

Research Paper

Pre-Claim Conciliation pilot – Evaluation summary report

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1 INTRODUCTION

1.1 Key message

The Acas Pre-Claim Conciliation Service (PCC) aims to identify workplace disputes between employers and employees which may become employment tribunal claims and resolve them effectively before they enter the tribunal system.

The findings of this evaluation show cost and time savings to both employers and employees involved in this pilot and a net financial benefit to the taxpayer. Employers, employees and their representatives report high levels of satisfaction with case outcomes and with the Acas PCC service during the pilot.

1.2 The PCC pilot

The PCC pilot took place from June to November 2008 in the Manchester, Newcastle and Nottingham regions. During the pilot, 903 referrals were made for PCC.¹

1.3 The PCC evaluation

This report summarises the findings of an evaluation of the PCC pilot which was commissioned by Acas and conducted by the Institute for Employment Studies from September 2008 to January 2009.

The aim of the PCC evaluation was to assess the impact of early intervention in potential employment tribunal claims on case outcomes and employment relationships. A further objective was that of measuring user satisfaction with the service and identifying barriers and facilitators to successful pre-claim case conversion and conciliation.

The research involved four key strands:

- A telephone survey of 160 employers and 339 employees who participated in PCC, drawn from Acas records of 811 PCC cases completed during the pilot and a follow-up telephone survey of 119 employees and 26 employers within this group. It should be noted that the sample does not, in some aspects, mirror the population of 811 cases and the views and experiences of survey participants may therefore not reflect those of the entire population.²

¹ Including 811 cases completed by 12 December which formed the sampling frame for the IES surveys of participants.

² For example, by Acas recorded case outcome, interviews took place with 27 per cent of the 'settled by Acas' category; nine per cent of the 'settled privately' category; 16 per cent of the 'concluded without settlement' category; nine per cent of the 'curtailed by time limit' category; 39 per cent of the 'not progressed' category. Employers interviewed represented only nine per cent of the 'not progressed' category.

- Telephone interviews also took place with 12 professional representatives who advised and acted on behalf of employers and employees during the pilot to explore views and experiences.¹
- Three focus groups with Acas conciliators and six focus groups with Acas helpline advisers to gain an insight into the advice, offer and service elements of PCC; to understand the administrative and operational issues during the pilot; and to gather perceptions of client expectations and motivations.
- A cost benefit analysis of the PCC service during the pilot drawing on data gathered from the IES surveys of employers/employees, Management Information supplied by Acas and secondary data gathered from previously published sources.

¹ Just over six per cent of the employees and employers in the 811 records provided by Acas had a professional representative acting on their behalf.

2 KEY THEMES AND FINDINGS

The aim of the PCC evaluation was to assess the potential impact of early intervention in potential employment tribunal claims on case outcomes and employment relationships. A further objective was that of measuring user satisfaction with the service and identifying barriers and facilitators to successful pre-claim case conversion and conciliation.

This report draws from evidence across the four strands of evaluation – participant surveys, interviews with representatives, discussions with Acas Helpline advisers and conciliators and cost-benefit study – to consider the evidence for these key objectives.

The survey took place with 160 employers and 339 employees who participated in PCC. In 79 cases both employer and employee were interviewed. In 260 cases it was only possible to speak to the employee party, and in 81 cases it was only possible to speak to the employer party. The survey sample includes a disproportionate number of cases which fall under the short/standard jurisdictions as opposed to open period cases. The analysis may therefore not reflect the likely implications of operating a full PCC service involving more complex cases.

2.1 Who uses PCC and why?

2.1.1 Service user profile

PCC employer and employee service users are more likely to come from lower paid, less skilled occupations in small organisations with fewer than 50 staff in the private sector, in particular within personal services and construction industries. PCC employee participants have lower than average UK earnings and most no longer work for the employer with whom they had the dispute at the point of contacting Acas. Only a minority of employers surveyed had an HR function, and under 20 per cent had a trade union presence. This suggests that the PCC service is providing an important resource to sectors of the UK economy and individuals within it which are least well-equipped to resolve workplace disputes without external support.

2.1.2 The decision to accept/reject PCC

Helpline staff reported that most employee callers were ultimately keen to participate, although some wanted time to make up their minds before committing to using the service.

The main reason for employers accepting PCC was to come to an agreement to resolve the issue, while just under one-third wanted to avoid an employment tribunal claim. Those who had refused assistance did so because formal legal representation was already in place, more information about PCC was required before they would commit to it, or because they had a preference for resolving the problem without outside assistance. Some employers had a desire to see whether an employment tribunal claim was made, a belief that the employee's grievance was unjustified, or no desire to settle a claim outside the tribunal system.

2.2 The nature of the dispute

Employee and employer survey data agreed that most disputes were concerned with unfair dismissal or wages issues. Redundancy cases were common and there were fewer discrimination cases than anticipated which may reflect a number of factors including the deteriorating economic climate. This may focus individual attention on job retention rather than job quality. The relative absence of professional representatives may also mean that discrimination jurisdictions were less often added to potential claims. The presence of the PCC service, and indeed entry routes, during the pilot may also not have been sufficiently integrated into the advice packages of organisations dealing with discrimination issues. Acas may wish to consider the implications of these findings for service development and delivery of PCC.

Expectations of the parties were found to be quite high and, on occasion, misplaced. Despite being fully informed about the impartial nature of the service by Helpline advisers and conciliators, some employees had believed that Acas would champion their cause, rather than be a neutral facilitator of dispute resolution. Conciliators and helpline staff pointed out that the fast turnaround required for calls back to enquirers and speedy initial contact sometimes raised service user expectations unrealistically.

2.3 Nature and process of PCC

The most common method of entry to PCC was from individual employees contacting the Acas helpline directly, although nearly half the survey sample were made aware of Acas services by a third party such as family or friends. Employers most commonly became aware of the service when contacted by an Acas conciliator to explore whether or not they might be prepared to enter into a conciliation process. Half of employees had received advice from other sources, over one-third of whom had mentioned Citizens' Advice. Helpline staff reported that Acas received very few direct referrals to PCC from third parties such as EHRC.

2.3.1 Service provision – initial calls

The costs of each initial PCC related call to the helpline are estimated as £5.78, according to Acas MI data, amounting to a total of £5,110. The additional costs of PCC calls in terms of the time taken to establish PCC eligibility and promote the service could not be calculated as no quantitative data was available. However, all helpline staff reported that the PCC calls took longer, most commonly estimated to be double the usual length because of the complexity of explaining the service to potential users and determining their eligibility.

Most contact between conciliators and PCC participants took place over the telephone, via email or via fax. Only a very small proportion had face-to-face contact (four per cent of employers and less than one per cent of employees).

2.3.2 What happens as a result of PCC?

There were five possible recorded outcome of PCC intervention:

- The referral is not progressed (ie closed before any substantive conciliation took place) (39 per cent of cases resulted in this outcome according to the Acas management information).
- The dispute is settled by Acas (26 per cent).
- The PCC process is concluded without a settlement (18 per cent).
- The PCC process is curtailed by time limit (to lodge an employment tribunal claim) (nine per cent).
- The dispute is settled privately (eight per cent).

Conciliators were concerned about whether outcomes were consistently recorded across the pilot areas. The 'not progressed' category was felt to be particularly wide and in some respects ambiguous, for example covering cases where an employer had not responded to letters or telephone calls. Employers who preferred to wait for an employment tribunal claim and employees who came to realise they did not have a case to pursue were also included within this outcome category – such cases might more accurately have been counted as cases where no settlement was reached. Furthermore, there were some disparities between employee reports of case outcomes and data recorded by Acas systems, which raises some implications for Acas concerning the usefulness and robustness of PCC pilot outcome categories and how best to ensure accuracy of management information data for future evaluation of the service.

2.3.3 Settlement of PCC disputes

The data indicate that most of the cases reached some form of conclusion and were either settled (one-third of the total) or not pursued further (39 per cent). Just over a quarter did not reach a conclusion. It is worth noting that where referrals were converted to PCC cases (ie both parties consented to engage in conciliation), more than half (56 per cent) ended in settlements.

Survey data shows that most settlements took the form of payments from the employer to the employee, with some evidence of employees agreeing not to pursue legal action (16.2 per cent of cases¹) and an agreement that the employer would provide a reference (13.8 per cent of cases).

The average (mean) settlement for individuals at the PCC stage (via Acas or privately) was around £1,500 (with a median of £1,000), lower than the average (mean) of £4,000 achieved from a conciliated settlement or £4,500 for an ET award. However, this comparison should be treated with extreme caution – the differences between PCC and IC settlements appear to be largely a factor of the proportionately higher number of short period cases (for which lower settlement rates are the norm) in the PCC sample. The relatively low numbers of cases in the survey for which these data are available mean findings should be taken as indicative only. In around one in ten cases the settlement was non-financial (eg a reference, or in a very few cases re-instatement).

¹ All were 'Acas settled' cases.

2.3.4 What happens if a dispute is not settled at the PCC stage?

According to the employee survey, around two-thirds of employees who did not settle their dispute through Acas at the PCC stage go on to submit a claim to an employment tribunal. On this basis, the evaluation estimates that the PCC process reduces by half (51 per cent) the number of claims lodged by the employees who have been referred to the service. It should be noted that not all such claims will progress to a full Tribunal hearing - some will drop out along the way in the form of withdrawals or settlements.

2.3.5 Barriers and facilitators at entry, conversion and conciliation stages

The major barriers to successful PCC included the reluctance of one or other party - more commonly the employer - to either engage in PCC in the first place or to wish to settle following conciliation.

The major enabling factors to successful PCC include significant time investment on the part of both helpline staff and conciliators. Conversion of potential participants into actual participants is time-consuming as it involved explaining the service or 'cold calling' employers who might not be aware that the employee had intended to pursue his or her grievance to an employment tribunal. Users of new pilot services typically have low awareness and understanding of them before becoming involved. As awareness spreads it is likely that the efforts to promote PCC may be less burdensome, and effective marketing of the service by Acas and BERR could play a major part in assisting this.

2.4 Reducing employment tribunal claims

The survey evidence shows that many PCC cases are resolved in a timely fashion to the mutual satisfaction of both parties. Of those employees who had settled their dispute (via Acas or privately) two-thirds said that this settlement would have been very unlikely without Acas. Two-thirds of all employees said that the Acas PCC service had been very important in helping them to decide how to progress their case. This suggests that a full PCC service could make a positive contribution to reducing the number of potential ET claims.

2.5 Difficulties in preserving the employment relationship

In most cases, the employment relationship had already ceased before Acas became involved in the dispute. According to both employee and employer surveys, in between 75 and 80 per cent of cases the employment relationship had already ended before Acas became involved in trying to resolve the dispute. Nor was it always possible to preserve employment relationships where PCC took place. In only about five or six per cent of cases did the employee seem to have remained in post after conciliation had concluded.

The main driver here seems to have been employers, with termination in around three in four cases due to dismissal, redundancy, company closure or expiry of temporary contracts. Many interviewees across the different strands of the evaluation cited the current economic climate as a determining factor in the nature of claims presented during the pilot. The possibility of meeting the PCC objective of preserving the employment relationship is rendered much more

challenging where so many of the cases that come to attention at the PCC stage involve dismissal, and particularly redundancy.

By the time Acas became involved in the relationship between the parties during the pilot, it had often deteriorated to a point where it was effectively beyond repair. Although employers took a somewhat more benign view, over half the employee sample reported a poor or very poor relationship with their employer at the first point of contact with Acas.

Both risks and benefits were perceived to attach to pre-claim intervention. As one employer representative stated, when an employee has contacted Acas about a potential claim to an employment tribunal a message is sent to the employer that the relationship is breaking down or has broken down, and *'the employer may then not want to employ that person if they are off moaning to Acas'*. It may therefore be the case that even this degree of formalisation of the dispute makes it less likely that an ongoing relationship can be restored. Nonetheless, PCC evidently represents a significantly lesser level of formalisation than that post-claim and, as a result, a small number of conciliators mentioned being specifically asked for, and in one or two cases achieving, reinstatement. Evidence from conciliators and legal representatives tended to present PCC as a relatively informal, cheap and speedy solution at a time before positions became entrenched.

Taking these three factors into account (ie high levels of termination, low readiness to settle, potential for entrenched positions) it seems hardly surprising that settlements rarely included reinstatement, with only 2.5 per cent (of employee survey) Acas settled cases arriving at this outcome. Parties who reached private settlements suggest a slightly higher readiness to re-engage than did those secured through Acas, which may reflect relatively lower levels of antipathy.

2.6 PCC outcomes

The main measure of quality that has been collected for the evaluation is the satisfaction levels of the parties concerned. While this may not be a full indicator of quality (most employees, for example, will not have a benchmark with which to compare the level of service received or the outcome they achieve) it is a reasonable assumption that the higher the level of satisfaction the higher the level of quality.

Not surprisingly, the evaluation found that the parties to disputes which were settled (either through Acas or privately) were generally more satisfied than the parties to cases which were not resolved in PCC. In settled cases both parties tended to be very satisfied (ie scoring around six on a seven point scale) with the outcome of the case. Furthermore, both parties thought Acas had been pivotal to the satisfactory outcome and had done a good job explaining the process, examining the strengths and weaknesses of the cases and working towards an outcome. There was little variation in satisfaction by type of case.

Satisfaction rates were lower for cases that are not settled and lowest for those which are either progressed but concluded without a settlement or curtailed because of the time limit for taking a case to a Tribunal. This is to be expected from parties for whom the process did not deliver the outcome they sought,

although it is interesting to note that, according to conciliators, many employees entered the PCC process with little idea of what they wanted. Conciliators also thought that settlements often arose where employers realised that they had a weak case, as a result of the explanation of the law given by the conciliator or on advice from HR or legal professionals.

2.7 Quality of the PCC service

2.7.1 Overall satisfaction with Acas

There were very high levels of satisfaction with the Acas service amongst all groups, but particularly those whose case had been settled. Employer satisfaction was higher than that of employee participants and more common among those whose dispute was settled. This is unsurprising since employers were more likely to be drawn into PCC through employee grievances and employees initiating a complaint may have entered the process both with higher levels of grievance and also expectations. Representatives spoke of the key employer goal to avoid a claim and the costs associated with that claim so that fact, rather than any terms of the PCC case outcome, may raise employer satisfaction. Employers and employees felt that Acas involvement was important in bringing about case settlement, where this had occurred.

2.7.2 Overall satisfaction with Acas Helpline advice

Employer and employee satisfaction ratings were high across all four dimensions of helpline service including promotion of PCC, helping callers understand the service and offering time to think through the problem.

2.7.3 Overall satisfaction with Acas conciliation

Acas conciliation services received high satisfaction ratings from employers and employees. Survey data showed that scores of the conciliator service in explaining the law and strengths and weaknesses of the case, explaining possible outcomes and relaying proposals between the parties were very high, with scores of at least 4.5 (out of a maximum score of 5) across all service dimensions. Most participants believed that conciliators were even-handed and were satisfied with the amount of contact with them.

Those employees and employers who had either settled with Acas or settled privately expressed significantly higher satisfaction rates with Acas conciliators.

Representatives of employers and employees similarly offered praise for Acas services, noting in particular that Acas conciliators were impartial and knowledgeable.

2.7.4 Helpline service issues

Most helpline staff felt that there were few problems in identifying clients who might be suitable for PCC, but warned that this was dependent on the accuracy of information provided by callers. There were some difficulties around establishing caller intent to pursue an employment tribunal claim and the timing of the PCC offer varied. Some advisers sought improved guidance, skills training and shorter

documentation to support training received. This is a relatively common feature of pilot programmes. Acas may wish to consider revising its training for helpline staff as part of any internal review of the pilot service provision. Many were keen for more contact with conciliators to find out whether the referrals were appropriate and to gain feedback on the progress of the pilot.

2.7.5 Conciliation service issues

In some cases conciliators wanted fuller details on the background to each case from helpline staff. Selling the benefits of PCC before explaining the process was instrumental to securing participation, especially that of employers. Conciliators also found it very difficult to achieve the guaranteed call-back by the end of the next working day to potential PCC participants which was a requirement of the service and offered by helpline advisers to all callers. Acas may wish to consider the stringency of this target or resourcing implications of meeting it with a full PCC service in operation.

2.8 Wider benefits of the PCC service

The cost benefit analysis identified a net saving to the taxpayer of £83,382 as the costs of providing the PCC service were outweighed by savings including from fewer employment tribunal claims and tribunal hearings. This is equivalent to a saving of £94.32 for each PCC case.

There were also savings to employees of £353,259 and to employers of £446,130 in terms of time saved, as PCC took, on average, less employee time and less management time than employment tribunal claims. These work out at £400 per employee per case, and £505 per employer per case.

Thus, the combined net savings to Acas, the ETS, employees, and employers was £882,831, or almost £1,000 per case.

There are also a number of potential wider benefits of the PCC service which have not been possible to capture in this evaluation. These include issues such as impact on employee health and well-being in those cases where termination of the employment relationship can be avoided, and more broadly benefits to both employers and employees from having a working environment with more efficient and fair dispute resolution processes. This may result in improved workforce morale and productivity. There may also be employment relations best practice benefits, such improved workplace relationships and the avoidance of collective workplace disputes as a result of the early non-litigious resolution of disputes; however, a longer-term evaluation would be needed to capture these.

