21	10		
Performance	14			30
Pay			10	
Other	14			17

2.2 Findings from surveys with employers taking up ELVs

In total 92 employers taking up ELVs were interviewed in the first survey and 71 of these were interviewed again in the second survey. The samples in these surveys are small and caution is required when interpreting the findings. For illustrative purposes all findings will be presented in either percentages or proportions of responses.

➤ Expectations

Employers expected help with a range of issues and often expected advice and help with more than one issue. In total 122 issues were cited. The majority of employers wanted help with either implementing (39 per cent) or developing (29 per cent) procedures and information or advice about employment law regulations (29 per cent).

In around a third of cases employers wanted help or advice about dealing with a specific problem with an employee or employees. The majority of these stated that the problem was likely to escalate into a dispute (76 per cent); over half believed that the problem could lead to an employment tribunal application (56 per cent). Mediation had been arranged in 30 per cent of these cases.

➤ Impact of the help received

Three quarters of the employers who had wanted help with dealing with a specific problem with an employee reported at the second interview that the help they received at the ELV had enabled them to avoid an employment tribunal. A fifth of the employers had taken up mediation under the pilot.

The majority of employers stating that they wanted help or advice about implementing or developing procedures stated that the advice they received was easy to understand (81 per cent). At the second interview, three fifths (60 per cent) had either fully or partially implemented the advice or information they had received. Forty per cent of employers

¹ As can be seen by the figures in this row the numbers of cases under each provision are very small – particularly the number of mediations. Therefore caution needs to be taken when interpreting the results in this table and the findings are merely illustrative of the types of cases brought to the provisions under the pilot

had not implemented procedures prior to the first interview but were intending to do so in the future. Around half of these stated that they had implemented the procedures at the second interview. Of the remainder half were still in the process of developing the procedures and half stated that they had decided against implementing procedures.

To assess any long term improvements in employment relations following the Acas intervention employers were asked to rate the relationship at the first interview and then again at the second. Table C sets out the results in each survey:

Table C – Employment Relationship

	First interview	Second Interview
Very Good	45	55
Good	42	37
Neither Good nor Poor	11	4
Poor	1	4
Very Poor	1	0

In the first interview 45 per cent of employer reported that the relationship was very good, 42 per cent reported it was good and 11 per cent said it was neither good nor poor and one per cent said relations were poor. There was room for improvement in 55 per cent of organisations. In 33 per cent of the organisations where improvements could be made, employers rated the relationship more highly in the second survey, 44 per cent rated them the same and 15 per cent rated them lower than they had in the first interview.

Greater improvements in employment relationships were reported by employers who sought help with dealing with individual disputes than by those who needed practical advice about employment law or help with developing or implementing procedures; in organisations in which improvements were possible, over half of the former (55 per cent) compared to less than a third of the latter (30 per cent) reported some improvement.

➤ **Satisfaction with Acas**

In the first survey employers were asked to express their opinions about the service they received from Acas and the value of the information and advice provided at the ELV. The feedback was overwhelmingly positive, with the majority of employers feeling satisfied that they received the help they needed, and that the Acas intervention was beneficial to the organisation.

The majority of employers (68 per cent) felt that the Acas adviser provided *all* the help they needed; a further 17 per cent felt Acas had provided *most* of the help needed. A tenth of employers felt the adviser gave part of the help needed and only four per cent of employers felt that the adviser did not provide any help at all.

This varied according to the type of help required. Employers wanting help with dealing with a specific problem with employees were more likely than those needing practical help with developing or implementing procedures or employment law information to report that they received all the help they needed (72 per cent compared to 67 per cent). However, a small minority of the former (10 per cent) reported that they had not received any help with dealing with this problem; none of the latter reported this.

Nearly all employers taking up ELVs were satisfied with the service they received from Acas (96 per cent), with 74 per cent stating they were very satisfied. The vast majority of employers felt that the time spent meeting the adviser was beneficial to their business (97 per cent); and felt that the advice and information helped them with the smooth running of their business (88 per cent).

➤ **Face-to-face contact versus telephone contact**

To assess whether or not face to face contact was necessary to provide all the information and advice required, employers were asked if they felt that it could have been provided over the phone. Nearly half (48 per cent) of employers *did not think* the service could have been delivered over the phone. However, 28 per cent felt that the service *could definitely* have been delivered over the phone and a further 23 per cent felt that it *could possibly* have been provided over the phone.

This varied considerably depending on the type of help required, with employers requiring help with dealing with a specific problem with an individual being far less likely than those requiring practical help or employment law information to state that the help could have been provided over the phone (21 per cent compared to 32 per cent).

2.3 Findings from in depth interviews with parties taking up Mediation

As stated above, in depth interviews were conducted by, an independent researcher with parties to mediations. This part of the report will focus on the findings, which answer the questions raised by the ETS and BR Taskforces as set out in the introduction.

Interviews were conducted with parties to 17 mediations, two of which took place in one firm. Of the 17, 13 mediations were 'facilitative' and were conducted by Acas staff. The remainder were 'directive' mediations and were conducted by members of the Acas panel of independent persons. It was not possible to interview parties who had taken up the appeal service. In all there were 37 in depth interviews, 19 with employers, and 18 with employees.

➤ **Outcome of mediation**

When measuring the impact of mediation, the research examined the outcome of the disputes in terms of repairing, retaining and improving the employment relationship and preventing tribunals. The interviews were semi-structured to allow parties to identify any other impacts, both positive and negative, which came from taking up mediation.

Before discussing these it is worth pointing out that measures of success in mediations are difficult to quantify and very difficult to standardise. The best case scenario would be to resolve the dispute completely. However, a complete resolution to a dispute is not always possible and does not always signify the magnitude of the impact on the organisation. In the vast majority of cases mediation had a positive impact on the dispute and yielded benefits to the organisation and parties and were sustained in the longer term (between three and eight months after the mediation). While complex and difficult disputes were less likely to be completely resolved following mediation, the positive impacts achieved in moving parties closer together were reported to have had greater benefits to the organisation than those in which the dispute was fairly straight forward and was completely resolved.

Looking at the contents of the agreements, in two organisations the employee agreed to leave the firm and the employer agreed to a severance package. In others the agreement involved either an apology or changes in behaviour, with promises to treat each other with respect and courtesy. In some cases supervision arrangements were changed so that disputing parties were less likely to come into contact with each other. Also, in some directive mediations, mediators made recommendations concerning interpretation of contracts and terms and conditions.

- ***Additional impacts identified by employers***

Employers reported a raft of benefits, which emerged from their experience of mediation. For instance they developed a greater understanding of the use of internal procedures and gained confidence in their ability to manage conflict within the workplace. In cases where the resolution was sustained for a limited period, employers reported that they had gained a breathing space in which to reflect on their experience and to further develop their understanding of employment law and their own improved ability to handle conflict situations.

Many employers reported that mediation had worked where internal procedures had failed. They pointed out that mediation is a much swifter and efficient form of dispute resolution, taking up far less time than internal formal procedures. Furthermore, many employers reported that the mediation had the positive impact of mending the employment relationship, thus enabling them to retain valued members of staff – this was also recognized as an economic saving reducing the costs of recruitment and training new staff. The Costs for seeking external advice from employer organisations, solicitors and accountants were also identified by employers.

Employers reported that mediation had helped to prevent employment tribunal applications being made and seen an end to the internal procedures, which had been instigated prior to mediation. Only one employer reported that an employee was considering making a claim to a tribunal after the mediation. Three employers had reinstated formal procedures after the mediation as the agreement had broken down either fully or partially.

One of the negative impacts of mediation reported by some employers was that the confidential nature of the process and the outcome prevented them from learning from the experience, and therefore had a limited impact on their ability to make improvements in workplace practices.

- ***Additional impacts identified by employees***

Employees also reported a range of positive outcomes in addition to resolving the dispute. For instance, that been able to tell their story to an independent and impartial third party was beneficial as they had for the first time been listened too and the issues were taken seriously. They reported been more comfortable in expressing their concerns in a non-confrontational environment. The willingness of the employer to provide mediation was also seen by employees as a positive sign that the organisation was taking the issue seriously and recognized the need for action to obtain changes.

- ***Effectiveness of Mediation***

Parties' expectation and understanding of mediation had an impact on the effectiveness of mediations. Where parties fully understood the process and were aware of the scope of mediation for dealing with disputes, ways forward were more readily identified and parties were more likely to report high levels of satisfaction with the service and with the process.

The most successful cases were those in which both parties freely volunteered to take part in the mediation and where there was a balance in power relationships.

In some of the instances where Acas staff had not managed to meet with employees prior to the mediation, parties reported feeling powerlessness at the outset as they felt they had not voluntarily taken part in the process. However, the same employees also reported that the impartial and professional manner and attitude of the mediator gained their trust during the mediation and some progress was made in identifying a way forward.

In other cases where Acas staff had not met with parties before mediations, some misconceptions about the mediation process and the scope of mediation for resolving disputes were found. For example, some parties wanted an investigation of the issues, to apportion blame, to use mediation punitively or to force the other side to see their point of view. In such instances progress was very unlikely.

The effectiveness of mediation under this pilot was therefore greatly enhanced when Acas staff met with parties prior to mediation to fully establish their expectations of mediation and to ensure they understood the process.

➤ ***Appropriateness of mediation***

As mentioned above, benefits were reported in the vast majority of cases and that even the most difficult and entrenched disputes can be improved by entering into mediation. While some cases are less likely than others to be completely resolved and may seem intractable at the outset, the evidence gathered in this study suggests that almost all disputes are amenable to mediation. However, one of the aims of the research was to look at the appropriateness of mediation in different kinds of disputes. Several factors emerged concerning the appropriateness of mediation for finding ways forward in disputes in small businesses and these factors tended to cluster within cases.

The stage of the dispute impacts on the amenability of mediation: mediation was found to be more effective if the dispute was in its early stages and less so if the dispute had a long history. Also the nature of the dispute had a bearing on the usefulness of mediation; those which were based on contractual issues or disciplinary issues were more amenable to mediation than disputes concerning personal differences, particularly where claims of bullying and harassment were reported and where this had been interpreted as a 'personality clash' by the parties concerned. A third factor was the level of emotions involved, with highly charged emotional feelings reducing the effectiveness of mediation for resolving the dispute. A fourth factor, which reduced the efficacy of mediation, was the types of parties involved. It was found in the mediations in this study that mediation was less likely to work in disputes between supervisors/line managers and employees or between colleagues of equal status than between owner managers and employees.

As mentioned above, these factors were often all present in one case. For instance disputes concerning a clash of personalities were also likely to be very highly emotionally charged, to have had a long history and to be between employees of equal status or line managers and supervisees, whereas cases concerning contractual or disciplinary issues were more likely to have a shorter history, be between owner managers and employees and to be less emotionally charged.

➤ ***Future use of Acas and Mediation***

Most of the parties found mediation was highly beneficial and stated that they would certainly use it again in the future, should they find themselves in a similar situation. Many of the employers in this pilot were familiar with Acas and had used the services in the past for advice about workplace issues. Nevertheless, the experience of using mediation under the pilot increased their awareness of the services on offer through Acas and most of the employers said that since the mediation they had used or intend to use other services. Employers were asked whether they would have used mediation if they had had to pay for it and many reported that they would. When asked about the amount they would be prepared to pay if they used Acas mediation in the future they cautiously offered around £300; they realized that this amount would not cover the cost of providing the service, and therefore might need subsidising.

2.4 Diversity

➤ Gender

Throughout the pilot details of the characteristics of parties and businesses taking up services were recorded and monitored. The majority of employers taking up ELVs and mediations were females (58 per cent of the former and 66 per cent of the latter), as were the majority of employees involved in mediations (75 per cent). Previous research has shown that there is a gender difference in dealing with problems at work and in enforcing employment rights using the Employment Tribunal Service (Fox 2004); women are less likely than men to enforce employment rights through the employment tribunal system and more likely than men to seek advice about employment problems and to take a conciliatory route to resolving employment tribunal claims that are made.

➤ Ethnic Minority Groups

The proportion of parties from non-white ethnic backgrounds was representative of the population of the areas in which the pilot took place; 75 per cent of employers categorized themselves as white British and 12 per cent were from ethnic minority groups. Less than half employers taking up ELVs reported that they had no employees from ethnic minority groups. Over a third of employers reported that they had between 1 and 5 employees from ethnic minority backgrounds and one eighth reported having between 6 and 10 employees from non-white ethnic minority backgrounds.

3 Conclusions

Employers taking-up ELVs were overwhelmingly positive, stating that they were highly satisfied with ELVs and found them beneficial to the smooth running of their business. The vast majority of employers reported that the Acas adviser provided all or most of the information and advice they required and that the information and advice received was easy to understand and helped them to implement workplace practices and procedures where necessary. A significant proportion of employers using ELVs wanted information or advice to help with a specific situation with individual employees, to help them prevent disputes escalating, which in many cases they believed would otherwise have resulted in an employment tribunal application being made against them. A small proportion of these took up mediation to help resolve the problem, while the remainder reported that the ELV alone provided all the information and advice necessary to deal with the situation and the majority reported that an employment tribunal had been avoided.

Around half of the employers taking up ELVs felt that the help they received could have been delivered over the phone, but this was less likely when requiring help with individual disputes than when help was wanted with developing or implementing policies or procedures or when in depth information about employment law was required. However, as the monitoring data showed, the majority of employers receiving all of the information they required over the phone had been seeking advice about problems with employees in disputes. This tends to suggest that telephone advice might be equally effective in helping employers resolve workplace disputes as is face-to-face advice.

The in depth study of parties taking up mediation showed that mediation was very effective in helping to find ways forward in individual disputes in small businesses. Employees and employers reported a whole raft of benefits aside from the progress made towards resolving disputes. Employers identified benefits such as experiencing an increased confidence in conflict management and in using their formal internal grievance and disciplinary procedures. Employers identified savings in terms of the costs of seeking advice from employers associations, solicitors and accountants, and the benefit of retaining valued members of staff with the added savings in the costs of recruiting new staff and training. The mediation was also valued as it gave employers a 'breathing space' in which they could take a fresh look at the situation and make decisions about the next steps to be taken.

Employees reported the added value of having an independent, impartial third party to listen to their story, a chance to air their grievances in a safe environment and to put their point of view to the opposite side in a non-confrontational manner. Employees expressed the opinion that the fact that the employer was prepared to ask Acas to help with the dispute signalled to them that they were valued members of staff and that the employer was taking the situation seriously. This in itself was seen by employees as a positive step towards improving the dispute.

Mediation was found to be most effective in cases where parties were fully informed about the scope and the process of mediation in helping with disputes, and where expectations and motivations for using mediation were realistic. Where parties expected to use mediation in a punitive way, to force the other side to see their point of view, to apportion blame or score points over the other party, progress towards a resolution was very unlikely. Misconceptions about mediation, rare though they were, not only reduced the efficacy of the service, but it had a negative impact on the parties' opinions of Acas and on their satisfaction with the service. It was found that misconceptions about mediation were most likely to occur in cases where a set-up meeting had not taken place prior to mediation. It is likely that in these cases Acas staff did not have the opportunity to fully inform the parties about mediation. This highlights the importance of ensuring that parties are fully informed about the service and that they have realistic expectations of what can be achieved.

It was very difficult to identify which cases were more or less amenable to mediation in this study as the disputes tended to have clusters of factors which either made it more or less likely that mediation would help find ways forward – for instance long standing disputes were less amenable to mediation, but these disputes were also likely to centre on a personality clash and the parties were likely to have highly charged emotions; each factor in itself might act as a barrier to fully resolving disputes. However, in nearly all such cases some progress was made, and as was stated earlier it is likely that a small improvement in a complex and entrenched dispute is likely to yield the same or more benefits than a full resolution of a straightforward dispute.

The characteristics of the parties taking up ELVs and mediation tends to suggest that these services are more attractive than other alternative routes for resolving workplace problems to employers and employees from ethnic minority groups and to women.

Overall, the findings from the pilot suggest that ELVs and mediation were highly effective in helping to improve employment relations within small businesses. They were also effective in improving business performance and in the case of mediations in saving costs to employers. Accordingly, all parties gave very positive reviews of their experiences of using Acas. In particular, employers said they would approach Acas for help if any such situations arose in the future and expressed a willingness to pay for Acas' services to help them deal with individual employment disputes.

Annex - Costs to Acas of Delivering the Pilot Provisions

This section of the report presents the analysis of the monitoring data to estimate the amount of time spent on delivering the services under the pilot.

➤ *Time Spent in Contact with parties*

Table 1 sets out the time spent providing each service.

Table 1: Time (mean average number of minutes) spent on each provision under the pilot

	Mean average number of minutes	Base
Employment Law Advice - Visit	200	109
Employment Law Advice - Telephone	64	25
Directive Mediation set up over the phone	95	2
Directive Mediation set-up meeting	158	7
Facilitative Mediation set-up on the phone	692	6
Facilitative Mediation and Set-up meeting	758	11

On average facilitative mediations in which no set-up meeting took place took around a day and a half to provide. Set-up meetings for facilitative mediations took around one hour to provide. Directive mediations were slightly more time consuming than facilitative mediations.

On average, panel mediators charge for around 12 hours work to prepare for and conduct the mediation; in addition, Acas staff spent on average one hour and thirty five minutes setting-up the mediation over the phone and two hours and forty minutes when a face-to-face set up meeting took place prior to the mediation. Therefore, facilitative mediation cost the equivalent of 12 hours Acas staff time and directive mediations cost 2.66 hours staff time plus twelve hour of Acas panel member's time. ELVs took around three hours and twenty minutes to provide and telephone advice was provided in just over an hour.

➤ *Time spent in each type of contact with parties*

Table 2 shows the amount of time spent on meetings/mediations, traveling to and from meetings and mediations and preparation and follow-up work.

As might be expected the actual visits with parties took up the majority of Acas staff time. Facilitative mediations were provided within a normal working day, taking around 7 hours.

Table 2 also shows that around half of the time spent providing ELVs was taken up with traveling to and from and preparing for the meeting.

Table 2: Mean preparation time, travel time and visiting time for each type of case

Average no. Of Minutes spent on Each Method of Contact in each provision	Preparation and Follow-up	Travel	Visit
Employment Law Visit	30	62	108
Telephone advice	32	0	0
Directive Mediation set up over the phone	95	0	0
Directive Mediation set up meeting	79	0	79
Facilitative Mediation	159	69	407
Facilitative Mediation and set-up meeting	157	131	433

Tables 3 presents the distribution of time Acas staff spent with each party taking up each of the provisions under the pilot. The table shows that Acas staff spent more time with employees and employers involved in facilitative mediations than any other provision and more time was spent with the former than the latter whether or not a set up meeting had taken place. Where a set up meeting took place prior to directive mediation, Acas staff spent more time with the employer than the employee.

Table 3: Proportion of Acas staff time spent with each side

Proportion of Acas Staff time spent with each party	Employee	Employer	Blank
Employment Law Advice - Visit	7%	71%	21%
Telephone advice	28%	72%	1%
Directive Mediation set up over the phone	42%	42%	16%
Directive Mediation set up meeting	38%	61%	1%
Facilitative Mediation	58%	35%	7%
Facilitative Mediation and set-up meeting	49%	45%	6%

➤ **Number of contacts**

Table 4 shows the mean number of contacts for each type of provision varied between 4 and 18 overall. On average Acas staff had 5 contacts with employers taking up ELVs and this was consistent across regions. As might be expected, Acas staff had far more contact with parties taking up facilitative mediation than directive mediation (between 11 and 18 contacts in the former and 6-7 contact in the latter). One of the most notable findings in Table 4 is the regional variation in contacts with parties taking up facilitative mediations which were set up over the phone, with the Leeds staff making over twice as many contacts with parties as London staff. The reverse is seen where a set up meeting took place prior to the facilitative mediation, with London staff making more contacts with parties than Leeds staff.

Table 4: Mean number of contacts per provision

Number of contacts	All cases	Leeds	London
Employment Law Advice - Visit	5	5	5
Employment Law Advice - Telephone	4	6	2
Directive Mediation set up over the phone	7		7
Directive Mediation set up meeting	8	6	6
Facilitative Mediation	11	21	9
Facilitative Mediation and set-up meeting	18	15	21

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