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Resolving Collective Disputes at Work: User perspectives of Acas collective conciliation services

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EXECUTIVE SUMMARY

This report presents findings from a study carried out among the users of Acas' collective conciliation service. It explores expectations and experiences of collective conciliation and impacts resulting from use of the service. The research was conducted by the National Centre for Social Research (Natcen) on behalf of Acas.

The overall aim of the study was to explore the reasons why parties used the conciliation service on a repeat basis and what they perceived to be the long and short term benefits of Acas involvement.

The study was qualitative and involved a total of 18 in-depth interviews: 10 with employer or employer representatives and 8 with regional officers of trade unions who dealt with a range of different cases involving collective conciliation across a number of different organisations. The sample was distributed across four Acas regions in order to ensure a regional spread and coverage of both specialist and generalist models of delivering the service.

Fieldwork was carried out in November and early December 2001. Interviews, lasting 1 –1 ½ hours, were tape recorded for subsequent verbatim transcription. Analysis of the verbatim transcripts was undertaken using 'Framework', a computerised analytical tool developed in-house by Natcen.

Deciding to use Collective Conciliation

The frequency of use of collective conciliation varied considerably between different types of employing organisations. Some organisations used conciliation several times a year whilst others used it once every few years. Trade union representatives were generally involved in several collective conciliation cases each year.

Both employers and trade unions tended to seek collective conciliation at the point in a dispute where parties had reached an impasse and wished to reach an agreement. Both sides stressed that it was in the interest of neither the company nor employees to proceed to industrial action. Collective conciliation was frequently built into companies' dispute procedures and unions often made it their policy not to ballot for industrial action until collective conciliation had been attempted. Another motivation for using collective conciliation was the wish to demonstrate to customers and/or the workforce that a company or the union was making every effort to settle the dispute.

However, parties might, exceptionally, decide against using collective conciliation where they felt that there were potential advantages to prolonging the dispute. This might be where a party felt that the strength of their case was overwhelming and that the other party would capitulate, or where they preferred to proceed to arbitration. Parties might also decide against using collective conciliation where it was felt that industrial action would be cathartic for sorting out persistently poor industrial relations or where it was felt that that a small, local dispute did not warrant involving a "high profile" organisation such as Acas.

Even where parties used conciliation fairly frequently, there was little evidence that they were becoming dependent on collective conciliation. There were still disputes which were resolved without resorting to conciliation. It was generally considered preferable to try and resolve disputes internally and only initiate conciliation where all other avenues had been exhausted.

Union representatives, in particular, felt that their own credibility with their members would be undermined if they had recourse to Acas too readily.

The fact that Acas was seen to be independent and impartial was fundamental to customers' willingness to use collective conciliation. However, there were a number of specific features of the collective conciliation process which led parties to use the service:

- It provided a suitable environment for discussion and reflection
- It could lead to the generation of new ideas for resolving deadlock
- It afforded parties the opportunity to express their own position more convincingly through having this articulated by an impartial third party
- It allowed dialogue to resume where direct negotiations had broken down
- It was a way of improving parties' understanding of each others' position
- It was helpful to gain a third party perspective on the representative's own position
- It forced parties to recognise the consequences of failing to agree
- It provided a safe way of conceding ground without loss of face.

Willingness to go to conciliation was generally seen to send a positive message to the other side and to wider audiences. However some concerns were expressed that it could be misconstrued as an indication of lack of confidence in one's own position by the other side.

Experience of Collective Conciliation

Making contact with Acas regional offices was generally considered to be the correct procedure for involving the conciliation service. However, in some cases parties had established a relationship with a particular officer and might directly contact that individual.

Experiences of collective conciliation varied in terms of the number of sessions, number of representatives present and length of time involved. Views about conciliation being conducted with the parties in separate rooms also varied. Whilst these were seen to provide an environment in which the sides could safely 'let off steam', some people were suspicious about what discussion was taking place when the conciliator was with the other side.

Perceptions of the role played by the conciliator in collective conciliation varied. Some conciliators were felt to act simply as a 'go between' passing messages between the parties, whilst others were felt to be more proactive and used various tactics to move the parties' thinking forward and tease out areas of possible agreement. There was overwhelming preference for the proactive approach which was felt to be more useful in producing a settlement.

Service users identified a number of qualities felt to be important in a conciliation officer. These were impartiality, professionalism, a personable manner, knowledge and competence, patience and accessibility.

Impacts of Collective Conciliation

Collective conciliation can help produce a settlement in a number of ways

- The direct influence of the conciliator can cause one or both parties to alter their position. The parties described being given a 'subtle nudge' by conciliation officers and said they trusted their judgement in these instances.
- Talking through and explaining why positions are held can cause perspectives to change. This might be because things are seen in new light or because one side realises for the first time how strong the commitment of the other side is to a particular position.
- New ideas or options which emerge in collective conciliation can provide the basis for settlement. These might be suggested by the collective conciliator or they might be suggested by one of the parties.
- Options which had previously been rejected without detailed consideration can lead to solutions because the conciliation process facilitates a more detailed examination or considered analysis.

Settlements emerging in collective conciliation through ACAS were felt to be more likely to produce more widely acceptable and lasting agreements than those which the parties could generate themselves. This was because the involvement of ACAS in developing possible terms of settlement was felt to bestow credibility on these terms and make these more acceptable to the parties. The involvement of ACAS was also thought to add weight to settlements and lead to these being viewed by the parties as binding.

A number of factors were identified by service users which were felt to affect whether it was possible for collective conciliation to resolve a particular dispute. These included

- Level of entrenchment and willingness to move
- Parties' purpose in using conciliation and whether there is commitment to achieving a conciliated outcome
- Extent to which the dispute is rooted in deeper issues
- Degree of unity within each side involved in the dispute

Views varied as to how collective conciliation affected terms of settlements. Some felt that collective conciliation did not much alter the terms under discussion. Others however described instances in which conciliation had altered parameters of possible settlement terms and led to the inclusion of new items.

Collective conciliation was felt to have a range of impacts. Dispute resolution can have beneficial impacts for staff morale and the atmosphere in an organisation and can improve relationships. When dispute resolution involves the ending of industrial action this can lead to the resumption of the full operation of the business, prevent the loss of revenue and increase customer confidence.

An impact arising from non resolution of a dispute in collective conciliation was the ending of any illusions that a solution might be easily found. This was felt to force both sides to recognise the seriousness of their dispute.

Views on the existence of longer term impacts resulting from collective conciliation were varied.

- Some service users did not think they had witnessed any broader changes or impacts resulting from their use of collective conciliation. This view was more evident among regular users of the service who felt their recurrency of use suggested an absence of lasting effects, at least in relation to the particular issue they brought to Acas.
- Others, however did feel the use of collective conciliation had had broader impacts. These related to changes in dispute procedures, changes in organisational practice or policy, improved relationships and ways of communicating and wider use of Acas services. In addition, the terms of settlements reached in collective conciliation can have financial impacts for organisations and lead to expenditure savings.

It is possible that for some of the service users in the sample it was too early for wider impacts of collective conciliation to be discernible. The experiences of some service users suggest that it may sometimes be years before the real ramifications of a dispute and the way in which it was settled become apparent.

The small number of interviews on which this study is based make it almost impossible to draw conclusions about where the most significant impacts from collective conciliation occur. However some of the evidence collected may suggest that the contribution of the ideas and experience of collective conciliators can have a particularly important influence in smaller organisations with less established industrial relations relationships. When the parties have little experience of negotiating or even dealing with one another, there seems to be more scope for the ideas that collective conciliators bring to have impact.

Recommendations

The following key recommendations are suggested to Acas based on this research.

- **Development of a more proactive style among collective conciliation officers :**
The development of this style of conciliation should be a focus of the training and development of collective conciliation officers.
- **Increased targeting of collective conciliation services among smaller organisations:** The evidence of particularly positive and lasting impacts among smaller organisations suggests that collective conciliation may have most impact in these environments. Attempts to heighten the impacts of collective conciliation may be most effective if assistance is targeted at smaller organisations and those without any experience of using Acas
- **Increased publicity of ACAS and services offered:** A lack of awareness of Acas services among smaller organisations was commented upon by both employer and trade union representatives. This suggests that this is an area which offers most scope for an expansion of collective conciliation and other Acas work. There may be value in more extensive marketing of ACAS to these organisations.

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1 INTRODUCTION

1.1 Background

The Advisory, Conciliation and Arbitration Service (Acas) commissioned the National Centre for Social Research (Natcen) to conduct a small-scale evaluation project with customers who were 'repeat users' of collective conciliation as part of its ongoing programme of research into collective conciliation.

Acas provides a wide range of services. It offers conciliation in both individual employment rights cases and in collective situations as well as advisory and advisory mediation services. It also provides the Acas arbitration service. Recent changes in workplace employment relations, which have seen a decline in trade union membership and collective bargaining, have inevitably resulted in a shift of Acas' work away from collective disputes to an increased level of individual employment rights cases. The change of climate has led Acas to conduct a review of how collective conciliation is perceived from the perspective of different parties to the conciliation process: employers and employer representatives, trade union officers and collective conciliation officers themselves.

The current study was commissioned to provide information to supplement and enhance a previous study which Natcen conducted into the perception and practices of collective conciliation officers during the collective conciliation process¹. The purpose of the study was to collect information about the experiences of customers, from both the employer and trade union sides, who were "repeat users" of the service, that is to say they had used the collective conciliation service on a number of separate occasions.

1.2 Research objectives

The overall aim of the research was to evaluate the expectations and experiences of Acas customers using the service and to examine their perceptions of the benefits of Acas involvement, both short term in assisting the resolution of disputes, and longer term in influencing ongoing employment relations. The specific objectives which the study was seeking to explore were:

- Why parties involved Acas in some disputes but not in others
- What factors influenced their decision to involve the collective conciliation service
- Parties' expectations of what conciliation would involve and of what role the conciliation officers would play
- Parties' views about the tactics and methods used by conciliation officers and their overall satisfaction with particular aspects of the service
- Satisfaction with outcomes achieved as a result of the involvement of the collective conciliation service

¹ Molloy, D. and Lewis, J. Acas collective conciliation: a qualitative study of the nature of collective conciliation. March 2001

- What parties perceived to be short, medium and long term impacts of Acas involvement in workplace disputes.

1.3 Design and conduct of the study

1.3.1 The use of qualitative research

The study was designed to be qualitative in nature. Qualitative research is particularly well suited to providing a detailed understanding of attitudes and behaviours and the factors that underpin them. This therefore made it an ideal format for exploring the experiences of people who had used collective conciliation and the reasons why they continued to use the service on a repeat basis. In-depth interviews were selected as the optimum method of data collection because of their ability to explore individuals' accounts and views in great depth.

Qualitative research involves small samples that are purposively selected to reflect, but not be statistically representative of, the relevant characteristics of the research population. The samples are designed to elicit the full diversity of views and behaviours within the given population but are not designed to make any statistically reliable statements about their incidence or prevalence. In this study the sample of repeat users of collective conciliation was purposively selected from information provided by the Research and Evaluation Department within Acas to ensure diversity across a range of characteristics.

1.3.2 Study design

The study was designed to generate a depth of understanding of the collective conciliation function from the perspective of parties who were repeat users of the service. It involved a total of 18 interviews with service users: 10 interviews with employers or employer representatives and 8 interviews with trade union officers. It was decided to conduct slightly fewer interviews with trade union officers than employers for two reasons. Firstly, trade union officers were dealing with a number of different disputes across a number of different organisations and were therefore likely to be able to discuss a range of different cases involving collective conciliation. Secondly, the employer sample needed to be sufficiently large to accommodate different sizes of employer organisation and organisations from both the private and public sector.

The sample was distributed across four Acas regions in order to ensure a regional spread in terms of the interviews conducted and to ensure that both Acas specialist and generalist conciliation services were covered by the research. The key sampling criteria were:

- Repeat users of the service
- Region: geographical location and generalist or specialist service
- Spread in terms of employer size and sector and of trade unions

Acas Research and Evaluation Section drew up a sample frame of repeat users of collective conciliation from the collective conciliation database in conjunction with Acas regional contacts. The sample frame identified the person within each organisation who had been the point of contact with the conciliation service and also provided contact details.

Acas sent out a letter to all contact people included in the sample frame, explaining the nature and purpose of the study and giving parties the option of opting out of the study before the sample list was passed to Natcen. A copy of the letter is given in Appendix 1.

The Natcen research team selected a sample from the sample frame received, in accordance with the sampling criteria previously identified. Parties were contacted by phone and invited to take part in the study. They were subsequently sent a letter to confirm appointment details and to reassure about confidentiality.

1.3.3 Profile of the sample

The 18 interviews achieved were distributed across the four regions as shown in Table 1.1 below. More interviews were conducted in London than in the other regions in order to ensure some coverage of head offices of both employer organisations and trade unions.

Table 1.1 Distribution of the sample

	London	Birmingham	Newcastle	Glasgow	Total
Employers	4	2	2	2	10
Trade unions	3	2	2	1	8
Total	7	4	4	3	18

The profile of the sample is shown in Table 1.2. A total of 10 interviews was conducted with representatives of employer organisations although one of these interviews was with a representative of a trade association representing a group of employers within a particular industry. A total of 8 interviews was carried out with regional officers of trade unions.

The sample was intended to consist exclusively of people who were repeat users of collective conciliation. In the event, this was not always the case: a few had used the conciliation service on only one occasion. One employer had had contact with an Acas officer but felt sure that the dispute had not proceeded to conciliation. A primary factor would appear to be the way in which cases are recorded. As the previous study with conciliation officers has highlighted, definitions of what constitutes a collective conciliation case can vary. Some officers may count a series of phone calls to a party as collective conciliation which may account for why service users may be recorded as having used the service when they do not think they have.

Table 1.2 Sample Profile

Repeat Users:		Employer sector:	
Employers:	6 (+1)	Private	6
Unions:	8	Public	4
Acas in procedures:		Employer size (UK emps):	
Employers:	4 (+1)	<1000	2
Trade assoc:	1 in most agmts	1001-5000	3
Unions:	8 in most agmts	5001-10000	2
		1000+	2

1.3.4 Conduct of the fieldwork

The bulk of fieldwork was carried out in November and early December 2001. One interview had to be rescheduled for early January 2002. All interviews were carried out by members of the research team. The interviews were exploratory and interactive and were based on topic guides drawn up in close collaboration with the Research and Evaluation Department within Acas. Topic guides listed the key themes and sub topics to be covered in interviews but were sufficiently flexible to allow emerging themes and topics to be explored fully. Topic guides were reviewed after initial interviews and minor amendments made.

Interviews, which lasted between 1 – 1 ½ hours, were conducted at respondents' offices and were tape recorded, with respondents' permission, for subsequent verbatim transcription.

1.3.5 Analysis

Analysis of the verbatim transcripts was undertaken using 'Framework', a method developed in-house by the Qualitative Research Unit within Natcen². This method, now computerised, involves drawing up a series of thematic charts with headings based on the key themes and sub themes emerging from the data. The material from each interview was summarised under the appropriate headings along with the page reference from the verbatim transcript to facilitate easy access to the original context and retrieval of quotes. The experiences and views of all study participants have therefore been explored within a common analytical framework which is grounded and driven by respondents' own accounts. This method is particularly useful for allowing both within and between case analysis as well as detailed exploration of themes relevant to all study participants.

1.4 Report coverage

This report consists of four further chapters and a short concluding section to reflect on the key messages emerging from the data:

² For a description of framework see Chapter 9 'Carrying out qualitative analysis' in Lewis, J. and Ritchie, J. Eds. Title tba (2002) (Sage: London)

- Chapter 2 provides an overview of the reasons why employers and trade unions use collective conciliation and the circumstances under which they would, or would not, use the service.
- Service users' experiences of the collective conciliation service are described in Chapter 3, together with an overview of the features of collective conciliation which they regarded as particularly valuable.
- Chapter 4 considers how collective conciliation helps parties resolve disputes. In addition, it explores the impact which collective conciliation may have upon the terms of settlement agreed in disputes and the impact of parties' involvement in the collective conciliation process upon relationships and procedures within organisations.

2 DECIDING TO USE COLLECTIVE CONCILIATION

This chapter looks at why employers and unions use collective conciliation. We begin with an overview of the ways in which the representatives we interviewed used Acas, both for collective conciliation and for other purposes. We then look at their reasons for using collective conciliation, and the circumstances under which they would choose to do so or not to do so. We discuss their views about the appropriate timing of initiating collective conciliation, and about the message that this sends.

2.1 An overview of the use of Acas

As we noted in Chapter 1, it had been intended that all the organisations selected for the study should be repeat users of collective conciliation. In practice, their use varied considerably. Among employers it varied from organisations using collective conciliation every year and sometimes several times a year to an organisation which had not used collective conciliation for around ten years. Union representatives generally had more experience of collective conciliation and often were involved in several collective conciliation cases each year.

Beyond this, the level of use of collective conciliation also reflected the volume of disputes and the nature of industrial relations in different organisations and industries. The existence of extensive internal mechanisms, or mechanisms within a particular industry or profession, for dealing with disputes also affected the level of usage of Acas collective conciliation. Some respondents described having mechanisms which provided forms of conciliation or arbitration, which meant they made less use of Acas for these purposes.

The types of dispute were varied and included pay; other conditions such as hours, leave, staffing levels, and shift patterns; redundancy or transfer of undertakings, and recognition.

Employer and union representatives also used other Acas services, particularly individual conciliation in employment tribunal cases; arbitration; training and seminars, and the advisory service. They sometimes also described activities which appeared to be advisory mediation (for example '*a project*' or '*workshops*') or running alongside. These formal terms were not used by respondents and the distinction between these activities and collective conciliation was not always clear to them.

2.2 Reasons for using collective conciliation

2.2.1 Pre-requisites for collective conciliation

At a broad level, the circumstances under which collective conciliation was used and the motivations for using it were very clear. Both employers and union representatives used collective conciliation where they were in dispute, had reached a point where it was clear they could not resolve the dispute between themselves, and wanted to avoid industrial action and to reach an agreement.

The importance of avoiding industrial action was emphasised by both employers and union representatives. Employers stressed that it is usually not in the interests of the company because of its impact on productivity, customer relations and broader perceptions of the company. Union representatives stressed that it was generally not in the interests of

employees, both because of the direct loss of pay and because of the danger of broader harm to productivity and thus to job security.

“I mean it really does become a plague on both your houses, union and employer.” (Employer)

“Trying to avoid a dispute Nobody gains out of a dispute I mean what would you want to go on strike for? I mean that’s silly. You know, what you want to do is negotiate the best terms and conditions that you can get, and stay at work.” (Trade Union)

The importance of using collective conciliation to avoid industrial action was reflected in the fact that conciliation was frequently built into dispute procedures, as either a mandatory or a consensual step. Some union representatives said additionally that it was the policy of their union not to ballot for industrial action until collective conciliation had been attempted.

This meant that the circumstances under which the parties might decide not to use collective conciliation, once they had reached a failure to agree, were rare. Representatives stressed the importance of having exhausted internal options (discussed further below in section 2.4), and the main reason why Acas had not been used in other disputes was that internal discussions were still continuing.

But there were also some circumstances where there was not the same desire to reach agreement or to avoid industrial action. Respondents stressed that these would arise only occasionally, but they pointed to instances where their perception of the strength of their case meant that they would prefer to continue in dispute. For example, one employer representative described a case where it was felt that the union's claim had no validity or substance whatsoever. Since agreeing to it would have significant implications for the business, their preference was to continue to hold out, and the case proceeded to arbitration and a finding entirely in favour of the employer. One union representative similarly described a case where it was felt that the employee case was very strong and likely to result in an overwhelming ballot in favour of industrial action, at which point it was expected that the employer would capitulate.

The distance between the parties was also said occasionally to lead to a decision not to use collective conciliation. Being a long way apart could mean that the union was likely to achieve more of its members' objectives by threatening industrial action and continuing in direct discussions than by conciliation.

It was also said that there might sometimes be broader circumstances where taking industrial action might be the better option. For employers this arose where there was a perception that the workforce and union were becoming increasingly militant; for union representatives it arose where the employer was seen as riding increasingly roughshod over employees' rights and conditions. For both, it meant taking a view that a deteriorating relationship, characterised by regular or unceasing disputes, needed to be confronted and dealt with: the resulting industrial action would ultimately be cathartic.

“Sometimes it needs the strike. That sounds an awful thing to say and the public will probably never understand it, but sometimes you actually need the industrial action, you need the big bust up, you need the war.” (Trade union)

Finally, one employer also referred to small local disputes where it was felt that it would be inappropriate to involve Acas – particularly reflecting the image of Acas as a national, high profile organisation.

“Probably also feeling that most of the things we had disputes about before are pretty squalid little back-yard things, and you think, goodness me, surely you don’t have to invoke an organ of national government to sort out whether Bloggs works in this part of the organisation or that part of the organisation. It just doesn’t sound like the kind of thing you associate with Acas in the papers So maybe it took for something to be a national level issue, to make it easier to see the application (of collective conciliation).”
(Employer)

2.2.2 Other motivations for using collective conciliation

Beyond the overarching motivation of a genuine desire to reach agreement and avoid industrial action, there were some other considerations which could underpin the decision to use collective conciliation.

First, employer and union representatives stressed the importance of demonstrating to others that the company, or the union, was trying every option to settle the dispute. Employers talked about the importance of demonstrating this to customers in particular, but also to the workforce. It seemed to be particularly important in organisations where disputes were likely to be more high profile, for example those providing essential services to the public.

“It was a consideration in our strategy to do the right thing and also to be seen to do the right thing because you know, no company wants to ... lose the media war over it.” (Employer)

One employer representative described using collective conciliation at a time when the company had recently been taken over. As well as meaning that production might move to one of the company’s new sites if there was a dispute, they felt it was important that they were personally seen by the new management to be using all endeavours to deal with the problem.

For trade union representatives, the emphasis here was on demonstrating to the membership that everything possible was being done to advance their case. There appeared to be a latent tension between full time officials and their membership, which could result in the workforce mistrusting full time officials and feeling that the union is not sufficiently robust in supporting members. Union representatives described cases where their assessment was that the company had genuinely made their best possible offer, but where the membership believed that a better offer could be obtained.

“They think that the company have got the ability to meet their demands all the time, which we know is not always the case. I mean yesterday I was with a company that I know for a fact, and I can’t tell the full workforce, that they were very, really almost at closure point, but yet when I address the workforce they tell me they’ve got plenty of work and the company are telling lies.” (Trade union)

Each side might thus use collective conciliation not only to reach a negotiated settlement but also as a demonstration of reasonableness or commitment to another audience.

There were other suggestions of more tactical motivations underpinning the use of collective conciliation. It was said that it might sometimes be useful to suggest it suspecting that the other side might refuse, since this would display the party suggesting it in a better light. A union representative described a case where they felt that the employer had suggested conciliation as a delay tactic, rather than with any firm intention of engaging with the process, since it would prolong the dispute over the Christmas period and thus, it was suggested, weaken the resolve of the workforce to continue.

Finally, one employer described using conciliation in one case primarily because it was a necessary precursor to arbitration, in the terms of their dispute procedures. They had no real confidence that conciliation would be useful and felt the union similarly had not engaged with it since what both sides wanted was arbitration.

As Chapter 4 discusses, these broader motivations in using conciliation had implications for whether conciliation was able to produce a settlement, and help to explain why it was not always able to.

2.2.3 *Dependence on collective conciliation?*

In general, using collective conciliation was seen as a step that should not be taken lightly. Both employers and union representatives sometimes described it as meaning that they themselves had '*failed*' if they had to involve a third party to resolve a dispute. Union representatives, as we discuss further in section 2.4.1 below, were sometimes concerned that being too quick to use Acas for collective conciliation might undermine their own role, and neither side (as Chapter 3 describes) particularly enjoyed the process of conciliation.

There were occasionally suggestions that parties – either employers or unions – were dependent on collective conciliation, using it as a matter of course without genuinely attempting to resolve disputes internally. This seemed to arise particularly in situations where there was a more confrontational approach to industrial relations, with employers seeing the union as demanding and militant.

One employer representative described a situation where for several years collective conciliation had been used annually in the pay review. They felt that the workforce completely mistrusted the company, so that it was always believed that the company's 'best offer' could be improved, and as a result collective conciliation had become almost an automatic part of the pay review procedure. The collective conciliation officer who dealt regularly with the company had advised them to make what was genuinely their best offer in direct negotiations and then hold firm, rather than making a lower offer and increasing it in conciliation. He had also suggested what appeared to be advisory mediation work to improve the relationships between workforce and management. The company was now considering changing the reference to conciliation in dispute procedures so that both parties had to agree to referral, rather than this being automatic on the request on one.

In addition, as noted earlier union representatives sometimes felt that the workforce could be reluctant to hear that an offer was the best possible until conciliation had been attempted. It seemed to be important not only that the union demonstrated they were following all possible avenues, but also that the workforce did not accept the management's position without some degree of 'struggle'.

One employer felt that the union was too ready to use conciliation in these circumstances.

“In our negotiations with (one union) we often find that they, in order to get the ultimate settlement endorsed by their members, it’s helpful for them to say, ‘Well, we went to Acas and this is the best we got.’ And it’s almost like window dressing in a way, so we do tend to end up with Acas fairly regularly in our discussions with (that union), and indeed we’re on the verge of that happening again shortly.” (Employer)

They had begun to adopt a tactic of *“keeping something back”*, not making their best possible offer before conciliation to ensure that they had some ground to give once conciliation began.

But, this aside, there was little evidence of parties becoming dependent on collective conciliation. Even where they used conciliation frequently, there were still other disputes which they resolved without conciliation.

2.3 Aspirations of collective conciliation

As well as exploring the motivations for using conciliation and the circumstances under which it was used, we explored the particular features of collective conciliation that led the parties to use it. Collective conciliation was used because it was hoped that it would:

- **provide a better environment for discussion and reflection:** aiding dialogue between the parties, making it easier for each side to consider their own position and allowing differences of opinion *within* each side to be discussed more openly
- **generate new ideas and thus resolve deadlock:** when internal discussions reached deadlock, the parties described the same points being made by both sides with nothing new being raised. They therefore used conciliation to provide new perspectives on the dispute, hoping that the parties would themselves see new options or that the conciliator would be able to suggest ways forward. They also used it to help them to focus on the issues when they could no longer *“see the wood for the trees”*

“We felt ... there was no further development in the negotiation stance or progress. We were going round in circles, they had a certain standpoint, by that time they would probably have some three, four, five to one majority to reject the offer, so they felt they were in quite a strong negotiating stance themselves and they had the support of the membership. We felt we’d offered the best we could, we couldn’t go any further.” (Employer)

- **allow the party to express their own position more convincingly:** each side sometimes used conciliation in the hope it would convince the other of the weight of their case. They felt that having it articulated by an impartial third party would increase its authority, and sometimes also hoped that the conciliator would convey his or her own endorsement of it.

“Because I felt that the argument that I was using was strong - I just didn't feel that the company were listening to the argument and we were both beginning to pin ourselves into corners.” (Trade union)

This was also important to union representatives where it was hoped that the conciliator would be able to convey to shop stewards involved in conciliation that the best possible offer had been made

- **allow dialogue to resume:** conciliation was used where direct negotiations had broken down completely – for example by the union where the company had refused to discuss a proposed new initiative further and was driving it forward in the face of employee opposition. It was seen to be the only option for *'getting back into talks'*

“Because basically we felt then that there was a dying need basically to get back around the table to speak, because it got to the point that decisions were being made without consultation with us.” (Trade union)

- **improve the parties' understanding of each other's position:** more broadly, it was used where it was hoped that the conciliator would be able to convey the other side's position, what was important to them, what they objected to in particular, what they might be prepared to concede and so on. One employer, for example, had felt they had no alternative but conciliation when the union representatives had spoken for no more than about two minutes in three days of negotiations. It was said that conciliation forces the parties to listen to each other, to be questioned about their own stance and to be accountable for it
- **provide a third party perspective on the representative's own position:** some union and employer representatives used conciliation because they wanted the conciliator's own reflections on their position – how strong their case was, where there were flaws, how reasonable they were being, how far it was consistent with industry norms and so on

“I suppose in a way to, to give us both an indicator if we were being, I suppose, too dogmatic over something, that ... you know, this is not an appropriate clause, and I suppose having that sort of advice and knowledge about what is good practice.” (Employer)

- **force the parties to recognise the consequences of failing to agree:** as we discuss below, conciliation was valued as a 'backstop' in negotiations and used where it was felt to be helpful to make either the other party or the union's membership recognise the consequences of failing to agree

- **provide a shield:** where relations had become soured, conciliation was seen as a way of putting forward options or conceding ground without loss of face, or making it easier for the other side to concede

“If you’re struggling in a dispute position, you know, it can be a way out, it can be a tactic in that way for us.” (Trade union)

Parties saw impartiality, and independence from management and unions, as fundamental to their willingness to use Acas.

As Chapter 3 describes, these aspirations were generally matched in service users’ experiences of conciliation, although there were differences between officers in whether all the interventions suggested above were being displayed. Interestingly, there seemed not to be differences between repeat users and people using conciliation for the first time in their expectations of conciliation. This would tend to suggest that prior conceptions of what conciliation involves are accurate, although the sample of first-time users was too small for reliable conclusions to be reached about this.

Finally, the findings are consistent with those from a recent survey of collective conciliation customers. The survey found 70% of parties saw it as very important in influencing their decision to use Acas that the service is independent of management and unions³. Key expectations (cited by over 75% of the sample in each case) were: helping the sides to agree terms; helping the other side to understand your point of view; helping you to understand their point of view; suggesting ways of settling the dispute; clarifying the issues, and taking the heat out of the situation.

2.4 Initiating collective conciliation

2.4.1 Timing

As section 2.2 described, both employer and union representatives described initiating collective conciliation at the point when the parties had proceeded as far as they could in direct negotiations, exhausted the internal dispute resolution machinery, and become entrenched. This could be either before or after ballots for industrial action.

It was felt that it was important not to go to collective conciliation too early, because it was generally preferable to resolve disputes internally rather than relying on a third party. This issue seemed particularly important to union representatives. Here, there seemed to be an underlying view that it was important to sustain their credibility in the eyes of members, shop stewards and the employer, and that their own role in negotiations could be eroded if they were too ready to take recourse to Acas.

“I don’t want the shop stewards to think that Acas are better negotiators than me And that the only way to cure anything is just to drag it out and call Acas in.” (Trade union)

³ *Survey of Collective Conciliation Customers - 2000/2001*, Fox. M., Advisory, Conciliation and Arbitration Service, Research Findings No. 2, Nov 2001.

"I certainly wouldn't object (to Acas becoming more proactive in initiating their involvement in disputes) because two heads are better than one But in the back of your mind ... they're treading on our toes. I think it's a fairly delicate balance ... because at the end of the day someone might say 'well we might as well not have a full-time officer there – the Acas officer's going to deal with it, he's going to produce the solutions.'" (Trade union)

One union representative was also critical of employers she had encountered who she felt were too ready to suggest conciliation rather than dealing with disputes themselves, out of an impatience with and lack of expertise in personnel management. Finally, it was also said that collective conciliation serves an important function as a backstop or a last step before industrial action, and that it should therefore remain differentiated from internal negotiations as a separate and later stage in the dispute resolution process.

In general, then, the parties would use Acas as a last resort only. However it was said that in unusual circumstances a recourse to conciliation might be considered at a slightly earlier stage if it was a way of avoiding what could be a damaging confrontation. One trade union representative for example said they might consider it if there was a *'personality clash'* between them and a particular employer representative. Another, representing a high profile area of work, said they might consider bypassing the final stage of the internal machinery and proceeding earlier to conciliation if it might help to avoid *'a big political dispute'*.

2.4.2 The message sent by initiating collective conciliation

Which side in a dispute initiated collective conciliation seemed not to be very significant to the people we spoke to. Indeed they often could not remember who had first suggested conciliation in particular disputes, or which party had approached Acas. Their general approach was to agree, with the other side, that Acas should be contacted. It seemed of no relevance who had actually made that contact, and they sometimes seemed surprised that the question was even being asked.

They generally felt that being willing to go to conciliation sent a positive message to the other side and to wider audiences such as the workforce and customers. It was seen to indicate that the party was taking a reasonable stance, was keen to resolve the dispute, would consider all sensible options and was prepared to moderate their position. It was felt to demonstrate a willingness to expose one's position to a third party, and thus to convey a suggestion of moral certainty and probity. However, it was also said that it could be an indication to the other side that a firm line was being taken, that the party was not willing to give in and would face the possibility of industrial action if necessary.

"Hopefully it will say to (the workforce) that there's nothing from our point of view to hide, we've been as open and honest as we can be." (Employer)

"I think it gives a message that me as an officer, or us as a union, don't want to go down the road of industrial action. We're happy to talk to anybody or do anything to resolve the issue, rather than industrial action. So ... even though we're threatening industrial action, I think the employers ... see us in a better light, to be honest Sometimes I think they get quite shocked (that we suggest conciliation) ... and I think they're alarmed when I say, 'well look, we'll talk to Acas, we'll do this, we'll do that, what do you want to do? Anything but go down this road'. I think they're quite surprised

by that to be honest. (It can make them) more accommodating ... you know, if I want to do other meetings on site, health and safety issues meetings, they're more accommodating." (Trade union)

There was also some concern, however, that suggesting collective conciliation could be seen as, or might be misconstrued by the other side as, an indication of weakness or lack of confidence in one's own position. Unions were concerned that employers might feel it indicated a lack of willingness to take industrial action; employers were concerned it might indicate to the union that they were ultimately willing to give in to the workforce's demands. In reality, there seemed little to suggest, from the way in which respondents described particular disputes, that this was how the other side's suggestion of collective conciliation had been interpreted.

It was generally said that such concerns would not make a representative on either side hold back from suggesting collective conciliation, although it reinforced the importance of using conciliation only as a last resort. One union representative said that they might consider asking Acas, or the TUC, to suggest conciliation to the employer rather than letting it be seen that it was the union initiating it. An employer said that it would be important, in raising the issue of conciliation with the union, to make it clear that it was not an indication of weakness on the employer's part. Generally, however, these concerns seemed not to act as barriers to using collective conciliation.

Deciding to use collective conciliation

3 THE EXPERIENCE OF COLLECTIVE CONCILIATION

Chapter 3 charts the experience which service users had of the Acas collective conciliation service from their first contact with the service to the point at which the involvement of the service ended. It also provides an overview and appraisal of the tactics used by conciliation officers during the conciliation process, the difference in style and approach between individual officers, and which features of collective conciliation employers and trade union representatives regarded as the most valuable.

3.1 The structure and format of collective conciliation

Section 3.1 explores the nature of the conciliation process: the degree of contact which parties had with collective conciliation officers prior to conciliation itself; where collective conciliation was held, how long it lasted and who was present. Finally, this section explores parties' views as to how prepared they were to be honest and open with the officer during the process.

3.1.1 Making contact

The Acas collective conciliation service often became involved in a dispute as a result of one or other party contacting the regional Acas office and asking them to assign an officer to the particular dispute. Indeed, it was generally accepted that this was the correct procedure when wishing to involve the Acas conciliation service. In a few instances, however, a conciliation officer had initiated the involvement by contacting one or other party.

It was clear that where parties had had a satisfactory experience with a particular conciliation officer in the past, they were keen to use the same person again. In some cases, Acas did automatically assign them the same officer. In other cases, parties requested Acas to assign a particular officer. One employer had actually held off conciliation until the particular officer became available.

However, where parties had been repeat users for some time, they had often built up a relationship with a particular officer. A number of trade unions representatives, in particular, said that they contacted that officer directly, rather than the regional office, when seeking to initiate conciliation in the expectation that that person would undertake the case. In the event of the officer being unavailable, they would have confidence in that person's recommendation for a suitable replacement. Repeat users who had used the same officer for several disputes often stressed how valuable it had been for them dealing with the same officer. Having an ongoing relationship built on trust also made it easier to be frank and open with the officer. It was also helpful in that the officer was familiar with how the organisation worked and with the history of the relationship between the parties. Using the same officer meant starting from a higher base of knowledge/information than if there was a new officer for each dispute.

Initial contact with the officer often consisted of a phone call or letter from one of the parties to outline the dispute and to deal with logistical matters such as times and venues. Sometimes, there was an exchange of basic documents but generally without any preliminary meeting before the start of collective conciliation.

However, in a few cases, the officer had made a request for a preliminary meeting with both sides to be briefed on the issues surrounding the dispute before the start of conciliation.

3.1.2 Duration, venue and personnel

Service users' accounts described very different experiences of collective conciliation in terms of the number of sessions and the length of time involved. Sometimes the process had involved a single session but its length could vary from a few hours to several days. In other cases, conciliation had involved two or more sessions with a gap between them. The process had covered a period of about three weeks. The longest and most complex dispute had involved four or five sessions over a three month period.

The venue for conducting collective conciliation varied: sometimes it was held at the workplace though parties seemed in many cases to have a preference for conciliation to be conducted on "neutral territory" such as Acas premises. This feature of the conciliation process was generally welcomed by those who had experienced it. Being on "neutral" territory was felt to be helpful for creating a "safer" and less fraught atmosphere in which conciliation could take place. Both sides pointed out there were considerable advantages to leaving the workplace environment, travelling to another location and being in unfamiliar surroundings. It helped to change the dynamics of the situation, and being outside what one employer called '*the comfort zone*' could create an added encouragement to settle. However, having good facilities to hand was seen as very important, and even simple facilities such as refreshments could become very important during a long and fraught conciliation session.

In a few cases, conciliation had been conducted with the parties being together in the same room. More often, parties were in separate rooms with the officer going to and fro between them. However, there were also instances where officers had chosen to vary the format according to the particular stage of the process. The parties would be kept in separate rooms while their respective issues were being discussed and then brought together to discuss a possible compromise or solution.

Views about the use of separate rooms in conciliation were mixed. On the one hand, it was seen as very advantageous to be able to discuss issues amongst the team away from the other side. It was also a safe environment for "letting off steam" without raising the stakes of the dispute since parties were confident that any emotionally charged statements would be diluted when relayed to the other side. On the other hand, being separate meant that people did not know what was being said in the other room. This could generate suspicion, for example if the conciliation officer appeared to be spending longer with the other side, particularly among people who had less experience of conciliation such as shop stewards. One employer also felt that the officer had spent much longer with the union representatives, and felt that had led to more pressure on them to make concessions.

Generally those attending conciliation consisted of a team of employer representatives and a team of shop stewards plus the trade union officer. In one case involving one of the emergency services, local government representatives had also been present. The size and composition of the teams was thought to be of importance for the effectiveness of conciliation. It was felt that having very large teams from either party could affect the dynamic of the process, making it harder to agree a collective position because of the number of separate 'agendas'. However, one employer took the view that the ideal was to have four or five people in the employer team with one '*maverick*' member who would be more challenging and questioning.

3.1.3 Service users' willingness to be open and frank with the conciliation officer

For the most part, parties expressed the view that it was largely in their own interest to be open and frank with the conciliation officer. Conciliation offered the opportunity for each party to explain their objectives to the officer and to discuss how far it was possible to make concessions. It was felt that it would be counter-productive to negotiations to confuse the conciliation officer with mixed messages, and not being open would negate the purpose of having the officer there. Service users sometimes said they found it easier to be very open with an officer with whom they already had a relationship. However, it was also said that the relationships with other members of the party's own team could affect how open they were able to be with the officer. One trade union officer for example said that this would depend on how well they knew their shop stewards.

3.2 An overview of the process of collective conciliation

Section 3.2 examines what took place during the process of conciliation and how parties viewed the process. It was stressed that by the time a dispute had reached the stage of going for conciliation, parties' views and positions had usually become very entrenched and the atmosphere had become very tense. The mere act of going for conciliation gave people a chance to draw breath.

Conciliation officers were described as routinely providing an explanation of the function of conciliation to parties at the outset of the process. This description of their own role usually stressed that fact that the conciliator was impartial and was there to try and find common ground between the two parties. At the same time, officers reassured parties that everything said was in confidence and would not be repeated to the other side without their express permission.

During the conciliation process itself, officers tended to spend a considerable amount of time with each team, listening to points of view to try and establish what their respective positions were. They were described as asking questions to encourage the parties to focus clearly and logically on their own position and to tease out how far they were prepared to make concessions.

As already mentioned, parties were usually in separate rooms. A key feature of the conciliation process was for officers to act as a "messenger" or "go-between" to relay one side's position to the other. The different ways in which conciliation officers appeared to interpret their "messenger" role are considered in section 3.3.1.

Where a situation seemed to have reached deadlock, officers sometimes brought forward new options for both parties to consider to try and break the deadlock. In some cases, this involved thinking creatively about the situation so that a variation on an existing theme might be made acceptable to both parties. The principal tactics used were to put "what if" scenarios to both parties to see how a change of perspective would alter their respective positions.

The conciliation process was not something that parties normally found intrinsically enjoyable. It could be stressful and tense, but it also involved a great deal of simply waiting while the conciliator was talking to the other side. Sessions could continue until quite late into the evening. This sometimes led to frustration, if there was a feeling that the conciliator was not

working as quickly and efficiently as possible for example if they were seen taking frequent breaks for a cup of coffee or a cigarette.

3.3 Features and styles of conciliation

This section looks firstly at the features of the conciliation process and how service users viewed them. It then examines the different ways in which service users thought that conciliation officers deployed the various features of the process to create their own style and approach towards conciliation. It shows how it was thought that styles of conciliation differed between individual officers and also that service users felt that individual officers varied their own style and approach according to the nature of the dispute.

3.3.1 Features of conciliation

There were a number of features of the conciliator's role that helped to drive the conciliation process although, as is explained in section 3.3.2, officers varied in the extent and ways in which they were seen to deploy them. The principal features identified were:

- The presence of an intermediary
- Acting as a messenger
- Providing an external and informed perspective
- Challenging views
- Generating new options
- Pointing out the consequences of a failure to agree

Presence of an intermediary

It has already been mentioned that, at the time of conciliation, the parties' positions were usually inflexible and well entrenched. The introduction of a new person helped to change the dynamic of the situation. It was seen to create a less confrontational situation, allowing people to air their anger and frustration in a "safe" environment and defusing the situation. This was felt to make it easier for the parties to open up their minds, to think more constructively, and to engage with the key issues:

"Well, basically, he got them to talk to him, where they wouldn't talk to us. Because what I said to them was, "negotiation is there, you know, but each side's got to negotiate and contribute. You're just sitting there looking at me". And he obviously got them to open up and be prepared to put on the table what it was that they were looking for." (Employer)

Acting as a messenger

A favourite slogan of some officers to parties was '*don't shoot the messenger*'. The role of the messenger, relaying messages between the two parties, was indeed seen as an integral part of the conciliator's role. However, service users felt that the role itself was potentially multi-layered and could be used by officers in different ways to assist in conciliation. At one level, conciliation officers were seen to be acting purely "as a go-between" to relay messages from one side to the other. However, at another level, it was felt that conciliation officers were able to assist the conciliation process by reinterpreting a party's position in neutral, unemotive, language. One employer respondent mentioned that the employer team was very

impressed with the way the officer *'diluted the language in presenting to the other side'*. This helped to communicate messages in a form that was more palatable and acceptable than if they had been delivered by the other side in person: *'they can translate what each side says into something the other side is more likely to listen to'*. It was generally assumed, from the constructive and careful language with which the conciliation officer relayed the other side's view, that the party's own position would be relayed in similarly palatable terms.

Service users also thought that conciliation officers could communicate messages in such a way that it enabled parties to have a better understanding of the other side's position, and to see things they had been unable to see before. There were cases where parties said that they had seen the other side's position in a different light because of the way the officer had communicated it. This was usually done quite subtly to avoid any suggestion of partiality. Ways of achieving this were to spell out what underpinned the thinking behind a particular deal or to point out the reasons that would make it impractical for the other side to accept a particular solution. Alternatively, officers might hint in which way they thought the thinking of the other side might go, or how far they felt the other side might be prepared to move, given some minor adjustment, so that a party could reassess its own position. Hearing how the other side was reacting and feeling was useful for parties when determining what their next move should be.

There was a widespread perception amongst service users that the relaying of messages and stances between parties helped to kickstart the process of moving towards a solution as the following passage illustrates:

"With an independent person shuttling between the two rooms, Acas can start to give you a feel of an area where a settlement might be possible and that starts to take you forward. You feel you are starting to make progress so you then feel safer about trying out ideas, testing the water, seeing whether such and such might work." (Employer)

Providing an external and informed perspective

In section 2.3, we noted that one of the advantages which parties hoped to gain from using the conciliation service was to be able to talk through their case with an informed but independent person. In particular trade union officers, who were dealing with a variety of different disputes, said that they had found it particularly beneficial to be able to discuss the case with the conciliation officer. In some instances the conciliator had advanced a view as to the chances of the party being able to obtain a favourable outcome. For example, the officer might indicate to a party that their case was not especially strong or was somewhat ambitious. Alternatively, the officer might suggest that the other side was very unlikely to move from its position so that the party might be being over optimistic in its assessment of its ability to achieve all it was seeking.

There were different views about the appropriateness of such an input, and variation between respondents in whether or not they sought it. Its acceptability also depended very much on the approach taken by the officer. It was more likely to be acceptable where it was put forward as a neutral and objective assessment of the merits of the party's position rather than expressed as the officer's personal view. Hearing a reasoned assessment of the pros and cons of the situation, based on the conciliator's knowledge of legislation and previous cases, was helpful in that the party could then gauge whether they had a reasonable case or not, and might readjust their position. It was sometimes felt to be less appropriate if such advice had not been solicited by the party. For example, a trade union officer felt that a conciliation

officer had compromised impartiality by providing an unsolicited opinion which suggested that the officer personally identified with the union position.

In addition to discussing the merits of the case, representatives also found it helpful to use the officer as a sounding board to bounce ideas off, for example about the tactics being used by the other side or for possible new options to try and push forward the case.

Challenging views

Officers could assist the conciliation process through testing or challenging the views and positions which parties held. They could do this by making them explain clearly and logically the reasons which underpinned them:

“He was forcing the reasons out by skewering us with his eyeballs and saying do you really mean this and, if so, why?” (Employer)

In this way, an officer could oblige a party to expose, and become aware of, any flaws in their argument. However, it was stressed that officers had to tread a fine line between conciliation and negotiation when adopting this approach. If they took too definite a line, or asserted their own opinion, they risked compromising their impartiality.

Generating new options

Representatives also described conciliation officers helping to generate new options. These could arise from the parties themselves, where they had been helped to see possible ground for compromise or had been encouraged to reflect on the merits of their own position. But conciliators themselves were also described as having put forward new options. It was sometimes felt that these would probably not have been acceptable to the other side if one or other of the parties had made them, and the fact that the officer was seen to be an independent third party coming to a dispute *‘without any baggage’* was very relevant.

Some parties felt that officers had thought creatively about the situation and put forward innovative options. More generally parties perceived this as redefining existing offers in slightly different ways or suggesting ways in which the terms of an agreement could be altered to the mutual satisfaction of both parties. A useful method for putting forward new options was to couch them in terms of ‘what if’ scenarios. Parties could then ascertain what room for flexibility the different scenarios would give them.

Pointing out the consequences of a Failure to Agree

As well as seeking out new options and areas of possible compromise in order to achieve a resolution to a dispute, officers could also be proactive by spelling out to parties the consequences of failing to reach a resolution. For example, they may point out that the impact on customer confidence could lead to problems with the “bottom line” resulting in problems both for management and for job security within the workforce. A trade union representative was critical of an officer who, in his view, had not spelled out sufficiently to the employer side the potential consequences of their position.

The features of collective conciliation which parties had experienced corresponded closely to the features of conciliation which had motivated parties to use conciliation in the first place, as set out in section 2.3. However, there was some variation in how far people felt that conciliators, in particular cases, had made use of the full range of interventions, as the following section discusses.

3.3.2 *Styles of conciliation*

Parties varied in the extent to which they had used the services of more than one conciliation officer. As already noted in section 3.1, repeat users of Acas collective conciliation were often keen to use the same officer for future disputes where they felt they had obtained satisfactory service in the past. Indeed, in some cases they maintained an ongoing relationship with one particular officer. Their awareness of differences in style between conciliators was therefore variable. However, even where their experience of other officers' style and approach was limited, service users were able to articulate the features which they particularly appreciated (or did not appreciate) in the style and approach of the officer, or officers, with whom they had had contact.

Parties pointed out that all conciliation officers differed to some extent in how they dealt with collective conciliation according to their own personality and temperament. For example, some might adopt a relaxed approach whilst others were more brisk and businesslike. Some people would take detailed notes about the dispute whilst others just made bullet points. However, the most fundamental difference in style, which parties noted, related to the extent to which conciliation officers used all the features of conciliation described in section 3.3.1.

At one end of the spectrum were officers whose style of conciliation was described as that of a 'go between'. A key feature of this approach was that these officers tended to confine their intervention to relaying messages, or acting as a 'go between', without giving a more in-depth understanding of what underpinned each side's position. It did not seem to be part of these officers' perception of the role to use the features of conciliation to try and change the parties' perspectives or to seek out ways of effecting a resolution to the dispute. At the other end of the spectrum were officers whose style was described as 'proactive'. The perceived hallmark of the 'proactive' approach was that officers were moving beyond purely relaying messages, and additionally using other tactics to move forward the parties' thinking, to tease out areas of possible agreement and to look for ways in which they could achieve a resolution.

There was an overwhelming preference for the proactive approach. It was generally felt that the "go-between" approach was of itself unlikely to achieve a resolution, or at least it would take considerably longer. One employer had become so frustrated by the limited approach taken by a particular conciliation officer who was regularly assigned to their cases that, in consultation with other local employers, they were on the verge of making a complaint to Acas.

"We did have a problem at one point. We kept getting an officer who was a terribly nice chap but who was absolutely useless. We knew it was a waste of time and would not achieve anything. We were going to say to Acas that we were not happy with the officer but then he got moved. We were very relieved that it happened and that we did not have to force the issue."
(Employer)

By contrast, a "proactive approach" on the part of an officer tended to demonstrate that the officer had a real commitment to achieve a resolution. It gave parties the confidence that the officer would do everything possible to try and achieve a successful outcome. It was seen to be demonstrated where officers persevered, in the face of deadlock or a repeated negative reaction to any new initiatives, rather than calling a halt to conciliation. In addition, officers who took a proactive approach were felt to adapt their tactics and approach to different people or stages in the conciliation process to useful effect:

“We tend to get the same person. His approach varies depending on who he is dealing with. He knows how to pitch it to different people.....His role changes in different circumstances. Sometimes he is very persuasive and sometimes quite demanding. Sometimes he throws out bait or challenges and asks questions...They do that very well. They very quickly get the feel of the situation, what the problem is, where they have to go.” (Trade union)

Overall, officers at the “proactive” end of the spectrum were felt to be using the full range of interventions described in section 3.3.1, and this helps to explain the high levels of service user satisfaction with this style of conciliation.

3.3.3 What makes a good conciliator?

Service users also discussed the range of qualities which they considered important in a conciliation officer. The principal ones they identified were: impartiality; professionalism; a personable manner; knowledge and competence, patience and accessibility.

Impartiality

A recurrent theme was the fundamental importance of impartiality on the part of the conciliation officer in collective conciliation. This was the basis of representatives' use of Acas for conciliation. In dealings with parties, it was therefore felt to be essential for officers to demonstrate that they did not have any axe to grind and were there to conciliate, not negotiate. Conciliation officers also needed to demonstrate in every way that they did not lean to one side or the other in the dispute.

It was generally felt that the way that officers conducted themselves during conciliation reinforced the impression of impartiality. They tended to be very careful not to be seen to be taking sides and to make it clear that they were not there to negotiate on behalf of either party. Service users considered that a proactive approach was consistent with impartiality if it was clear that the officer's actions – testing a party's stance, giving their own view, suggesting possible ways forward and so on – were based on an objective and even-handed assessment. Parties also sometimes described feeling that their officer had understood their position and was *'on their side'*, but at the same time still perceived that the officer was impartial and neutral and was likely to have given the other side exactly the same impression.

However, in a few instances parties' faith in the impartiality of an officer had been compromised. One employer representative had felt that the officer had displayed partiality when it was discovered that he had sent the union team home but kept the employer team behind with the result that some members missed their last train home. The employer team felt they were being put under pressure by the officer to make a series of concessions, without reciprocal concessions being forthcoming from the trade union side. The officer's manner was described as *'accusatory'*, and it was felt that they were expressing personal views based on a stronger identification with the union than the employer. This seriously undermined the officer's credibility from the employer perspective. The perception of impartiality could also be undermined where parties felt that their experience of another Acas service had been unsatisfactory. Representatives from one union doubted the impartiality of conciliation officers based on their experience of an arbitration case which they felt had not been dealt with even-handedly.

Professionalism

It was considered extremely important for an officer to demonstrate a professional attitude towards the process of conciliation in order to attain the respect of parties and to inspire confidence. The integrity of the officer was seen to be a key ingredient in professionalism. Parties felt that it was important to believe in the *'trustworthiness'* of the officer if they were to be fully frank and open in their dealings with the person. They wanted to feel sure that officers would respect confidentiality and only communicate to the other side what they had been authorised to communicate. Hearing the careful way in which the officer communicated the other side's position gave people confidence that their confidentiality too was being respected, and there were no examples in respondents' accounts of officers revealing anything untoward.

In addition, it was important for officers to demonstrate professionalism in the way they looked, spoke and acted. One officer was described as *'oozing professionalism'* because the way he dressed and spoke reinforced the idea of a neutral and independent third party. An officer's credibility could be seriously impaired where, for example, he or she used bad language as had been the experience of one employer. As noted earlier, there was also a degree of frustration if officers were seen to take frequent breaks while the parties waited.

A personable manner

It was widely accepted that conciliation officers had very different personalities and personal qualities: for example, some were quite soft-spoken whereas others were more brisk and businesslike. However, it was felt that there were certain qualities which facilitated good communication in the process. Firstly, it was seen as essential for an officer to be able to adapt to different kinds of people and establish a rapport with them. Good conciliation officers were felt to be able to relate well to both sides, and make each feel their position was understood. Officers achieved this in different ways according to whom they were dealing with: one respondent felt at ease with the officer because of the bad jokes he told. It was also felt that people were more likely to listen to an officer who put them at their ease and then put forward a solution that involved some compromise on their part than someone who was sharp and abrupt in their manner. It was generally agreed that a *'personable manner'* also depended on the ability of officers to make parties feel that they were really listening to, and understanding, what parties were saying. In addition, the officer needed to convey the impression to parties that their views were important.

Knowledge and competence

Parties said that they needed to have confidence in the ability of the officer to really grasp the issues around the dispute, to tease out what the agendas of the different parties were and to spot the flaws in either side's argument. As well as having the intellectual equipment to do this, it was perceived to be beneficial where officers were sufficiently experienced and knowledgeable so that they were able to draw on facts without constant reference to other documents and could bring their experience of other cases to bear on the current dispute. It was also considered helpful where officers were familiar with the background and jargon of a particular industry so they did not require detailed background briefing. In addition, good officers were thought to be articulate and skilled in communicating issues in a way that was both intelligible to people and neutral in presentation.

Patience

Service users did indeed regard patience as a virtue in a conciliation officer. It was considered very beneficial in the often emotionally charged atmosphere of a dispute situation

to have someone who was happy just to listen without imposing any time limits. This helped to remove the pressure on parties and put the situation on a more even keel.

Accessibility

As part of their professional approach, conciliation officers needed to be punctilious about making sure that they could easily be contacted, either directly or through a message service. Speedy response to any messages left was generally regarded as important.

Overall, there seemed to be a high degree of satisfaction with the conciliation service and with conciliation officers. They were generally perceived to carry out a difficult and skilful job well, with patience, intelligence and tact, and in doing so to provide a very important and valued form of assistance. These views are consistent with the findings of the Acas survey of satisfaction with the Acas conciliation service, where 68% of service users were very satisfied and 23% satisfied with the service received. The survey found high levels of satisfaction with key features of the service, particularly conciliators' knowledge of employment relations and employment law, their impartiality and trustworthiness, and their understanding of the issues in dispute.

3.4 Ending of conciliation

The point at which the involvement of the Acas officer in the process had ended varied. Where an agreement had been reached, the officer had sometimes withdrawn almost immediately or had stayed on for a short time thereafter to oversee the drawing up of documents. In other cases, contact had continued, on either a formal or an informal basis, sometimes instigated by the trade union or employer representative and sometimes by officers themselves.

There seemed to be different approaches among conciliators to documenting the conclusions of conciliation. Some drew up a formal agreement document to be signed by the parties, others wrote separately to each side briefly outlining what had been agreed, and sometimes no documentation had been provided. Generally the parties seemed to appreciate some written output. In one case, the absence of formal documentation of the ending of conciliation meant that, when the case was subsequently referred to arbitration, there was a dispute as to whether this had been done within the period set down in the organisation's dispute procedures. Both parties were said to have been highly dissatisfied with this.

There was a range of views about the point at which the conciliation officer's role should end. One trade union officer had found it useful where the conciliator had stayed on while parties discussed how to go about implementing the agreement.

But the general view was that the role of the conciliator was purely to conciliate and that this meant that the involvement should cease at the point where an agreement was reached (or where it was clear that there would be no outcome from the conciliation process). At this point, they felt that parties needed to take back control again. In the words of one employer *'It is the manager's job to manage the business'*. A trade union officer expressed a similar sentiment: *'The trade union officer is the negotiator'*. In none of the cases had the conciliation officer been involved in helping to secure the membership's approval of the agreement.

There was a considerable degree of support, however, from both sides, for some continued involvement on the part of the Acas officer once collective conciliation itself was over. This could be a formal arrangement involving advisory mediation, although the term was not used by the parties and the officer's activity tended to be seen as a continuation of conciliation.

One employer had found it very useful to have the officer facilitating workshops to talk through the agreement and how it was going to be implemented. Alternatively, the officer could be brought in to help more generally with relations between the parties. A trade association reported that there had been regular meetings, chaired by the Acas officer, after conciliation to discuss issues with a view to easing future relations between the parties. In another case, the Acas officer had come in to the company to give training in new procedures that had been drawn up after conciliation had finished.

Some service users referred to the fact that the officer had maintained informal contact with them, either by phone or by calling in person, just to make sure that things were progressing smoothly and to check if they could be of any assistance. Those who had experienced this were generally positive about it: it was good to maintain the link. It also sent a very good signal about the Acas collective conciliation service. In the words of one trade union officer: *'It is very good that they are putting themselves about'*. Similarly, representatives who had had limited contact with Acas before the conciliation case now saw it as a source of informal advice and support on other issues.

4 IMPACTS OF COLLECTIVE CONCILIATION

This chapter discusses the effects of collective conciliation upon the parties who go through this process and upon their dispute. It explores exactly how collective conciliation can help parties in dispute reach a settlement and why, in some cases, disputes may not be resolved in collective conciliation. This chapter also explores how collective conciliation might influence the terms of a settlement reached in this environment. Wider impacts linked to collective conciliation are also discussed such as the effects of a dispute being resolved upon the quality of relationships between employers and employee representatives, ways of working, procedures and productivity within organisations. Conversely, any impacts resulting from the non resolution of a dispute are also considered.

4.1 How does collective conciliation help produce a settlement

Quantitative research commissioned by Acas provides evidence that a significant proportion of service users feel that collective conciliation directly contributes to the resolution of disputes⁴. This research explored exactly how it is that collective conciliation assists service users in reaching a settlement. The process of collective conciliation is perceived to help in a range of different ways. Progress may be made towards settlement because of something the conciliation officer does or suggests in collective conciliation. Alternatively, this may happen because of less tangible factors such as the simple fact of Acas's involvement resulting in change in the parties' positions in relation to the dispute.

The contribution of collective conciliation to dispute settlement is clearest when this causes one or both of the parties to move their position in the dispute. This can happen for different reasons. Firstly, this may occur because of the direct influence of the conciliator. As has been discussed in Chapter 3, service users frequently referred to the way conciliation officers sometimes provided a 'subtle nudge' or indication that they felt there should be some movement or modification of position.

"I have to applaud the way Acas handled it, they didn't direct us, but there was a subtle nudge in terms of which way they thought our thinking should go...they very subtly pointed out without telling us that perhaps our view was not sound ...they may say things like 'well it's not a usual clause to have in'" (Employer)

Suggestions of this nature are trusted and carry weight with the parties because of the independence of Acas. In addition because Acas is a government body there is a perception that opinions on the reasonableness of the parties' positions 'must be true'. Consequently, 'having Acas say that what you are suggesting is a bit untoward really makes you think'. Another way in which it was felt that parties may change positions is as a result of seeing these in a new light. It was felt that the process of talking a point of view through in collective conciliation can cause perspectives to change. Revisiting a position and explaining why it is

⁴ 78% of service users in a recent customer satisfaction survey felt that Acas has directly contributed to settlement. *Survey of Collective Conciliation Customers - 2000/2001*, Fox. M., Advisory, Conciliation and Arbitration Service, Research Findings No. 2, Nov 2001.

held can cause views to be reassessed. Some service users described how this process can result in recognition that their perceived commitment to a particular position is not immovable.

“Coming in, making us all rethink and all relook, including myself...I mean there are times when I’ve just closed down as well...I mean they’ll say things like, well, this isn’t like you, come on, what’s going on here? And it all comes out, you know, all this silliness that’s been going on. And yes, I find...if I have to call them in, I usually find that it does make a difference, it opens it all up again.. it all comes out onto the table” (Trade union)

Lastly, these types of discussions can highlight how strong one side’s commitment is to a particular position. This can cause change because becoming aware of the strength of opposing views may cause one party to modify its stance. For example, in one case an employer withdrew the proposal to implement productivity measures when collective conciliation highlighted how opposed the trade union were to these and *‘it became clearer how forceful their position was’*.

A second way in which collective conciliation can cause the parties to find a settlement is a result of the emergence of new options or ideas. If these ideas prove acceptable to both sides then they may provide the basis for an agreement which ends the dispute. These ideas may be suggested by the conciliator. It was felt that because of their wide ranging experience of industrial relations, conciliation officers were well placed to suggest ideas or possible solutions which they may have come across in the context of other disputes. Alternatively these ideas might be suggested by one of the parties. This might be because new ideas emerged from discussions in collective conciliation or one party had ideas they had not previously expressed, but felt able to raise these through the presence of an intermediary.

The case example below highlights the way in which ideas that emerge in collective conciliation can provide the basis for reaching agreement.

A trade union was in dispute with a local authority over plans to contract out a number of services. This was opposed by staff who were concerned that this decision might affect the quality of service provided. Both sides involved Acas after failing to agree. Given that the trade union were clearly not going to be able to persuade the local authority to reverse the decision to put these services out to tender, the conciliator suggested to the trade union that requesting involvement in the tendering process might provide a route out of the dispute. This had not been considered previously by the trade union who agreed to the service being put out to tender on the condition that some members of staff were involved in the selection process. This was felt to be important because it enabled staff to ensure the contract went to a not-for-profit organisation which they felt would mean that standards of service were more likely to be maintained. Overall the conciliator was perceived to have been very successful because *‘she got us talking and found a resolution in a difficult situation’* (Trade Union)

Thirdly, collective conciliation can help parties settle disputes because settlements which emerge in this environment were felt to be more easily accepted than those which the parties might generate themselves. This was because Acas involvement was seen to bestow credibility upon any settlement in which they were involved:

“Acas gave it an added value to our people...we were prepared to reach that agreement because....it had Acas’s name on it...those four letters actually gave strength to an agreement that was reached.” (Trade union)

Trade union representatives in particular felt that Acas involvement brought credibility to suggestions for settlement which assisted them to gain members' acceptance of these. The fact that Acas were involved was felt to signal to union members that all possible avenues for resolution had been explored and any proposed deal was the best they could hope to achieve. Acas's experience in disputes meant that they were well qualified to assess whether a suggested settlement was a *'good deal'* or *'the best we are going to get'*. In some cases this was felt to have been subtly indicated by the conciliator in some way, whilst in others this message was perceived to be implied simply because Acas were involved.

Another way in which collective conciliation was perceived to help produce a settlement was in influencing perceptions of these as being binding. It was felt that the involvement of Acas meant there was *'a code of honour'* attached to anything that was agreed in collective conciliation which meant the parties were bound to adhere to these agreements. Whilst this requirement had no legal basis, it was perceived to be morally binding. It was felt that for one side to later breach something they had agreed to in collective conciliation would mean a loss of integrity. Indeed, this perception of the binding nature of any agreements reached in collective conciliation formed one of the attractions of using this process because it was felt that *'Acas involvement would ensure compliance from both management and unions'*. This binding character of settlements agreed to in collective conciliation did not appear however to apply automatically in every case. There were some case examples in which the fact that one party had later reneged on an agreement reached in collective conciliation meant that no resolution had been achieved.

Lastly, collective conciliation may also help produce agreement for those service users who have developed a degree of reliance on collective conciliation as has been discussed in Chapter 2. Trade Union representatives in particular expressed the view that in certain types of industry sectors disputing parties were often unable to resolve disagreements without involving Acas. As one trade union representative put it *'it was almost like that was where we had to be (in collective conciliation) to get the strike called off'*. This situation was felt to be located in industries which had more 'traditional' or confrontational industrial relations environments. One employer saw this *'heavily unionised, heavy duty, operational type environment'* as a *'niche market for Acas'*. The contribution of collective conciliation to the settlement of such disputes seemed to be simply signalling to the parties that proposed deals were the result of a struggle. In these type of disputes, a degree of negotiating and bargaining was felt to be necessary before settlement could be reached.

"I suspect that those levels of pain had to be gone through and... the discussions had to happen in order for there to be an outcome...I think it's almost part of the ritual... trade union colleagues... have to be able to go back to their stakeholders...and say look 'we spent five hours, we told management, we said we weren't prepared to take this...' I sometimes think that ritual has to happen to satisfy parties that the discussion was a serious one." (Employer)

Further light is shed on the specific contribution of collective conciliation to resolving disputes by the fact that some service users felt that they would not have reached a settlement without Acas. This perspective suggests that collective conciliation may make the difference between resolution and non resolution in some disputes. Whilst it is obviously difficult for service users be certain as to how their dispute might have progressed if Acas had not become involved, some customers felt very strongly that it was only because of the contribution of Acas that they had found a settlement.

“Sometimes you come out with enormous relief and you feel, thank God for Acas, we’d be in the most frightful mess if it wasn’t for them.” (Trade Union)

4.2 Factors affecting the scope for a conciliated outcome

Both the employers and trade union representatives had also used collective conciliation in disputes where no settlement had been reached. Reasons for the failure to reach a settlement in these cases varied. There appears to be a number of factors which clearly affect whether it is possible for collective conciliation to bring about the settlement of a dispute. These include the parties’ level of entrenchment and willingness to move, purposes in using collective conciliation, unity of the sides and extent to which the dispute is rooted in deeper issues. Many of these factors confirm earlier research which has highlighted the importance of these factors as determinants of the scope to achieve a resolution during collective conciliation. (Molloy and Lewis 2001, Goodman, 2000, Burrell & Hilltrop, 1985)

Level of entrenchment and willingness to move

The extent to which there is possibility for movement in each sides position in a dispute obviously affects whether collective conciliation can be successful. Both trade union and employer representatives described cases where *‘there was very little that Acas could do’* because there was no potential for movement in the position of one or both sides. When describing these examples people tended to attribute this unwillingness to move to the opposite side. For example factors such as *‘intransigent management’* were often cited by trade union representatives. Alternatively employers described situations in which the trade union were perceived to have been *‘stubborn’* and refused to engage with any suggestions for compromise. Other trade union and employer representatives, however, took a more detached view of these type of situations and could see that the potential for collective conciliation to achieve resolution was limited given that *‘the management went into conciliation with no way of meeting what the trade union wanted’*. Not all service users had experienced these levels of entrenchment however, and some argued that there was little point in using collective conciliation in these circumstances because *‘there’s no point in going to Acas if you are not prepared to move’*.

Unwillingness to move in dispute situations may be linked to the strength of the parties’ positions. It was felt that in situations where one party is in a particularly strong position such as a trade union which has achieved a large majority in a ballot for industrial action, then this can cause an unwillingness to move. Conversely if one side knows that they are unlikely to win a dispute then this situation can provide more scope for a conciliator to achieve a settlement.

Parties’ purpose in using collective conciliation

The motivations of the parties in using collective conciliation has implications for the likelihood of a settlement being reached. As Chapter 2 has described, there was some variation in the extent to which parties entered collective conciliation with the wish to achieve a conciliated outcome. This situation can obviously diminish the opportunity for a settlement to be reached. In cases where conciliation had been used to prolong a dispute or simply to gain access to arbitration then it was usually felt that there was very little or no possibility that collective conciliation might have achieved a successful outcome.

In addition, when one or both parties enter collective conciliation with unrealistic or inaccurate expectations of the role of the conciliator and what the process can be expected to achieve,

this can also lessen the likelihood of a settlement being reached. These circumstances, seem more exceptional and as Chapter 2 has highlighted, often service users generally appear to have a good understanding of the role of collective conciliation. However, more exceptionally some of the trade union representatives gave examples of cases where shop stewards expected the conciliation officer to resolve their dispute and negotiate for them. This misunderstanding about respective roles in collective conciliation can lessen the likelihood that this will produce a settlement because the parties are not prepared for the roles that they are expected to play.

Extent to which the dispute is rooted in deeper issues

Some disputes were perceived to be symptoms of much deeper industrial relations issues within organisations such as a lack of trust or communication problems between management and the employees. In these circumstances it was felt to be difficult for collective conciliation to produce a settlement. This is because it can be difficult for the conciliator to produce an effective agreement in a situation where the real issue causing problems is not under discussion. It was perceived to be particularly difficult for collective conciliation to achieve lasting settlements in these situations. Even if collective conciliation is able to produce an agreement on the surface issue, this would not affect deeper problems such as problems in the way the two parties communicate or relate to one another. This might mean that disagreements are quick to reoccur.

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

Unity of the sides involved in the dispute

It was felt to be difficult for collective conciliation to produce agreement in disputes where there were divergent opinions within each side. In particular, situations where there were differing opinions between trade union representatives and their members were often mentioned. A number of examples were given of cases where collective conciliation had been unable to settle a dispute because although settlements had been agreed with parties during conciliation, a resolution could not be achieved as proposals had later been rejected by shop stewards or union members. Trade union representatives who had been in this situation often expressed frustration with shop stewards and union members who were sometimes perceived to lack realism. There was a view that sometimes the attitudes of these individuals were reminiscent of a more militant era in industrial relations and this prevented union members from realising when a deal was the best that could be hoped for.

Openness of the parties with the conciliator

One factor which might be expected to affect whether it is possible to reach a settlement in collective conciliation is how open each of the parties are with the conciliator about their own position. This issue was explored in the research although there was little evidence of service users keeping information back from the conciliator. Indeed some people felt that their frequent use of the collective conciliation service had led to conciliators developing a detailed understanding of the issues within their company. This was felt to make it very difficult to avoid being open with the conciliator. One trade union representative, however did describe

circumstances where he might not reveal his real position. He felt that if he did not know the shop stewards particularly well then the *'safest thing is to take a professional line'* and be cautious about how much of his true feelings about the dispute were revealed. Overall, however, both employers and trade union representatives felt they had generally been quite open with the conciliation officer when using collective conciliation. Indeed, there seemed to be a view that the idea of not honestly stating ones position was not a sensible tactic. It was felt that to avoid being open with the conciliator *'is not assisting negotiations at all'* and some service users asked *'what is the point of him being there'* in these circumstances.

4.3 Impact of collective conciliation on the terms of settlement

One of the areas explored in the research was how collective conciliation influences the terms of settlements that are reached in this environment. Overall, service users' views on this were varied. Some people felt that collective conciliation had very little effect on the terms of agreements. This view was often based on experiences where what had been agreed in collective conciliation was perceived to be very similar or identical to what had been discussed between the parties before they involved Acas.

"When we published the settlement it was amazing how many of our staff went, wait this is what management agreed to?... hang on we have been on strike for three or four days, you know we had three or four days of strike action and didn't actually achieve anything." (Employer)

These types of experiences were most common among people involved in more "traditional" industrial relations environments. As Section 4.1 described, in these industries sometimes collective conciliation was felt to be necessary to resolve disputes not because it produced new ideas on which settlements might be based, but because it created the impression that settlements had been obtained through a struggle.

The specific impact of collective conciliation in these circumstances is not upon the terms of settlement (which may remain the same), but upon the attitude of one or both parties towards these terms. As has been discussed earlier, collective conciliation can cause parties' attitudes towards terms of settlement to change as a result of being encouraged to rethink their position or because of realising the steadfastness of the other side. One employer, for example, described how a degree of *'subtle influence'* from the conciliator suggested to him that his objections to a range of trade union initiatives were unreasonable. This clearly influenced his attitude towards these initiatives and provided the basis for settlement as the employer consequently decided to drop these objections.

Other service users felt that the use of collective conciliation can affect the terms of settlement in more substantial ways. Views on this highlight three ways in which this can happen. Firstly, it was felt that use of collective conciliation meant that the terms reached would be essentially a compromise. Service users expressed the view that *'no side will get a great deal at Acas'* and settlements shaped in collective conciliation were *'balanced'* and never wholly in accordance with the views of one side.

An example of this type of compromise was provided in a case involving a large public sector organisation where collective conciliation had been used for the first time after being added to organisational dispute procedures. The settlement achieved in one of the first uses of this new procedure was felt to be far more favourable for the trade union side than that which would have been obtained under the previous system (which did not involve collective conciliation). It was felt that previously the deputy director would have simply made a decision which assisted in the primary objective of meeting targets on budget without much consideration of the trade union's views.

A second way in which collective conciliation can affect the terms of settlement reached and one where the impact of collective conciliation is perhaps clearest, is when it produces new terms of dispute resolution. Service users who had had these type of experiences often felt that collective conciliation could have a significant influence upon terms of settlement. They described how new options which were suggested in collective conciliation were then used as a basis for a final deal which both parties agreed upon.

Collective conciliation can influence the terms of settlement even when the conciliation ends without a settlement being reached. This was demonstrated in examples of disputes where collective conciliation had been unsuccessful but the discussions which occurred within conciliation proved helpful at a later date when attempts to resolve the dispute were revived. As Section 4.2 has illustrated, sometimes external factors may prevent collective conciliation achieving a successful solution to a dispute. However, in these circumstances earlier discussions from collective conciliation can be influential if external barriers to resolution are removed and a new momentum to resolve disputes emerges.

A trade union had begun industrial action as a result of a number of grievances against an employer. One issue in dispute was a disciplinary action against a union member. It was felt that collective conciliation was unsuccessful in resolving the dispute because, amongst other things, there seemed to be an unwillingness on both sides to make any concessions. However, after a number of weeks of industrial action, new impetus to resolve the dispute arose as both parties began to want normal relations to be resumed. The parties then began a discussion about the grounds for possible agreement. A number of possible options in relation to the disciplinary action had been identified and discussed in collective conciliation and these provided a basis for these later talks. The employer in this case felt that whilst it was possible that the parties could have generated these options alone at this later stage, this would have taken time and increased the risk of relations breaking down once again.

In circumstances where collective conciliation does not settle a dispute, it was sometimes felt that it can still have positive effects for the parties. Even where disputes were unresolved, it was felt that the process of collective conciliation can leave both sides with new understanding and clarity as to what the real sticking point in their dispute is. This might be because collective conciliation has managed to deal with any peripheral issues in the dispute which has highlighted where the real point of disagreement lies. This awareness of the fundamental point of disagreement was felt to be useful for the parties as it was helpful in later attempts to resolve the dispute.

4.4 Broader impacts

The research explored the full range of impacts that can result from the use of collective conciliation. When collective conciliation brings about the resolution of a disagreement it is possible that settlement and the ending of a dispute can have various impacts within organisations. In addition to these more immediate impacts there are also some broader or longer term effects which can result from the actual terms of settlement, suggestions arising in collective conciliation and from the process itself. The consequences of dispute resolution are considered below separately from other wider effects of collective conciliation.

4.4.1 The consequences of dispute resolution

If collective conciliation settles a dispute any subsequent effects of the dispute being resolved can be viewed as indirect results of the collective conciliation. These impacts of collective conciliation appear most profound when a dispute has involved industrial action. In these instances settlement would bring this to an end and result in a return to work. This can have a series of beneficial consequences such as providing a boost to morale among staff and improving the quality of relationships. In cases where industrial action was not yet occurring but threatened, the resolution of a dispute can be equally important for relationships and morale. Trade union representatives in particular, felt that this situation can improve working conditions for staff who no longer have to work with the uncertainty created by the possibility of being called out on strike at any moment.

When settlements reached in collective conciliation result in ongoing strike action being cancelled or the threat of this being removed, this has obvious benefits for customer relations and the profitability of companies. One employer for example described how ongoing strike action had been '*crippling the business*' because knowledge about the dispute was causing the company to lose custom. This was particularly evident in cases where industrial action was affecting the services provided by an organisation. Some of the employer and trade union service users for example, had been involved in disputes within the transport industry. The ending of industrial action in these instances meant staff did not have to deal with '*irate passengers wondering where their flight is*' because the full level of services had been resumed. Similarly, in another example collective conciliation had prevented industrial action being taken in the entertainment industry which was viewed to have prevented a loss of revenue.

"Well it would have taken much longer, and we would have had a few days of dark theatres, and you know, quite damaging, a lot of money would have been lost, and, you know, his approach probably saved the industry a lot of money." (Trade union)

The resolution of disputes which do not involve industrial action can also have positive effects on the quality of relations within an organisation or company. Both employers and trade union representatives described cases where resolving a disagreement had '*cleared the air*' and prevented '*simmering resentments*' between the two sides. This was clearly expressed by the trade union representative in the case described earlier in which the conciliator had suggested that local authority staff be involved in the selection of an external contractor to take over management of a particular service.

"It wouldn't have happened without her basically. No... the two sides wouldn't have talked, the authority would have proceeded with the externalisation of the service, and we would have been extremely annoyed with them for doing so. We would have threatened not to talk to them... the

employer would then use the situation to do what ever they wanted without consulting with us because we said we wouldn't talk to them. So the... situation you know basically (would have) become untenable." (Trade union)

Where collective conciliation does not resolve a dispute then this non resolution or continuation of the dispute can also have impacts. The link between these impacts and the contribution of collective conciliation, however, is more indirect than cases where the conciliator is able to bring about an agreement. When collective conciliation doesn't produce a settlement, any effects of this tended to be seen by the parties as being caused by the continuation of the dispute, rather than being a consequence of collective conciliation in any way. Indeed as Section 4.2 as described, when collective conciliation fails to resolve disputes this was generally perceived as being because of other factors rather than the conciliation process itself or the actions of the conciliator.

As might be expected, impacts resulting from the non resolution of disputes are primarily negative and can mean either the continuation or beginning of industrial action and a further deterioration in relationships. Some service users who had had these type of experiences described how in this situation the trade union members might feel disempowered and nurse lingering resentments relating to the dispute.

Another consequence of the failure of collective conciliation to produce a settlement which is acceptable to both sides is that the parties may be forced to recognise the seriousness of their disagreement. In one example, an employer described how the failure of collective conciliation to achieve a resolution in circumstances where the conciliator was perceived to have 'tried everything' had dispelled any illusions held by either side that a solution to their disagreement might be easily found. As a result, both sides '*were forced to consider how far they were prepared to go*' and really assess whether they felt strongly enough about the issues in the dispute to take or risk industrial action.

4.4.2 Longer term impacts

As has been suggested by the discussion in this chapter, views on whether collective conciliation has any longer term impacts varied considerably. Some service users did not think they had witnessed any broader changes or impacts resulting from their use of collective conciliation. Indeed, both employers and union representatives who used the service more regularly pointed out that similar issues caused disagreements within their organisations year after year. Trade union representatives, for example, sometimes felt that '*management are pretty poor managers and they make the same mistakes time and again*'. The recurrence of these mistakes was felt to illustrate the lack of any longer term effects resulting from collective conciliation.

A trade union representative gave an example which illustrated the repetitiveness of some types of dispute. He described how in one company in which he worked, management began pay negotiations every year with an inadequate offer which would immediately be rejected by the workforce. He felt that after torturous negotiations and wrangling management would eventually concede something more substantial. This was viewed as a classic example of the inability of some employers to '*realise that if they made a decent offer in the first instance, they wouldn't, year in, year out, have the workforce threatening to strike*'. The recurrent involvement of Acas collective conciliation in these type of cases was seen as doing nothing to prevent the reoccurrence of these situations.

The recurrent nature of disagreements and need for collective conciliation in some organisations was felt to suggest that Acas involvement did not have any more lasting effects. Indeed, some service users questioned whether it was actually sensible to expect that collective conciliation would have longer term impacts. There was a view that the resolution of a particular dispute was not in itself sufficient to produce lasting or longer term impacts within organisations.

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

Other people however had experienced some broader impacts as a result of their use of the conciliation service. One of the most frequently mentioned of these was that the collective conciliation service was written into dispute procedures. Some people had only used collective conciliation for the first time recently, usually as a result of a claim for trade union recognition. Sometimes in these cases the employer had been previously unaware of how quickly industrial action could begin after the sides reached failure to agree. This awareness and the experience of collective conciliation meant that Acas was sometimes inserted into disputes procedures at a stage between failure to agree and a ballot for industrial action to provide ‘breathing space’ and ‘time to take stock’ between these two stages in a dispute.

Another broader impact of collective conciliation was a general improvement of relationships within an organisation or company. This impact seems to be primarily a result of the settlement of disputes in collective conciliation as has been discussed in section 4.4, but it is also relevant here. Some service users felt that the attitudes of management and the trade union towards one another had improved as a result of the process of collective conciliation. This was more evident in smaller companies which did not have sophisticated disputes procedures or much experience of using Acas. One such case was described by a trade union representative who felt that before using collective conciliation the employer had had very fixed notions about what dealing with the trade union would be like. These ideas were described as being based on very traditional stereotypes of conflict ridden industrial relations. It was felt that the experience of collective conciliation in this case had quashed these preconceptions and made the employer more welcoming towards the existence of the trade union and more open to discussions and negotiations with them. This was perceived to have improved relations and the general atmosphere in the organisation. In another example, an employers’ representative described how prior to the involvement of Acas, the trade union representatives would not talk to management and it was felt that as a result of collective conciliation the two sides were now communicating to an unprecedented degree.

Another impact of using collective conciliation is that it can lead to wider use of Acas services. This was evident among some smaller employers who had begun to use other Acas services after using collective conciliation for the first time. This was because positive experiences of collective conciliation meant they were much more inclined to use Acas in other situations. Collective conciliation also increased awareness of Acas generally and of the other services it provides. The establishment of a relationship with a conciliation officer also contributed to increased and wider use. Some people described occasions subsequent to collective conciliation when they had contacted the conciliator who had assisted them for advice. One employer who had recently used the collective conciliation service for the first time had since telephoned the conciliation officer for advice on a number of unrelated issues that had arisen within the company and was in the process of receiving assistance with these

matters. The fact that using collective conciliation had provided a contact within Acas who could be contacted whenever needed was felt to be a very useful by product of using collective conciliation.

Survey work with Acas customers has found evidence that collective conciliation may result in broader changes to policy or practice⁵ and this is supported by the qualitative evidence. These type of impacts appear more likely in cases where collective conciliation influenced the terms of settlement and introduced something new. This might be when new ideas emerge in collective conciliation which provide the basis for agreement as discussed in Section 4.1. These ideas can have impacts which extend beyond the specific dispute in which they were introduced, for example on internal procedures, relationships, attitudes and ways of working within an organisation. In particular, the principle of consultation, when introduced as part of a settlement can have longer term ramifications. If when put into practice this proves to be effective or beneficial, then this principle may begin to be used more widely. A range of these longer term impacts are illustrated by further details of the dispute example given in Section 4.1

Collective conciliation had produced agreement in a dispute between a trade union and a local authority which was planning to contract out a number of services. At the conciliator's suggestion, the trade union had made their acceptance of this initiative conditional upon the involvement of union members in the tendering process. Consequently, staff were included in the selection panels responsible for deciding where the contract for delivering this service was awarded.

The form that the settlement of the dispute took was felt by the trade union representative to have had a range of positive impacts for staff, ways of working and service users. The fact that the dispute was settled amicably improved relations between management and trade union members and smoothed the process of contracting out the service. This contrasted favourably with a similar dispute in the same local authority over the contracting out of the meals-on-wheels service where, on the date of the transfer, over half of the staff had resigned.

Staff involvement was also perceived to have ensured that the best possible bidder for both staff and service users was selected. Because the organisation chosen was non profit making this was felt to have meant that the service provided was of a higher quality than it would be if the contract had been awarded to a commercial organisation. This was reported to have been very important to the staff because of the type of service involved and the fact that service users were a particularly vulnerable group. The selection of a non profit making contractor was also felt to be beneficial for staff because it meant that their terms and conditions of employment were less likely to be unfavourably altered. Lastly, the resolution of the dispute in this way was viewed to have affected ways of working within the local authority. It was felt that management now appreciated that it was beneficial to share information with staff and involve them in this way. This was perceived to have resulted in an overall move towards partnership working which was expected to continue to be influential within the future. Moreover it was felt these experiences might affect the way that services were contracted out in the future and discussions about establishing a protocol for involving the trade union in the selection of private contractors had begun.

⁵ In the recent Acas wide survey roughly two fifths reported changes of this nature following resolution of the dispute. *Survey of Collective Conciliation Customers - 2000/2001*, Fox. M., Advisory, Conciliation and Arbitration Service, Research Findings No. 2, Nov 2001.

The research also attempted to explore how collective conciliation might influence productivity and economic performance within organisations. As was discussed in Section 4.4, financial impacts resulting from collective conciliation are most apparent in circumstances where settlements reached in collective conciliation result in strike action being cancelled. Over and above these economic impacts are often difficult to determine as the factors contributing to workplace economic change are likely to be wide ranging and subject to various influences. However, as demonstrated below there is some evidence that the terms of settlements reached in collective conciliation can be financially beneficial for companies⁶.

A chemical company had recently been in dispute with a trade union who were resisting changes to terms and conditions. One of the proposed changes which was particularly important to the company was the proposal to transfer time off for public holidays to employee annual leave entitlement. This was eventually agreed by the union in collective conciliation as part of a whole package of changes which included a bonus payment to staff. The employer expected this to increase productivity in the company because it would remove the need to close down the chemical plant entirely at any point. Previously shutting down the plant for public holidays involved a loss of a days production at either side of the public holiday because of the lengthy procedures involved in closing down and starting up the plant. At the time of interview there had not yet been any public holidays since this change had been implemented and so it was difficult for the employer to comment on the financial impacts of these new terms and conditions. However these were anticipated to significantly increase productivity over time.

⁶ In a recent customer satisfaction survey a small minority of respondents also said there were improvements in profitability (5%), competitiveness (6%) and performance (12%) following Acas involvement. *Survey of Collective Conciliation Customers - 2000/2001*, Fox. M., Advisory, Conciliation and Arbitration Service, Research Findings No. 2, Nov 2001.

5. CONCLUSIONS

1. Why parties use Acas

The Acas collective conciliation service is predominantly used by two parties in a dispute when they feel they cannot move forward without assistance. Practically, this tends to be when they have failed to agree, negotiations have broken down and internal machinery is exhausted. Use of collective conciliation is usually prompted by the desire to settle and to avoid industrial action or steps towards this. In workplaces where Acas conciliation is written into dispute procedures then, as might be expected, there are few deliberations around using the service. In these circumstances reasons for using collective conciliation are located in the earlier decision to involve Acas in dispute procedures. This step had usually been taken because of recognition of the value of the process in providing a possible forum to reach an agreement and provide '*breathing space*' in a dispute.

A further reason for using the collective conciliation process or including this in procedures was because the involvement of Acas was perceived to attach '*a code of honour*' to anything that was agreed in collective conciliation. This meant the parties were morally bound to adhere to these agreements. For one side to later breach something they had agreed to in collective conciliation was perceived to mean a loss of integrity.

2. Meeting expectations

It is interesting that parties' expectations of the process mirror what they feel they receive. This might be expected among repeat users whose expectations are likely to be shaped by previous experiences of the collective conciliation service. The fact that some of those included in the sample had only used Acas on one occasion however, provided an unexpected opportunity to a) match expectations with experiences and b) to compare reasons for using the service between single and repeat users. The little apparent difference in the motivations of these two types of service user may be worthy of note. Whilst it is difficult to draw any definitive conclusions around this point given the small number of interviews on which this study is based, this does provide some suggestion that the reasons for first use of the service by some, and the reasons for repeat use by others, are very similar. This suggests that the purpose of collective conciliation is largely well understood in advance of Acas becoming involved and users' experiences of the service tend to match expectations.

3. Customer satisfaction

The findings of this study based largely among repeat users of collective conciliation suggest that overall users of collective conciliation are very satisfied with the service they receive and that it meets customer's expectations. The most satisfied service users tended to be those who had experienced more 'proactive' styles of conciliation as these were felt to be particularly helpful in assisting the parties to rethink or alter their position. Even in cases where collective conciliation fails to produce an agreement to end a dispute this does not necessarily leave people dissatisfied or prevent subsequent use. Service users seem to feel that it is rarely the responsibility of conciliators when there is no settlement and that the conciliators do the best that they can. Satisfaction with the collective conciliation service was mirrored in attitudes towards Acas as a whole and the organisation is held in very high esteem.

4. The impacts of Acas interventions

This study also provides some clear evidence as to the type of impacts that collective conciliation can have. Whilst there are some disputes in which collective conciliation appears to have little effect beyond settling, on other occasions beneficial impacts are described by service users. An obvious impact resulting from collective conciliation is the immediate benefit of resolving the dispute. The cessation of the disagreement, particularly when this is accompanied by a return to normal relations between the parties in due course, is of clear benefit to both sides.

As explored in Chapter 4, more exceptionally collective conciliation can have wider benefits within organisations. These seem to be most likely to occur where collective conciliation introduces something new - such as an idea or concession not previously considered by the parties - which provides a basis for agreement. If these ideas involve new ways of working which prove successful, then they can have implications for relationships and affect how management works and deals with staff and the trade union in future. Alternatively, if these ideas mean that management proposals for increasing organisational efficiency are accepted, when put into practice these can have economic benefits in terms of increasing productivity.

In other disputes, however, there is little evidence that collective conciliation has any more lasting effects. This might be explained to some extent by the focus of this study upon 'repeat use'. It is possible that the widest impacts of collective conciliation are more likely to be experienced by single users of the service. This is because one might expect that wider impacts might sometimes reduce the need for future use of the service. The concept of broader impacts implies some form of longer term improvements or change in relationships which may mean that parties become better equipped to deal with problematic issues when they arise in the future. The earlier discussion about dependency on the collective conciliation service suggests that this may not be occurring in some organisations. It may be that some types of disputes or industrial relations environments offer much less scope for collective conciliation to have lasting impacts. For example, dispute situations described earlier where use of collective conciliation was said to be the only way that employers could get a Union to accept pay offers. This is obviously a difficult issue for Acas to tackle without denying people the right to use the service, however it does suggest an additional role for Acas advisory services in working with previous users of the Acas conciliation service.

The attempt to identify the wider impacts of collective conciliation, however, is not a straightforward task and the findings of this research around impacts should be considered in this context. Wider impacts by their very nature may take time to manifest and develop. The experiences of some employers and trade union representatives suggests that it can sometimes be years before the real ramifications of a dispute and the way in which it was settled becomes apparent. For this reason it may be that for some of the service users in the sample it was too early for any wider impacts of collective conciliation to be discernible.

This point is illustrated by the experiences of one employer in the sample who had used collective conciliation ten years previously. This case provided valuable insights into the way in which the implications of a dispute can take years to develop and how attitudes to settlements reached in collective conciliation can change over time. From the perspective of the employer, the '*dispute that we lost*' had become known as the '*dispute that we won*' over this ten year period because of fundamental changes occurring in the industrial relations climate in this time period which were unrelated to collective conciliation.

The small number of interviews on which this study is based make it almost impossible to draw conclusions about where the most significant impacts from collective conciliation occur

and the type of companies or organisations which benefit from these. Collective conciliation had been used to great effect by service users in both smaller and larger organisations. However some of the evidence collected may suggest that the contribution of the ideas and experience of collective conciliators can have a particularly important influence in smaller organisations with less established industrial relations relationships. When the parties have little experience of negotiating or even dealing with one another, there seems to be more scope for the ideas that collective conciliators bring to have impact. In addition, some of these type of organisations had only used Acas very recently and often said that Acas could do more to publicise the services they offer among smaller organisations like themselves who might not have much awareness of them.

5. Specific Recommendations

The conclusions discussed above provide a valuable source of data on dimensions of customer satisfaction, and areas of potential impact for Acas' collective conciliation service. This information will be especially valuable for Acas in seeking criteria for future evaluation of the service. A number of specific recommendations emerged from the research.

- **Development of the more proactive style among collective conciliation officers**

Service users saw this style of conciliation as being particularly helpful and compared it favourably with less proactive styles of conciliation. This suggests that the development of this style of conciliation should be a focus of the training and development of collective conciliation officers.

- **Increased targeting of collective conciliation services among smaller organisations**

The evidence of particularly positive and lasting impacts among smaller organisations suggests that this is the environment in which collective conciliation might have most impact. Attempts to heighten the impacts of collective conciliation may be most effective if assistance is targeted at smaller organisations and those without any experience of using Acas.

- **Increased publicity of ACAS and services offered**

A lack of awareness of Acas services among smaller organisations was commented upon by both employer and trade union representatives. This suggests that this is an area which offers most scope for an expansion of collective conciliation and other Acas work. There may be value in more extensive marketing of ACAS to these organisations.

Conclusions

APPENDICES

Appendix 1 - Opt out letter

Advisory, Conciliation and Arbitration Service

Head office

Brandon House, 180 Borough High Street, London SE1 1LW

tel: 0207 210 3656 fax: 0207 210 3645

Research & Evaluation Branch

Dear,

Acas is committed to improving the conciliation service it provides to parties involved in employment disputes. As a result we are currently engaged in a programme of research into this area of our work, exploring the experiences of our customers and considering ways in which the service can be improved. One element of this work is to consult with employers and trade-union representatives (both full-time and lay) who have used Acas services, and I am now writing to ask for your cooperation in taking part in this work.

We have commissioned the National Centre for Social Research (Natcen), which is an independent research institute, to carry out a series of interviews with parties. We are particularly interested in the perceptions of those who have used the Acas conciliation service more than once over recent years. We are writing to a selection of people who meet these criteria, hence this letter to you.

This study will consist of in depth interviews, carried out by experienced researchers from Natcen. Interviews will take place in late November or early December 2001, at a time and place that suits those taking part, and will last an hour to an hour and a half. Acas would like to pass your name and address to Natcen who will then contact a small number of people to arrange an interview.

I should stress that everything said in the interview will be treated as totally confidential. All information will be anonymised, and no names of individuals, organisations or cases will be included in the written report on the study. No information will be reported in a way which will allow you to be identified. Issues to be discussed will include: the circumstances under which you chose to involve Acas; what kind of assistance you look to the service to provide; and how we might assist in the future with workplace issues.

We hope that you will be willing to take part. All of those interviewed will be sent a summary of the research findings. This is an important study, and we would very much welcome the opportunity to hear your views. However, if you do not want your name and address to be passed to Natcen, please complete the attached slip and return it to Acas by no later than Wednesday, 31st October.

Yours sincerely

Francis Noonan
Director, Operations

I do not wish my name and address to be passed to NCSR to take part in interviews being carried out on behalf of Acas

YOUR FULL NAME (Please print clearly)

NAME OF YOUR ORGANISATION (Please print clearly)

ADDRESS

Please return to Allen Anie, Acas, Brandon House, 180 Borough High Street, London SE1 1LW, or telephone 0207 210 3656, by 31 October 2001 at the latest.