

# Research Paper

Evaluation of the first year of Acas' Pre-Claim Conciliation service

Ref: 08/10

2010

Prepared by:

Acas Research and Evaluation Section  
And Infogroup/ORC International

For any further information on this study, or other aspects of the Acas Research and Evaluation programme, please telephone 020 7210 3673 or email [research@acas.org.uk](mailto:research@acas.org.uk)

Acas research publications can be found at [www.acas.org.uk/researchpapers](http://www.acas.org.uk/researchpapers)

ISBN 978-0-9565931-5-3

## **Evaluation of the first year of Acas' Pre-Claim Conciliation service**

**2010  
Prepared by:  
Acas Research and Evaluation Section  
And Infogroup/ORC International**

## FOREWORD

The 2007 Dispute Resolution Review led by Michael Gibbons resulted in a range of significant policy changes aimed at encouraging employers and employees to resolve workplace disputes swiftly, with minimal formality, and without resort to litigation. The Government's investment in Acas' pre-claim conciliation service (PCC) was one of the key interventions designed to ensure earlier resolution of disputes and provide benefits to employees, employers and the taxpayer. It is therefore very important that the service is effective and well-regarded by users.

Acas rolled out PCC nationally in April 2009 and ORC International, an independent social research agency was commissioned to evaluate the experience of employers and employees who had used the service. I am very pleased to see that the evaluation has produced such positive results. The research shows high levels of satisfaction both with the outcome of PCC and with the service, and a high regard for our staff which is consistent with findings from our customer surveys of post-claim conciliation. That a significant minority of employers updated their policies because of the advice given by the conciliator also shows that Acas is delivering its mission to improve organisations and working lives through better employment relations and demonstrates some of the added value that often flows from Acas conciliation.

It is also especially gratifying, in the light of the aims of the new policy interventions, that the research shows PCC offers significant time and cost savings to employers and employees compared with Employment Tribunal claims.



Keith Mizon  
Director, Individual Dispute Resolution

## Contents

<b>1</b>	<b>Executive Summary</b>	<b>Page 1</b>
<b>2</b>	<b>Introduction</b>	<b>6</b>
<b>3</b>	<b>Who used PCC?</b>	<b>15</b>
<b>4</b>	<b>The Workplace Dispute</b>	<b>19</b>
<b>5</b>	<b>Progression to PCC</b>	<b>25</b>
<b>6</b>	<b>Conciliation</b>	<b>32</b>
<b>7</b>	<b>Outcome of dispute</b>	<b>44</b>
<b>8</b>	<b>Overall perceptions of pre-claim conciliation</b>	<b>49</b>
<b>9</b>	<b>Conclusion</b>	<b>57</b>
	<b>References</b>	<b>60</b>
	<b>Appendix A Case Studies</b>	<b>61</b>

## List of figures and tables

	<b>Page</b>
Table 2.1 95% Confidence intervals by service user type	12
Table 2.2 95% Confidence intervals by case outcome	12
Table 2.3 Profile by service user type	12
Table 2.4 Profile by case outcome	12
Table 3.1 HR Presence	16
Table 3.2 Age profile	17
Figure 4.1 Profile of dispute	19
Figure 4.2 Time-scale of dispute	20
Figure 4.3 Relationship between employer and employee at time of dispute	21
Table 4.1 Relationship between employee and employer (per cent who said good)	22
Figure 4.4 How employment came to an end	22
Figure 4.5 Tribunal claim submission (employers)	23
Figure 4.6 Tribunal claim submission (employees)	24
Table 5.1 How participants heard about PCC	25
Figure 5.1 Suitability of PCC	27
Figure 6.1 Timeliness of contact	33
Table 6.1 Method of contact	33
Figure 6.2 Number of times in contact with conciliator	34
Figure 6.3 Preferred amount of contact with conciliator	35
Table 6.2 Preferred amount of contact by service user type	35
Table 6.3 Role of conciliator in providing information about the case	36
Figure 6.4 Impartiality of conciliator	38
Figure 6.5 Level of service user trust in information given by conciliator	38
Table 6.4 Level of trust in the information given by the conciliator by service user type	39
Figure 6.6 Level of useful information provided to employers for future use	40
Figure 6.7 What actions has the organisation taken as a result of involvement in the PCC process?	40
Table 6.5 Total hours spent on case by employees	41
Figure 6.8 Number of hours spent by employees on the workplace problem	41
Figure 6.9 Number of persons involved and spent time on PCC case	42
Table 6.6 Total number of hours spent on case	42
Table 6.7 Total number of hours spent by outcome	43
Table 6.8 Total number of hours spent by period	43

Figure 7.1	Outcome of PCC referrals as detailed in sample	44
Table 7.1	Outcome of sample by service user type	44
Table 7.2	Outcome of sample by perceived impartiality of conciliator	45
Table 7.3	Outcome of sample by type of employer	45
Figure 7.2	Outcome of PCC according to service user	46
Figure 7.3	Satisfaction with dispute outcome	47
Figure 8.1	Importance of Acas involvement	49
Figure 8.2	Agreement that Acas was a factor in the decision to resolve the case	50
Figure 8.3	Likelihood of settling without Acas involvement?	51
Figure 8.4	Re-use of PCC	51
Figure 8.5	Satisfaction with PCC process (independent of outcome)	52

# **1 Executive Summary**

## **1.1 Background**

Acas is a non-departmental public body mainly funded by the Department for Business, Innovation and Skills (BIS) with a remit to improve employment relations. This includes a statutory role to promote the resolution of actual and potential claims to the employment tribunals without the need for them to be determined by a hearing.

Michael Gibbons' 2007 review of employment dispute resolution arrangements recommended that where possible workplace disputes should be resolved without recourse to an employment tribunal, and that the system should be altered to promote earlier intervention in employment disputes.

Alongside certain statutory changes introduced by the Employment Act 2008 to give effect to the recommendations of the Gibbons Review, BIS invested in a new Acas service called Pre-Claim Conciliation (PCC). The aim of PCC is to intervene in a dispute where there is an intention to pursue an employment tribunal claim and save time and money, reduce stress, offer a quick solution, produce a 'win-win' outcome, give both parties control of the outcome, avoid the formality of a hearing, and tackle disputes early to provide a better chance of preserving or restoring the employment relationship.

## **1.2 Research aims and methodology**

The full PCC service has been in operation since April 2009, and Acas commissioned ORC International to evaluate the service's effectiveness. The research aimed to:

- evaluate the factors in converting referrals to cases;
- assess the outcomes in PCC referrals that do not become cases;
- assess the impact of PCC on dispute resolution;
- measure satisfaction with the service and identify improvements that could be made;
- collect data that would allow Acas to undertake a future cost-benefit analysis.

The research included a main quantitative fieldwork stage, consisting of 1,187 interviews of 20 minutes average duration with a sample of PCC service users. A range of outcomes (i.e. not progressed, impasse and resolved) and service users (i.e. representatives, employers and employees) were included. Follow up in-depth interviews were held with 13 service users to understand the reasons why many referrals were not converted to PCC cases. Finally five interviews were conducted with employers and employees involved in successfully resolved cases in order to understand how these disputes were successfully resolved following Acas intervention.



### **1.3 Who used PCC?**

The user profile of PCC is compared with the profile of those who submit applications to employment tribunals (data from Survey of Employment Tribunal Applications 2008 (SETA)), and the national workforce profile from Labour Force Survey (Winter 2008) (LFS). Comparisons showed that the public sector (PCC, 12 per cent; SETA, 19 per cent), large workplaces (PCC, 13 per cent; SETA, 19 per cent) and organisations with internal HR departments (PCC, 55 per cent; SETA, 62 per cent) were underrepresented amongst PCC referrals / cases. This is likely to all be a result of under-use of PCC by the public sector, with large workplaces and internal HR departments characteristically found among public sector organisations to a much greater extent than in the public sector.

The average earnings of employees involved in disputes covered in PCC were lower than the national average but similar to Employment Tribunal claimants (median values – PCC, £20,000; SETA, £20,000; LFS, £22,984). Trade union membership was lower in PCC referrals / cases than in cases submitted to employment tribunals (ten per cent compared to SETA, 25 per cent and LFS, 27 per cent), and those with a long-standing disability also appeared underrepresented (13 per cent compared to SETA and LFS, both 22 per cent).

Parties were less likely to be represented during PCC than when they had submitted an employment tribunal claim (PCC, nine per cent; SETA, 33 per cent of claimants and 54 per cent of employers). Representation was split between 'professionals' and non professionals, non professionals were typically family or friends (32 per cent of all representatives).

### **1.4 Workplace dispute**

The majority of disputes related to alleged unfair dismissal (61 per cent), but other common issues included breach of contract (18 per cent), discrimination (15 per cent) and redundancy payments (13 per cent).

The majority of participants said that their workplace had written procedures in place for dealing with disputes (56 per cent); employers were more likely to say this than employees (77 per cent compared with 42 per cent). Seventy four percent of those who reported their organisation had written dispute procedures in place said that the procedures had been used in this dispute. Employers were more likely than employees to state that they had been used (86 per cent vs 59 per cent of those with dispute procedures).

At the time of the dispute, 37 per cent said the relationship between them and the other party was good, but 42 per cent that it was poor. Employees were more likely than employers to be negative about the relationship. In most cases (95%) employment had ended, this was commonly due to dismissal (44 per cent), redundancy (34 per cent) or resignation (14 per cent).

### **1.5 Progression to PCC**

Most (89 per cent) of those who had been offered PCC after phoning the Acas helpline said that, after the helpline adviser had described it to them, they felt that PCC sounded suitable for their case.

The research highlighted a number of barriers that prevented acceptance of the offer of PCC including:

- Lack of understanding about Acas, PCC and employment tribunals , highlighting a need for conciliators to ensure all processes (both in terms of conciliation and the tribunal) are adequately explained;
- Difficulty with timescales – there is only a short window for employees to submit an employment tribunal claim, and employees were not always clear that PCC would not jeopardise this.
- Being prepared to negotiate –Not all employers and employees felt that conciliation was appropriate as they were not willing to negotiate. For employees this can be due to feeling that they were unfairly treated, and for employers this can be because they felt they had done nothing wrong.

## **1.6 Conciliation**

The majority of survey participants (56 per cent) said that they were contacted within two working days of contacting the helpline. However, nearly a third had to wait more than two working days.

Employees and representatives tended to have had a higher number of contacts with the conciliator than employers. This may reflect their role in initiating PCC cases (most representatives who participated in the survey acted on behalf of the employee). Employees and representatives typically had on average (median) five contacts with the conciliator, but employers were on average only in contact on three occasions. In spite of having more contact with the conciliator, employees were more likely than employers to have wanted a greater amount of contact (25 per cent compared to nine per cent).

Participants generally had a high opinion of the individual qualities of the conciliator, including that they were good or very good at:

- Explaining the conciliation process (85 per cent);
- Outlining the law as it applied to the problem (78 per cent)
- Relaying proposals between parties (74 per cent);
- Helping you understand the strengths of the potential claim (72 per cent);
- Understand the pros and cons of resolving before a claim (71 per cent);
- Helping understand the weaknesses of the potential claim (66 per cent).

Employees gave slightly higher ratings of the conciliator than employers and representatives – probably because they were more likely to have started the process with a lower base knowledge than other parties.

In conciliation, it is important that the conciliator is even-handed in order to build up trust and respect with both parties – this is a key part of being able to successfully resolve a case. Seventy three per cent felt that the conciliator was even-handed; however, employees were less likely to think this (66 per cent vs. employers, 78 per cent; representatives, 89 per cent). However, the difference was explained by the higher proportion of employees who felt that the conciliator was on their side, 15 per cent compared with five per cent of employers and six per cent of representatives. This perception is likely to be linked to a wider issue of employees' expectations – there was evidence that they expected greater support and a representative type role from Acas. Most participants said that

they were able to completely trust the information given by the conciliator (70 per cent) – again, employees were less likely to have said this (66 per cent vs employers, 71 per cent; representatives, 84 per cent). Just three per cent of employers and five per cent of employees did not trust the information given to them by the conciliator.

Showing the wider impact that conciliation may have on reducing employment conflict in the future, 28 per cent of employers involved in the process said that the conciliator had provided them with information or advice that they felt would avoid them dealing with a subsequent problem. The most common subsequent changes were to reinforce attention to existing procedures and seek professional advice before taking disciplinary action.

Despite there being little evidence that PCC had helped to preserve employment relationships, there was clear evidence that by intervening earlier it helped individuals spend less time on the dispute. Data from SETA and the PCC evaluation highlights the benefits of earlier intervention. Where the employee was able to resolve the case through PCC they spent less than a day on the dispute, when it was resolved through IC they spent six days on it, and when it went to full tribunal hearing they spent up to ten days. Similarly, for employers, where they resolved the issue through PCC they spent less than a day on the dispute, when it was resolved through IC they spent five days and up to nine days where it went to a tribunal hearing.

### **1.7 Outcome of dispute**

Forty four per cent of disputes that were referred to the conciliator were successfully resolved. This includes 33 per cent where the issue was resolved through conciliation through an Acas settlement, five per cent resolved through private agreement and six per cent where the issue was resolved when after speaking to the conciliator, the employee decided not to take it any further.

Eighty per cent of those who had resolved their case through PCC felt that Acas was a factor in their decision. A majority of all participants said that Acas involvement had been important (either very important or fairly important) in helping them decide how to proceed with the dispute (77 per cent).

Overall two-thirds of service users (65 per cent) who had progressed to PCC were satisfied with the outcome, 20 per cent were dissatisfied and 9 per cent were neither satisfied nor dissatisfied. Employers and representatives were more likely than employees to be satisfied with the outcome. Satisfaction with the outcome of PCC was linked to the actual outcome of the case: 82 per cent of those who had resolved their dispute were satisfied compared to 43 per cent of those who had ended up in impasse.

### **1.8 The PCC Service**

As an indication of the positive impact that PCC had on the service users, most (88 per cent) said that they would either definitely or probably use PCC again in the future.

Satisfaction with the PCC process itself, independent of actual outcome, was high across all groups, with a majority in each group extremely or very satisfied with

how the process had operated. Within this generally positive picture, levels of satisfaction were highest amongst representatives (92 per cent) and slightly lower among employees (79 per cent) and employers (84 per cent).

Segmentation of the results showed that it is of primary importance that conciliators are able to describe clearly the relative benefits that can be had from resolving a dispute without a tribunal claim. This reaffirms that it is important that the conciliator and helpline adviser are giving a clear explanation of exactly what conciliation could potentially achieve. It is important to note that service users felt the main benefits of PCC were that it was faster, it saved going to a tribunal / court, and that it was less stressful. Receiving enough contact was also important in order to ensure the service user was satisfied, and ultimately at the heart of the relationship was the level of trust that the conciliator was able to build up.

## 2 Introduction

### 2.1 Background to Pre-Claim Conciliation

UK employees are supported by a framework of employment rights intended to combine social justice with economic prosperity. Complaints about the infringement of almost all statutory employment rights can be made by claiming to an employment tribunal. Research in 2008 found that one in three respondents (34 per cent) had experienced a problem in work in the past five years.<sup>1</sup>

The dispute resolution system comprises a state-funded conciliation service, provided by Acas, which seeks to resolve workplace disputes that are, or are on the verge of becoming, claims to the employment tribunals. This is underpinned by a statutory Code of Practice, issued by Acas and approved by Parliament, which sets out guidelines for fair practice for handling grievances and disciplinary matters in the workplace. The Code of Practice is not prescriptive, nor can a party lodge any free-standing statutory claim simply for not observing it. However, an unreasonable failure to follow the Code may affect awards in cases that come before an employment tribunal.

#### *History of current dispute resolution arrangements*

Acas, established in 1975 with a remit to improve employment relations in the UK, is a non-departmental body, and is mainly funded by the Department for Business, Innovation and Skills. Its governance by an independent council has contributed to its unique reputation as a credible and widely respected provider of impartial and confidential services for over 30 years. Its vision to be 'Britain's champion for successful workplaces and a motivated workforce' is underpinned by six pledges which set out that Acas should:

- Be fair, unbiased and professional;
- Meet customers' needs;
- Promote equality and diversity;
- Be proud of its staff, respecting their views and investing to help them meet their potential;
- Be accountable for their performance; and
- Be a cohesive organisation.

In order to reduce the level and impact of conflict in the workplace, and to promote good relations in work, Acas undertakes a range of activities; these activities have an impact upon the employers and employees involved and on the wider economy. In a recent research report, it has been estimated that six key areas of Acas activity generated economic benefits of nearly £800 million in 2005/6.<sup>2</sup> The largest single segment of Acas' Grant in Aid is accounted for by the Individual Conciliation service, which is offered to employees and employers involved in an Employment Tribunal (ET) claim. When a claim has been submitted to an employment tribunal Acas has a statutory duty to endeavour to promote the settlement of the dispute through conciliation without the need for it to be determined by an employment tribunal hearing.

In October 2004 new Regulations were implemented which, among other things, introduced a prescriptive statutory three step discipline and grievance procedure in the workplace and placed time limits on the provision of Acas conciliation periods in the majority of cases. The purpose of these fixed conciliation periods was to prompt parties and representatives to engage in conciliation at an early stage rather than, as had often been the case, in the last few days before a scheduled employment tribunal hearing.

In December 2006, Michael Gibbons was commissioned to carry out an independent review of the arrangements for resolving individual rights disputes in Great Britain to examine whether there were any options for simplifying and improving aspects of the dispute resolution system<sup>3</sup>. The review found that the changes introduced in 2004 had failed in their aim of promoting early resolution of disputes because 'parties tend to get caught up in process rather than focusing on achieving an early acceptable outcome'.

Gibbons argued that the statutory workplace procedures often meant that issues that could have been solved informally became formal and legalistic; with both parties focused on correctly following the statutory procedures rather than providing the optimal solution. The review acknowledged that the system of individual conciliation through Acas was well-respected and generally effective. However, the review pointed out that Acas '... may miss both early and final opportunities for achieving settlement ...' because Acas was typically only becoming involved after a tribunal application had been submitted, and was sometimes prevented from helping in the latter stages of the process because of fixed time limits.

The review made a number of recommendations to promote early dispute resolution as follows:

- Remove the statutory three step discipline and grievance procedure
- Encourage employer and employee organisations to make greater use of mediation, whether provided in-house or by external sources;
- Increase the quality of advice to potential claimants, advocating the potential benefits of alternative dispute resolution to achieve better and quicker results;
- Offer a free early dispute resolution service, including where appropriate mediation; and
- Offer incentives in the tribunal process for recognition of attempts at resolving the disputes early in the system.

The amendments (set out in the Employment Act 2008) following this review focused on providing a new framework for dispute resolution. For Acas, the new dispute resolution framework introduced the following changes:

- A revised code of practice and accompanying guidance;
- An enhanced helpline service<sup>4</sup>; and
- Importantly for this research, a service to offer early conciliation in cases that might otherwise become claims (Pre-claim Conciliation (PCC)).

Prior to the full rolling-out of the PCC service, an initial pilot was run in three areas between June and November 2008. In 2009, the pilot was evaluated; this

evaluation<sup>5</sup> assessed the effectiveness and quality of service. Overall the evaluation estimated that the PCC reduced by half the number of claims lodged by employees who were referred to the service. Furthermore, it was estimated that on average, the combined net savings to Acas, the ETS, employees and employers was nearly £1,000 per case. However, generally by the time that Acas became involved in the dispute, the employment relationship had already ceased; in only five to six per cent of cases did the employee remain employed post-conciliation. It was reported that by the time Acas became involved, the relationship between the parties had deteriorated to a point where it was effectively beyond repair.

From April 2009 Acas' statutory duty to provide non-ET1 conciliation became a discretionary power and the PCC service was rolled out across England, Wales and Scotland. PCC is promoted by Acas in three main ways:

- Helpline advisers identify callers (mostly employees or people calling on behalf of employees) whose circumstances seem to fit the relevant criteria, invite them to consider PCC, and refer them to a conciliator if they express an interest;
- PCC is promoted directly to employee and employer representatives, inviting them to contact the Acas helpline if they have a potential PCC client;
- Employers and representatives who are, or might become, regular PCC users are encouraged to request it again directly (i.e. not through the helpline), establishing local contacts to help them.

The key benefits according to Acas were that PCC could:

- Save time and money – preparing and presenting a tribunal claim takes a lot of time for both parties;
- Reduce stress – the process of pursuing or defending a case is difficult, and appearing in a tribunal can be a harrowing experience;
- Offer a quick solution – many cases can be dealt with in a few telephone calls, with an agreement drawn up shortly after;
- Produce a 'win-win' outcome – in the tribunal, someone always loses;
- Give both parties control of the outcome – settlements are reached through agreement of both parties and therefore resolve matters on terms that suit both parties;
- Avoid the formality of a hearing – the Employment Tribunal is a court of law; and
- Tackle the dispute early and therefore provide a better chance of preserving or restoring the employment relationship.

### **The PCC Process**

Acas Helpline advisers seek to identify callers (typically employees) who might be offered PCC and try to establish whether:

- the employee is eligible to make a claim;
- there is nothing to prevent conciliation from succeeding (for instance, insolvency of the employer);

- the parties have already made reasonable efforts to address the matter; and
- that the employee is likely to make a claim if Acas assistance is not provided.

Where a caller meets the relevant criteria, the Helpline adviser outlines the PCC service and invites the caller to consider it as an option. If the caller wishes to proceed, case and contact details of the parties and/or their representatives are entered by the Helpline adviser as a PCC referral.

The new referrals are allocated to PCC trained conciliators and the caller can expect to hear from the conciliator within two working days. Where contact is established, the conciliator verifies that the eligibility for PCC is satisfied, ensures that the person understands what conciliation entails, and if the caller is the employee explains that the conciliator will be contacting their employer revealing that the employee has approached Acas. The conciliator explains that any settlement reached will be the final outcome and ensures that there is time available for conciliation before the deadline for lodging an employment tribunal claim.

If the caller wishes to proceed, then the conciliator tries to contact the other party as soon as possible to offer PCC and try to secure their agreement to participate. When the "other party" is the employer this can be a challenging task; often because the employer is not aware how strongly the employee feels about the dispute, or may not know that the employee is considering a claim. If the other party agrees to discuss the substance of the dispute the PCC referral is "converted" to become a PCC case. Where representatives are involved, conciliation dialogue takes place with them rather than directly with the parties.

On completion, a PCC referral / case will be recorded as falling into one of a number of defined "outcome categories", which are described below:

- *Unprogressed – inappropriate* (referrals with this outcome were not within the scope of this research). This is where, either from the information on the referral or from what either party said during the initial conversation with the conciliator, the criteria for providing PCC were not satisfied. This could be because the employee had already lodged an employment tribunal claim, the employee was ineligible to claim, the jurisdiction was not appropriate, the referral date was too close to the deadline for a claim or that there had been no reasonable efforts to resolve the dispute internally;
- *Unprogressed – employee unwilling* – this is where, in initial discussions with the conciliator, the employee declined to proceed with PCC;
- *Unprogressed – respondent unwilling* – this is where, in initial discussions with the conciliator, the employer declined to proceed with PCC;
- *Unprogressed – other* (referrals with this outcome were not within the scope of this evaluation) – applicable to referrals closed in circumstances other than outlined above. Most referrals closed with this outcome category arose in situations where the conciliator was unable to contact one or both of the parties;
- *Resolved – COT3<sup>6</sup>* – Cases settled through Acas where the terms of settlement are recorded in an agreement on a COT3 form;



- *Resolved – other* – this means that both parties entered into dialogue about the claim and the issue was resolved, but not through the use of a settlement drawn up by Acas, for example:
  - The parties opted to settle the matter privately via a legally binding compromise agreement;
  - The parties reached an informal agreement to resolve the matter through other channels;
  - The employee indicated clearly to the conciliator that they wished to take the dispute no further;
- *Impasse – no resolution brokered* – this was applicable where, after some dialogue concerning the dispute, one or both parties informs that they no longer wanted to take part in conciliation, one or both parties became uncontactable, or it did not prove possible to settle;
- *Impasse – ran out of time* – applicable to cases closed where, after some dialogue concerning the dispute, one of the parties or the conciliator brought conciliation to an end because the deadline for lodging an employment tribunal claim was becoming imminent. PCC needed to stop at this point so that it did not jeopardise an employees' ability to submit a tribunal claim.

## **2.2 Research objectives**

The full PCC service has now been in operation since April 2009, and Acas commissioned ORC International to evaluate the service's effectiveness in its first year of full operation. The research aimed to:

- evaluate the factors in converting referrals to cases;
- assess the outcomes in PCC referrals that don't become cases;
- assess the impact of PCC on dispute resolution and employment relations and to identify any barriers and facilitators to successful intervention;
- measure satisfaction with the service and identify any improvements that can be made; and
- collect data to allow future cost benefit analysis to be carried out.

## **2.3 Research methodology**

The programme of research comprised the following:

- Main quantitative fieldwork – 1,188 telephone interviews of 20 minutes' average duration with a sample of PCC service users. A range of outcomes and types of service user (i.e. representatives, employers and employees) were included in the fieldwork;
- In-depth interviews with those involved in unprogressed cases – 13 interviews with a cross-section of employers and employees to understand the main reasons why many referrals were not converted to PCC cases; and

- Five interviews with employers or employees involved in successfully resolved cases, to understand how some disputes were successfully resolved following Acas intervention.

### **2.3.1 Quantitative fieldwork**

The main quantitative survey was conducted by telephone using Computer Assisted Telephone Interviewing (CATI). Using CATI ensured that all routing was correctly followed, and allowed certain logic checks to be built into the survey.

The questionnaire varied slightly depending on the service user type. The following topics were covered:

- profile of the employee, employer and representatives;
- details of the workplace dispute;
- relationship between employee and employer;
- awareness of PCC;
- perception of helpline staff;
- impact of PCC;
- satisfaction with PCC;
- satisfaction with outcome;
- burden of dispute.

The sample for the survey was identified from the Acas database drawing on PCC referrals which had closed between April and December 2009. Prior to the start of fieldwork, the database was cleaned to ensure that employers and representatives that had handled more than one case were only contacted once.

Multiple attempts were made to contact potential respondents, in order to maximise the response rates. The response rates varied by the type of response rate, with employers the least likely to respond (29 per cent response rate), and employees (44 per cent) and representatives (39 per cent) proving more responsive. Therefore, in total 1,188 interviews were completed with a range of service user types and outcomes.

This means that we can be 95 per cent confident that that research findings are accurate to +/- three per cent at the overall level. For example, if 50 per cent of respondents were satisfied with the service they received, we can be reasonably sure that between 47 per cent and 53 per cent of all service users hold this view.

When split by service user type and outcome the data is still robust, and therefore, allows for sub-group analysis by these variables. The confidence intervals are detailed in tables 2.1 and 2.2, respectively.

**Table 2.1 95 per cent Confidence intervals by service user type**

Service user type	Number of interviews completed	Confidence Interval (95%)
Employers	478	4%
Employees	589	4%
Representatives	121	9%
Total	1,188	3%

**Table 2.2 95 per cent Confidence intervals by case outcome**

Outcome	Number of interviews completed	Confidence Interval (95%)
Resolved	482	4%
Impasse	302	6%
Not progressed	404	5%
Total	1,188	3%

The profile in terms of the type of service user and the case outcomes of the achieved sample were compared with that of the overall population of PCC service users (see tables 2.3 and 2.4). This highlighted small areas of underrepresentation or over representation, for example, there were slightly fewer employees and slightly more employers within the achieved sample compared to the overall population.

**Table 2.3 Profile by service user type**

Service user	Number of interviews completed	Population profile
Employers	40%	37%
Employees	50%	54%
Representatives	10%	9%

**Table 2.4 Profile by case outcome**

Case outcome	Number of interviews completed	Population profile
Resolved	41%	38%
Impasse	25%	27%
Unprogressed	34%	35%

Therefore, the data reported has been weighted to be representative of service user type and outcome coding (further detail is included in the technical report).

There are a number of terms that have been used throughout this report, the most commonly used are:

- Employee – the individual who had been identified as having a dispute with their employer, and was identified by Acas as a potential employment tribunal claimant. When used to define survey participants this excluded any represented employees, the representative was surveyed and analysed separately;

- Employer – the interviewee who was the ‘respondent’ to the potential employment tribunal claim, this was often an HR individual, or even the owner of a business. When used to define survey participants this excluded any represented employers, the representative was surveyed and analysed separately;
- Representative – employees and employers could choose to have a third party act on their behalf in the dealings with Acas. It should be noted that this sub-group when referred to in the report includes both employer and employee representatives;
- Service users – this term is used to describe all parties in the dispute that used PCC (employees, employers and representatives);
- Period – as described earlier in 2.1, there were three terms that refers to the traditional conciliation terms, short, standard and open. These periods are determined by the type of dispute (jurisdiction) and their relative complexity to resolve;
- Outcome – as described earlier in 2.1, there were a number of possible outcomes of referrals to PCC, these can be grouped broadly into resolved (conciliation successfully settled the dispute), impasse (conciliation was unable to settle the dispute), and not progressed (the dispute did not progress to PCC).

### **2.3.2 Qualitative fieldwork**

In-depth interviews were carried out with 13 employers and employees that had decided not to use the PCC service. These interviews were targeted in order to achieve a cross-section of potential service users, so they included small, medium and large employers, and businesses with HR representation and those without.

The interviews used a semi-structured topic guide designed to elicit further depth around the key barriers for disputes being progressed to PCC. The following topics were covered in the interviews:

- profile of interviewee;
- profile of dispute;
- dispute journey – i.e. the internal and external processes of the dispute;
- initial contact with Acas;
- contact with conciliator;
- barriers to using PCC;
- reasons for rejecting PCC;
- how Acas can better help in the future.

In addition to the depth interviews, it had been originally proposed that case studies with resolved cases would be conducted. However, this proved too difficult logistically, i.e. both parties needed both to be willing to take part in a case study, therefore, five interviews were conducted instead. These interviews were designed to understand how PCC had helped to resolve some disputes, and whether the dispute could have been resolved without Acas’ help. The following topics were covered in the interviews:

- profile of interviewee;
- profile of dispute;
- dispute journey – i.e. the internal and external processes of the dispute;
- perceptions of conciliator;
- expectations of PCC;
- why they decided to accept PCC;
- main reasons for being able to resolve the dispute;
- the added value of Acas conciliation;
- the benefits of PCC over a tribunal;
- satisfaction with the service.

---

<sup>1</sup> *Fair Treatment at Work Report: Findings from the 2008 survey* (2009), Department for Business, Innovation and Skills, <http://www.berr.gov.uk/files/file52809.pdf>

<sup>2</sup> *A review of the Economic Impact of Employment Relations Services Delivered by ACAS* (2007)

<sup>3</sup> *Better Dispute Resolution – A review of employment dispute resolution in Great Britain* (2007)

<sup>4</sup> Acas offer a helpline for employers and employees who wish to seek further information about employment rights and rules, this includes individuals seeking advice on an employment dispute. The helpline offers confidential, independent and impartial advice to assist the caller in resolving their problem.

<sup>5</sup> *Evaluation of Acas Pre-Claim Conciliation Pilot* (2009)

<sup>6</sup> The COT3 form is used to record the details of the legally binding settlement achieved through Acas.

### **3 Who used PCC?**

In this section we provide an overview of who used the service. We look at what we know about the characteristics of the employees and employers who have taken up the offer to use PCC, as well as those who decided against PCC. This includes a discussion on who participated in the survey including the personal and employment characteristics of employees and the organisational characteristics of employers. The user profile of PCC is also compared with the profile of those who submit applications to employment tribunals (data from Survey of Employment Tribunal Applications 2008 (SETA)), and the national workforce profile (data from Labour Force Survey (Winter 2008))

#### **3.1 Employment status**

The overwhelming majority of service users said that the employee worked for an employer at the time of the dispute (97 per cent), less than one per cent were a job applicant and two per cent refused to state the employee's employment status. All those who refused to state the status were employers.

#### **3.2 Profile of organisation**

The large majority of potential claimants were employed by the private sector (77 per cent); the minority were employed in the public sector (12 per cent), or non-profit / voluntary sectors (five per cent) and seven per cent did not know. In comparison, Labour Force Survey data indicates that 72 per cent of employees worked in the private sector, 25 per cent in the public sector, and three per cent in the non-profit sector. SETA 2008 data shows that 72 per cent of employer respondents were in the private sector and 19 per cent in the public sector with eight per cent in the non-profit/voluntary sector and so the public sector is disproportionately underrepresented amongst PCC users.

Service users were split between those with a single workplace in the UK (44 per cent) and those with multiple workplaces (55 per cent). The employer sample was more likely than the employee sample to be from an organisation with a single workplace (49 per cent vs 41 per cent), and correspondingly employees were more likely than employers to be from an organisation with multiple workplaces (57 per cent vs 51 per cent).

Of those service users who were aware of the number of employees within the workplace, 60 per cent said it was between 1 and 49 (i.e. a small workplace), 23 per cent between 50-249 (i.e. a medium sized workplace) and 13 per cent over 250 employees (i.e. a large workplace). This compares with 57 per cent from small workplaces, 24 per cent from medium workplaces and 19 per cent from large workplaces among employer respondents in SETA 2008.

The employer sample was asked whether the organisation had an internal Human Resources (HR) or Personnel Department that dealt with personnel issues. Over half (55 per cent) indicated that they had a HR or Personnel Department. In comparison, SETA data indicates that 62 per cent of employers with an employment tribunal application against them had an internal HR or personnel department.

Thirty-eight per cent of those who did not have an internal department used an external contractor for HR and personnel issues, and 62 per cent did not. Therefore, to summarise, 55 per cent had an internal HR department, 17 per cent had an external contractor, and 28 per cent had neither. All large workplaces had an internal HR department compared with just 39 per cent of small organisations (see table 3.1).

**Table 3.1 HR Presence**

	<b>Small</b>	<b>Medium</b>	<b>Large</b>	<b>Total</b>
Internal	39%	75%	100%	55%
External	21%	15%	0%	17%
Neither	40%	10%	0%	28%

Source: F4c - Does your organisation have an internal HR or personnel department that deals with personnel issues? / F4e - Does the organisation use an external person or company for HR or personnel issues; unweighted base: all sampled employers, 478 – small, 303; medium, 113; large, 49).

Nineteen per cent of employers stated that the organisation had an internal legal department that deals with any personnel or employment issues. This was similar to the tribunal applicant profile: SETA data suggested that 20 per cent had an internal legal department. Large workplaces were most likely to have stated that they had an internal legal department; more than both small and medium sized workplaces (large, 37 per cent; medium, 23 per cent; small, 13 per cent).

In summary, the public sector, large workplaces and organisations with internal HR departments were underrepresented amongst PCC referrals / cases compared to the population of ET cases as shown in SETA. In contrast, the private sector, small workplaces, and those without an internal HR department were overrepresented amongst PCC referrals / cases.

### **3.3 Profile of the employee according to service users**

A fifth of the service users said that the employee involved was at managerial level, 14 per cent were supervisors, and 65 per cent had no managerial / supervisory duties. Employees were more likely than employers to have said that the potential claimant involved in the dispute was a manager (26 per cent vs. 12 per cent) or foreman / supervisor (16 per cent vs. 11 per cent).

Most service users said the employee worked full time (82 per cent), as opposed to part time (16 per cent) or was contracted to work according to demand (two per cent). There was no difference between the service user types. There was considerable variation across user types in terms of reported annual gross salary of the employee involved in the dispute, the mean value was £28,992 and the median value was £20,000. The median is the same as for claimants in SETA 2008, where the median was £20,000, but is lower than the median for full time permanent employees nationally (around £22,984, LFS winter 2008).

The average length of time that the employee had been at the organisation at the time of dispute according to survey participants was five years. As would be expected, there was variation in the length of time, with the minimum length of time of less than a year, and a maximum time of 42 years; the median length of

time was three years. This is similar to the profile of employment tribunal claims where the mean length of time that the claimant had been employed was six years and the median three years.

Ten per cent of employees stated that they were a member of a trade union or a staff association at the time they were in contact with Acas. In SETA 2008, this figure was 25 per cent. LFS data indicates that in 2008, 27 per cent of employees within the UK workforce were members of trade unions; this suggests that trade union membership was underrepresented amongst PCC service users.

Unsurprisingly, given respective prominence within each at the UK wide level, trade union membership was higher (19 per cent) for public sector than private (eight per cent) or not for profit sector (zero per cent).

In terms of the employees' demographics according to the service users:

- most were white (91 per cent), three per cent were Black, two per cent Asian, and one per cent Mixed ethnic group. The profile is similar to the UK workforce as a whole (LFS), but a higher proportion were white than in employment tribunal applications (86 per cent as reported in SETA 2008);
- most spoke English as their first language (95 per cent);
- Thirteen per cent had a long-standing illness, disability or infirmity at the time of Acas assistance, which is lower than the proportion as recorded in SETA or LFS (both 22 per cent);
- the majority were aged between 35-54 (51 per cent), 21 per cent were aged 25-34, 15 per cent aged 55+ and 10 per cent 16-24. This is broadly in line with SETA 2008, and the national profile, as given in the LFS (see table 3.2 for comparison);
- the majority were male (59 per cent), therefore, 41 per cent were female. This is similar to the profile of employment tribunal applications (60 per cent male; 40 per cent female, as reported in SETA) and somewhat higher than the proportion of the whole UK workforce as given in the LFS (51 per cent male; 49 per cent female).

**Table 3.2 Age profile**

<b>Age</b>	<b>PCC Survey</b>	<b>Survey of Employment Tribunal Applications 2008</b>	<b>Labour Force Survey (2008)</b>
16-24	10%	8%	15%
25-34	21%	20%	22%
35-54	51%	53%	47%
55+	15%	20%	16%

Source: PCC survey - G8/9 – Age group; unweighted base: all sampled employers and employees who gave an age (1067)

In summary, the average earnings of employees involved in disputes covered by this survey were lower than the national average but similar for Employment Tribunal claimants. Trade union membership was lower in PCC referrals / cases than in employment tribunals, and those with a long-standing disability also



appeared underrepresented. There were fewer black and minority ethnic employees than among Employment Tribunal applicants.

### 3.4 Profile of the representatives

Nine per cent of PCC cases were represented, and a similar proportion of survey participants were representatives (10 per cent)<sup>7</sup>. SETA data indicates that a third of claimants nominated a representative on their employment tribunal claim form, and over half (54 per cent) of employers did likewise. This suggests that it was much less common in pre claim conciliation than in post claim conciliation to have representation.

Either party can choose to have representation when dealing with PCC, 72 per cent of representatives in the survey were acting on behalf of the employee, and 28 per cent were acting on behalf of the employer. Therefore, in terms of survey participants, six per cent of employers and 10 per cent of employees were represented.

There were both 'professional' and 'non professional' representatives, the most common types were:

- a solicitor, barrister or some kind of lawyer (34 per cent of all representatives in the survey);
- friend or relative (32 per cent) – a non professional representative;
- trade union / worker representative at workplace (nine per cent);
- Citizens Advice Bureau (six per cent);
- personnel or human resources specialist (six per cent); and
- legal specialist in company / company lawyer (six per cent).

Six per cent of 'professional'<sup>8</sup> representatives had been dealing with employment tribunal claims for less than a year, 34 per cent for between one and five years, 52 per cent for more than five years, and seven per cent did not know how long.

Whilst most professional representatives had dealt with several employment tribunal claims in the past year, the exact number varied widely. Six per cent had dealt with no employment tribunal claims, eight per cent had dealt with only one, 14 per cent two to five, 14 per cent 6 to 10, 17 per cent 11 to 20 and 34 per cent with

21	or	more.
----	----	-------

---

<sup>7</sup> Given that the data was weighted to be representative of the different service users (i.e. employers, employees and representatives), this is the unweighted proportion.

<sup>8</sup> Professional includes all those who were trained to be a representative, as opposed to being involved due to being a friend or a relative.

## 4 The Workplace Dispute

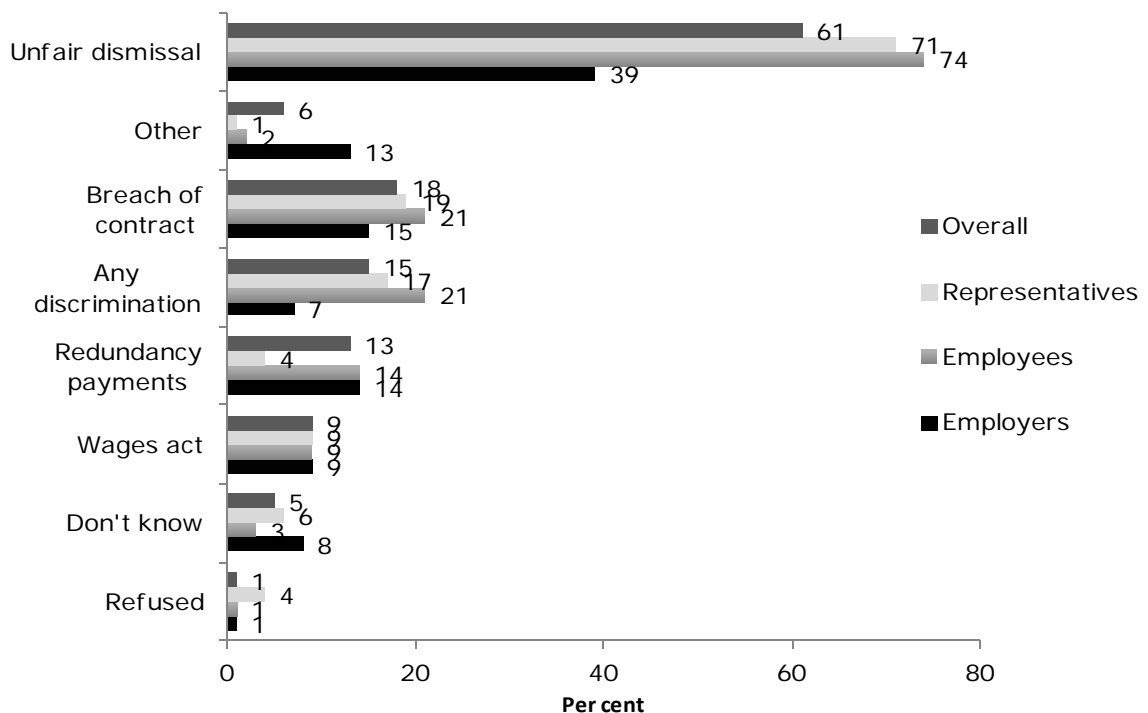
This section of the report profiles the workplace dispute, in terms of the type of issues involved, the length of time the matter had been in dispute, grievance and disciplinary procedures used, and the level of acrimony between parties. It also reports on how the employment came to an end and whether an employment tribunal claim was submitted.

### 4.1 The dispute

Ninety seven per cent of service users said that the employee was a current or former worker at the time of the offer of Acas conciliation, but only 5 per cent of these participants still worked at the organisation when they participated in the survey. Seventy one per cent of service users where the worker had left the organisation, stated that the employee had left prior to Acas involvement, 13 per cent during and 14 per cent after (two per cent did not know). Disputes that involved a private sector organisation were more likely than public or non-profit organisations to have resulted in the employee leaving prior to Acas involvement (75 per cent vs. 62 per cent and 59 per cent, respectively).

The majority of all cases were regarding an alleged unfair dismissal (61 per cent); other common occurrences were breach of contract (18 per cent), discrimination (15 per cent) and disputes over redundancy payments (13 per cent) as the main jurisdiction.

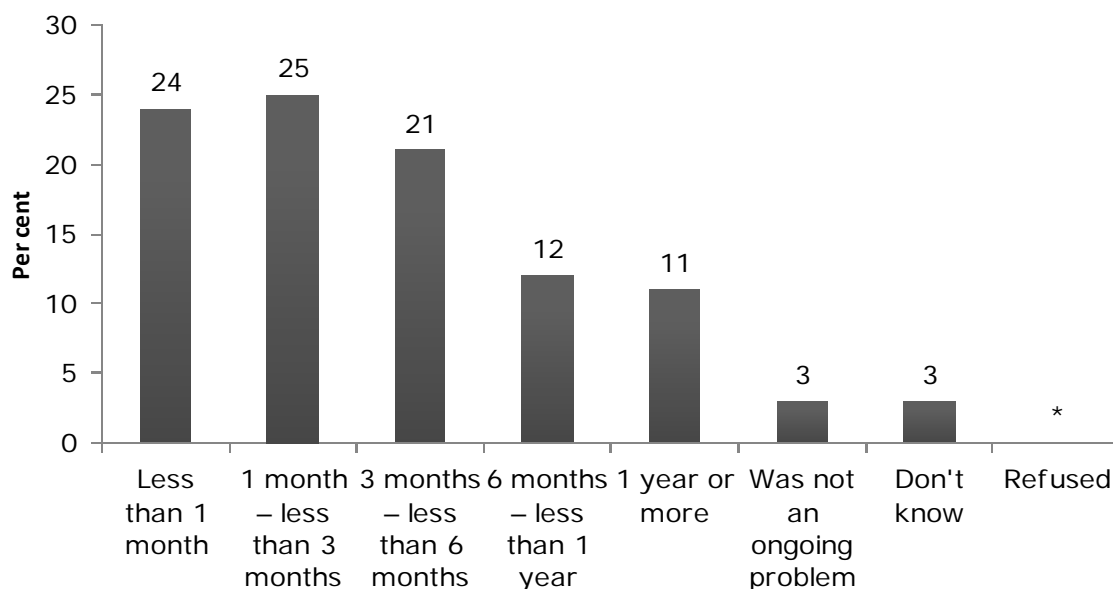
**Figure 4.1 Profile of dispute**



Source: B1 – What was the problem at work that caused the employee to contact Acas?; unweighted base: all sampled service users, 1188 (representatives, 121; employers, 478; employees, 589). Multiple responses were allowed.

There was a variety of time-scales for the disputes, but the majority occurred over a period of less than six months.

**Figure 4.2 Time-scale of dispute**



Source: B2 – Could you estimate over what length of time this problem had been going on?; unweighted base: all sampled service users, 1188.

#### **4.2 Disciplinary and Grievance procedures**

The aim of PCC is to be a last resort alternative to making, or having to defend, a claim to an employment tribunal. As discussed earlier, PCC is not offered on a 'blanket' basis, instead, according to Acas guidance, it is only to be offered to callers by the helpline advisor where the dispute meets certain criteria, including in most cases that the parties had already made reasonable efforts to address the matter using internal workplace procedures. Hence, although the statutory three-step procedures have been removed it was important to understand to what extent internal procedures had been used.

The majority of service users stated that their workplace had written procedures in place for dealing with disputes (56 per cent), but 35 per cent said that they did not, and nine per cent did not know. Perhaps highlighting that many employees were not aware of written dispute procedures, employers were more likely than employees to confirm that there was a written dispute procedure in place (77 per cent vs 42 per cent). Parties in medium and large workplaces were more likely than small workplaces to have written procedures in place (65 per cent and 64 per cent, respectively, compared to 52 per cent).

Seventy-four per cent of those who reported that the organisation had written dispute procedures in place said that they had been used for this dispute. Employers were more likely than employees to state that they had been used for the dispute (86 per cent vs 59 per cent of those with dispute procedures).

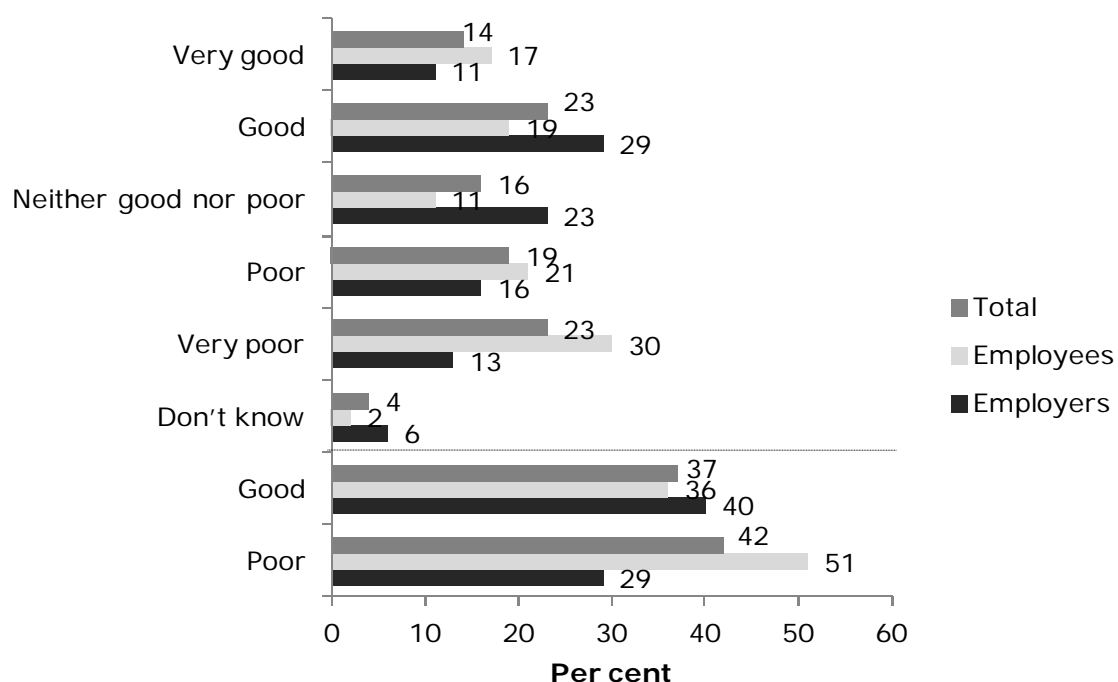
#### **4.3 Quality of employer / employee relationship**

Findings on the quality of the employer and employee relationship at the time of the dispute were understandably quite mixed; 37 per cent reported it was good, 42 per cent that it was poor, 16 per cent that it was neither good nor poor and 4

per cent did not know. Acas' 2007 Survey of Conciliation in Employment Tribunal cases<sup>9</sup> had a similar question about the level of conflict between the parties; 76 per cent said that there was at least some level of conflict. This suggests that on average the relationships of parties using PCC were better than those of parties involved in conciliation in employment tribunal cases; however, it is unclear whether this is a true difference or if this is an artifact of the different question wording or perhaps a reflection of a different economic climate.

Employees were more likely than employers to report that the relationship was poor at the time of the dispute (51 per cent vs 29 per cent).

**Figure 4.3 Relationship between employer and employee at time of dispute**



Source: B15 – How would you describe your relationship with employer / employee, would you say it was ...?; unweighted base: all sampled service users excluding representatives, 1067 (employers, 478; employees, 589).

The relationship was more likely to be described as poor where the employee worked for a small rather than for a medium or large workplace (45 per cent compared to 36 per cent and 38 per cent, respectively). This could be the result of there being more avenues for internally raising a dispute in a medium or large business. Alternatively it could be associated with the way personal and business relationships tend to be more closely entangled with each other in small organisations. Similarly those who did not have an internal HR team were more likely [than those who did] to describe their relationship as poor (35 per cent compared to 24 per cent).

Unsurprisingly, where the case was resolved the relationship was more likely to be described as good than where the conciliation reached an impasse (41 per cent vs 34 per cent). The direction of causality is uncertain: in hindsight the

relationship could be seen as good because it was possible to settle rather than settlement following on from a good relationship. Further analysis showed that this difference was only statistically significant for employers (resolved, 45 per cent compared to impasse, 33 per cent) rather than employees (resolved, 39 per cent compared to impasse, 34 per cent).

**Table 4.1 Relationship between employee and employer (per cent who said good)**

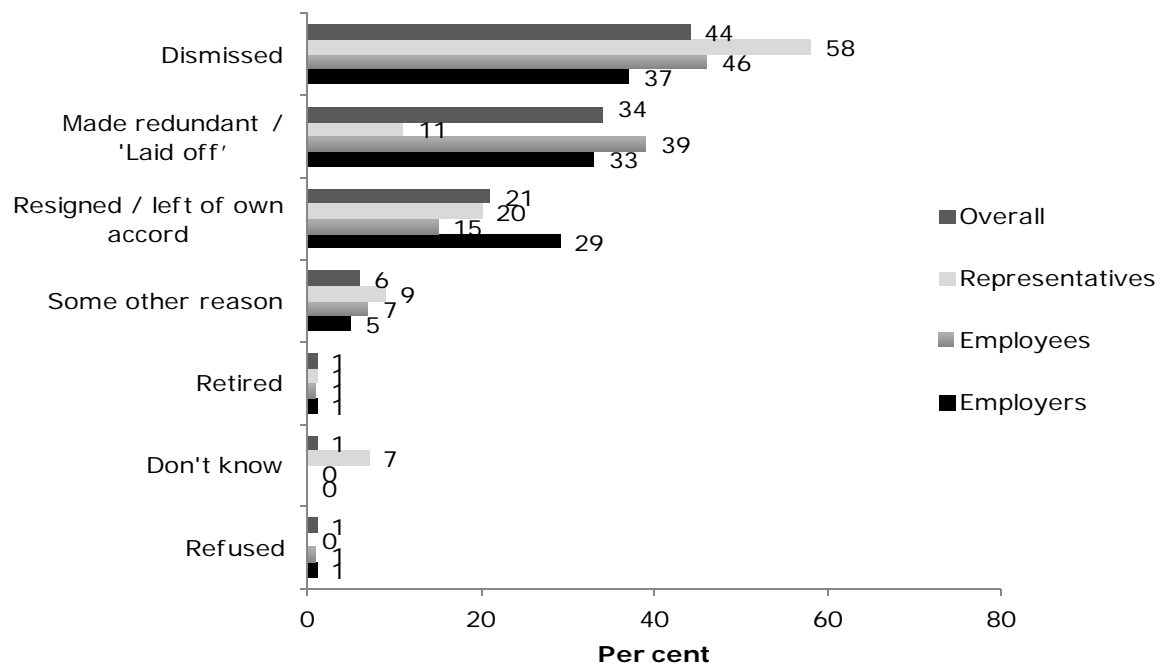
	Employers	Employees	Total
Resolved	45%	39%	41%
Impasse	33%	34%	34%
Not progressed	41%	34%	36%

Source: B15 – How would you describe your relationship with employer / employee, would you say it was ...?; unweighted base: all sampled service users excluding representatives, 1067 (employers, 478; employees, 589).

Only 58 sampled service users (five per cent) said that at the time of the interview, the employee had remained at the place of employment. For thirty per cent of these the relationship was now better (n=16), 54 per cent described it as the same (n=29), 11 per cent described it as worse (n=six), and five per cent did not know (n=three)<sup>10</sup>.

Where employment had ended this was most commonly due to dismissal (44 per cent), redundancy (34 per cent) or resignation / left of own accord (21 per cent). Representatives were most likely to be involved in cases where the employee had been dismissed, and were least likely to be involved where the employee had been made redundant.

**Figure 4.4 How employment came to an end**



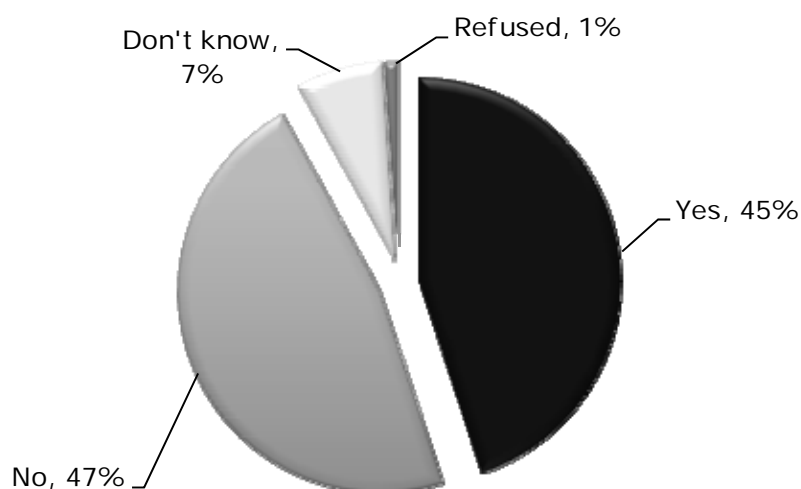
Source: A3 How did ... employment with ... come to an end?; unweighted base: all sampled service users where employee no longer worked for employer, 1093 (representatives, 111; employers, 425; employees, 557).

#### 4.4 Tribunal claim

Where the dispute had not been resolved (either through Acas or through another avenue), the employers and employees were asked about the likelihood of a future employment tribunal claim.

Forty-five per cent of employers whose dispute had not been resolved stated that the employee had now submitted a tribunal claim, 47 per cent said they had not, seven per cent did not know and one per cent refused to answer the question.

**Figure 4.5 Tribunal claim submission (employers)**



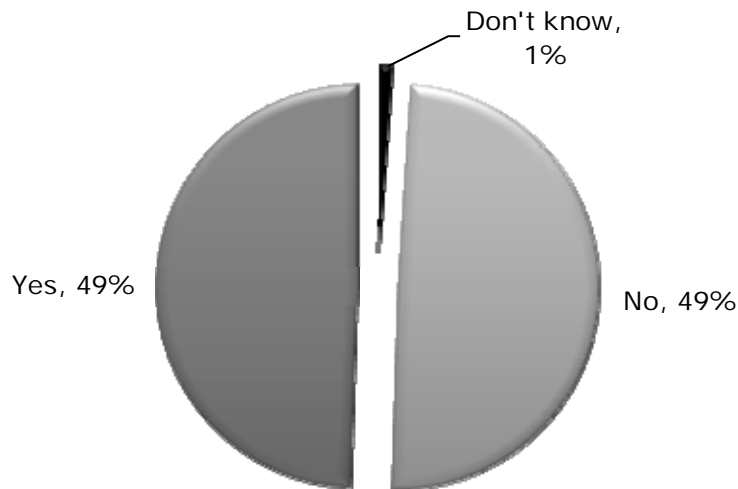
Source – B13a – Can I check, has .... now submitted a tribunal claim regarding this issue?; unweighted base: All unrepresented employers where dispute was not resolved, 268.

Tribunal submission was highest where the conciliation had ended in impasse (53 per cent, as opposed to where the dispute had not progressed to conciliation (38 per cent). This is likely to be a result of a number of disputes that were not progressed to conciliation because the employee had decided not to proceed with the dispute. It is also likely to be a reflection of the fact that these were cases where the parties had already shown in PCC that they were not prepared to settle.

Organisations without an internal HR department were more than likely than those with one to have stated that the employee had submitted a tribunal claim (53 per cent vs. 38 per cent). Similarly, small workplaces were more likely than medium and large workplaces to have ended up with the employee submitting a tribunal claim (50 per cent vs. 35 per cent).

Employee service users whose dispute had not been resolved were also asked whether they had submitted a tribunal claim; there was an even split between those who had and had not (49 per cent each).

**Figure 4.6 Tribunal claim submission (employees)**



Source: E7 – Can I check, have you now submitted a tribunal claim regarding this problem?; unweighted base: all unrepresented employees where dispute was not resolved?, 400.

Similar to the employers, employees who had reached an impasse in their PCC were more likely than those who had not progressed to have submitted a tribunal claim (61 per cent vs 43 per cent).

Interestingly, where the conciliator had contacted the employee within one working day, they were less likely to have submitted a tribunal claim than when the contact was made more than two working days after the initial call to the helpline (56 per cent not submitted vs 36 per cent). This highlights the importance of the conciliator quickly following up the initial call to Acas. It may also highlight that good proactive conciliation has a positive effect on the likelihood of subsequent claims.

Those who had not yet submitted a tribunal claim were asked whether they intended to do so: eight per cent said that they did, but 86 per cent said they did not. Asked a similar question, three per cent of employers said that the employee was planning to submit a tribunal claim; 67 per cent said no, but 29 per cent did not know.

---

<sup>9</sup> Acas carry out a regular satisfaction survey of service users of Individual Conciliation, where appropriate for context, results have been compared with this survey. The most recent survey was carried out in 2007, and was a postal survey as opposed to a telephone survey.

<sup>10</sup> Only unrepresented employers and employees were asked this follow up question, therefore the total adds up to 53 as opposed to 58.

## 5 Progression to PCC

This section of the report discusses how users first became aware of PCC- specifically whether they were offered PCC through the Acas helpline. Service users who were offered it through the helpline were asked about the helpline advisors in terms of whether they encouraged internal dispute resolution and how suitable it sounded to their dispute. A key performance indicator for Acas is to what extent 'referrals' are converted into PCC cases, and therefore, specific qualitative research was carried out to further investigate the barriers that prevent individuals from using PCC.

### 5.1 Awareness of PCC

Whilst the most common way that participants stated that they first heard of PCC was through the initial contact from the Acas conciliator (30 per cent), this was due to a high proportion of employers finding out through this method (69 per cent). This was in line with expectations; internal Acas data suggests that approximately 85 per cent of PCC referrals arise as a result of contact with the Acas helpline from the employee or someone acting on their behalf. Therefore, it is understandable that the first that the employer would have heard about PCC was the call from the conciliator.

As would be expected given their respective roles in initiating conciliation, employees tended to be more proactive than employers in terms of actively finding out about the service. Therefore, employees found out from a diverse range of sources, including word of mouth – which was generally from friends or family (26 per cent), through Citizens Advice Bureaux (17 per cent) and through their workplace (15 per cent).

The results for employees are surprising, and raise the possibility that the question was misunderstood by this group. It was expected that the majority of employees would have first found out about PCC through their call to a helpline. It is possible that employees spoke more about where they first heard about conciliation and Acas more generally as opposed to the PCC service.

**Table 5.1 How participants heard about PCC**

	<b>Employers</b>	<b>Employees</b>	<b>Representatives</b>
Contact from conciliator	69%	6%	11%
Word of mouth	2%	26%	5%
Through workplace	5%	15%	9%
Citizens Advice Bureaux	0%	17%	9%
Previous experience / used Acas before	8%	7%	36%
Call to Acas helpline	7%	12%	8%
Acas website	4%	14%	3%

Source: C1 – How did you hear about the Acas Pre-Claim Conciliation service, the service you were offered by Acas?; unweighted base: all sampled service users that answered the question (employers, 478; employees, 589; representatives, 75).



## **5.2 The helpline**

### **5.2.1 Offered PCC after phoning the helpline**

Regardless of how participants said that they had first *heard* of the PCC service (generally), they were asked how they had been *offered* it. PCC can be offered to the employee or the employer through the Acas helpline. When this offer is accepted, what is termed the 'reeling in' process begins, whereby the conciliator will contact the other party and attempt to gain agreement to conciliation.

In most PCC referrals, one party would have been offered the service after contacting the helpline, whilst the other party would have been offered the service after initial contact from the conciliator. Therefore, it was unsurprising that 54 per cent of the sampled population were identified in the database as having been offered PCC after contact with the Acas helpline. Also, in line with expectations, employees were more likely than employers to have been flagged on the database as having been offered PCC after contacting the helpline (86 per cent vs. 11 per cent).

In the survey two thirds of those who had contacted the helpline confirmed that they had been offered PCC after phoning the helpline, 24 per cent said that the offer was not made and nine per cent did not know. Employees were more likely than employers to have been offered PCC after having phoned the helpline. This is likely to be a consequence, as detailed in internal Acas data, that twice as many helpline calls come from employees than employers, and the nature of employee calls making it more likely that potential claims will be identified. Employers who call the helpline are less likely than employees to be in the position of knowing whether an employee was contemplating a claim.

### **5.2.2 Promotion of internal workplace procedures**

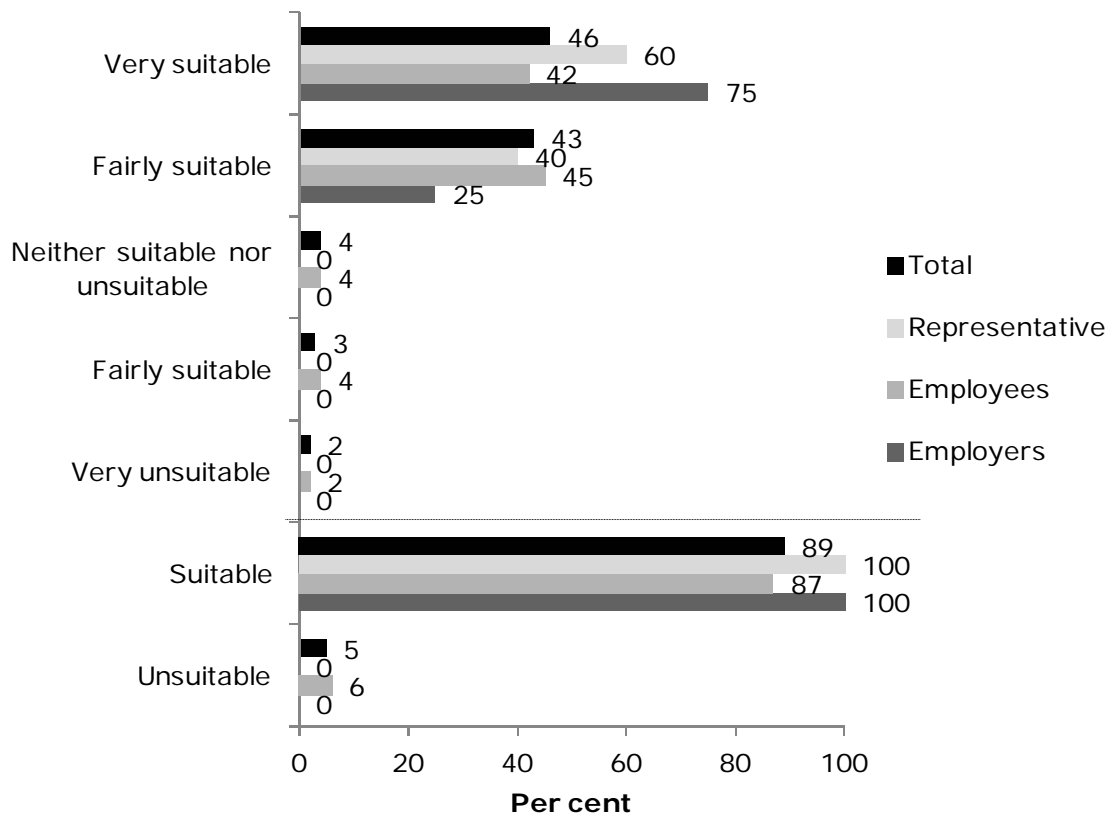
The PCC service is offered to employees and employers after the internal workplace procedures have been exhausted; therefore helpline advisers are trained to encourage usage of these procedures. As discussed in section 4.2, four in ten service users stated that written dispute procedures had been used and employees were more likely than employers to have stated that this had taken place.

Forty one per cent of those who were offered PCC after phoning the helpline confirmed that they had been encouraged to use internal procedures by the helpline adviser, 28 per cent said that they had already exhausted internal procedures, 18 per cent said they were not encouraged, and 12 per cent did not know. In line with the findings discussed in 4.2, employers were more likely than employees and representatives to say that they phoned the Acas helpline having exhausted their internal workplace procedures (46 per cent vs 27 per cent and 24 per cent, respectively).

### **5.2.3 Perceived suitability of PCC**

As detailed in figure 5.1, most (89 per cent) of those who had been offered PCC after phoning the Acas helpline said that, after the helpline adviser had described it to them, they felt that PCC sounded suitable for their case. This figure includes all employers (n=28) and representatives (n=42) and 87 per cent of employees.

**Figure 5.1 Suitability of PCC**



Source: C5 – When the helpline adviser described PCC to you, how suitable did it sound for your case?; unweighted base: all sampled service users who were offered PCC after phoning the Acas helpline, 424 (representatives, 44; employers, 36; employees, 344).

Most employment tribunal claims need to be submitted within 3 months, and the same deadline applies whether or not PCC is taken up. The majority (87 per cent) of service users said that the helpline adviser discussed with them the time limits for tribunal claims, while eight per cent said that they did not, and five per cent did not know.

Employees were more likely than employers and representatives to say they had been informed of the deadline (90 per cent vs 61 per cent and 77 per cent, respectively). Both parties should be informed of the deadline, therefore, this could be a result of either an actual difference in information, or could be the result of employees more likely to remember being told of the deadline, given the potential consequences for them.

### 5.3 Barriers to using PCC

#### 5.3.1 Quantitative research

Survey participants who had not progressed with PCC were asked why they had decided not to. The most common reasons for employers were that:

- They felt their process was fair/transparent<sup>11</sup>;
- They were not prepared to negotiate;

- They felt the employee did not have a case;
- They felt the employee had been less than truthful when approaching Acas.

Employees decided not to progress for a variety of reasons, with no particular reason being prominent, the most common were:

- Didn't want the hassle / it was too complicated;
- It was already resolved by the time they were called back by the conciliator;
- Having spoken to the conciliator, the employee did not believe they had a case;
- They (the employee) were not prepared to negotiate.

### **5.3.2 Qualitative research**

In order to better understand the reasons for these responses, 13 in-depth interviews were carried out with survey participants in unprogressed cases. A range of disputes were selected, and a range of service-users interviewed. This research included employees in disputes for unfair dismissal, discrimination, and unfair redundancy. It also included small, medium and large employers, some of whom had HR representation and some that did not.

Cases in the qualitative research included those where PCC was not progressed because of reasons relating to the dispute and others where there were barriers to using the PCC service. In other words, in some cases PCC was not progressed because the dispute had ended.

### **5.3.3 A lack of understanding about Acas, PCC and the employment tribunal**

There were a number of potential barriers preventing disputes being conciliated upon under PCC, firstly a considerable obstacle for all types of potential service user was simply awareness of what the service would be able to offer them. A large employer when interviewed commented that:

*"most organisations would rather have a free service than pay a lawyer to do it for them ..(so there is). a lack of understanding probably as to the role that Acas can play and the value and the success that Acas can potentially have" (employer, in-depth interview, no claim submitted).*

Similarly there was a lack of awareness from employees interviewed about exactly what the process involved in PCC was – this meant that they decided to reject conciliation. It was also felt that if the options were better explained, and they were able to get a better understanding of the practicalities of the process, then conciliation would have been an option that they would have considered more readily. This highlighted the importance that, in the words of one participant, the conciliator/helpline adviser should be clear on what is achievable, and not give a *"woolly, foggy promotion of their conciliation"*. This indicates that Acas needs to work with conciliators and helpline advisors to ensure that the processes (both in terms of conciliation and the tribunal) are adequately explained

*“More practical help in terms of ‘now here is what will happen in employment tribunals, here is what will happen before, this is likely to be the impact on your personal life, your professional, hereafter; if there is any financial compensation here is what it might be, how they work it out’ and so on and so forth. Which is the sort of thing I got from the solicitor I went to see months later – he did explain the process, how long it might take and so on, and I didn’t get any of that from Acas.”* (employee, in-depth interview, tribunal claim submitted)

#### **5.3.4 Difficulty with timescales**

It was also highlighted by employees that the dispute deadline raised a further barrier for engaging with Acas: some employees, spend some time deciding what to do next, when in fact they need to act quickly in order to be able to use PCC. It was highlighted that the three month timescale for submitting a employment tribunal application when also being expected to take part in conciliation was very short:

*“The best thing would be to contact Acas as soon as possible and to ask queries to Acas, and then I would manage the situation as I quick as I could; the problem is that for me it is the first time, and I hope the last time, and unfortunately the time frame of these is three months, it can be a long time, but it can be even a very short time.”* (employee, in-depth interview, tribunal claim submitted)

Also related to the time-scales, one employee felt that the other party had deliberately refused to respond to the conciliation in the hope of the deadline passing without the employee knowing:

*“They can’t force them to do anything can they, and you’ve got to be careful here because you will go out of time, and I think that’s what the company was hoping for, that I would run out of time, delay it so it ran out of time”* (employee, in-depth interview, tribunal claim submitted)

It is important that the time-scales are correctly and adequately communicated, as this could result in a greater conversion rate of referrals to PCC cases:

*“If I knew that the PCC process would be a quick process, like in a week or a couple of weeks’ time, maybe we can discuss pre-conciliation [sic]– possibly I will wait and then I will follow the procedure on the pre-conciliation process first, and then after I will do the tribunal ... when in the first instance when I called Acas, if they said ‘in a couple of days I will contact the employer and try to sort it out before the claim’ then possibly I will wait, but they didn’t give me a proper time frame, so I didn’t know exactly if it was worth the wait or not.”* (employee, in-depth interview, tribunal claim submitted)

#### **5.3.5 Stress and burden of a dispute**

However, not all ‘barriers’ expressed by employees were about PCC per se, but rather about difficulties in proceeding with the issue in dispute. PCC was rejected not in favour of a tribunal claim, but actually because the dispute was dropped. An employment dispute can be a stressful experience for employees and employers, and therefore, some employees preferred to drop the issue in order to try to move on from it.

One employee, who had been on long-term sick leave, found it difficult to engage with conciliation, explaining that *"I hadn't the strength to go through the hassle"*, and that *"the biggest barrier on taking part is the individual"* and that *"use of the service depends on how the individual feels at the time"*. Therefore, the difficult balance for Acas is to support the parties, but not to discourage disputes being resolved internally.

### **5.3.6 Being prepared to negotiate**

The emotional aspects of the dispute cannot be underestimated, and the nature of conciliation often requires compromises on both sides – as described above the emotional aspects can be a barrier to continue with a case, but they can also be a barrier to parties being willing to negotiate a settlement – for example where an employee wants to see the employer "punished" for their actions. One such example was the case of a employee working as a business developer for a furniture manufacturer, who felt that he had been unfairly made redundant.

The background to the dispute was that another worker had been appointed the week prior to his being made aware of a threat of redundancy. He felt that the other employee had been brought in at a lower salary with the specific intention of replacing his position:

*"So I was even more convinced that, you know this isn't redundancy, it's not legitimate, it's been engineered to get rid of me in order to cut costs ... I had a lot of people, colleagues and friends who said 'they can't do this to you, you've got to stand up' ... at that time it wasn't completely selfish, I wasn't just thinking 'oh, I'm in for a few grand here' – my thoughts were slightly altruistic in that 'he's got to be stopped, he's a maniac, he's ruining the business and he's messing other people's lives about as well, with impunity in some cases, but not in this one, so it's pretty much my human duty to do this'"* (employee, in-depth interview, tribunal claim submitted)

### **5.3.7 Persuading employers that they have a problem**

The main reason given by employers for not going ahead with PCC was that they felt that they had a strong case, and had no reason to take part in conciliation. Hence the main barrier was persuading the employer that they had a problem in the first place. All the employers stated that in the disputes in question they had fully followed their internal procedures:

*"The conversation was very, very short on the basis that I said 'thank you very much but no thanks because we haven't done anything wrong and I feel very confident we can defend the case and therefore we are not really looking for any mediation'"* (employer, in-depth interview, no claim submitted)

*"I haven't got a problem with this employee talking to them, but if we had got to a situation where he had put in a tribunal claim and I had somebody telling me that it was a good idea for me to negotiate with him, then I would have been somewhat annoyed because I would have thought that in terms of the situation that I described, I would have thought it was a fairly*

*cut and dried case for that particular one” (employer, in-depth interview, no claim submitted)*

In spite of their unwillingness to participate in these particular cases, several employers said that they would be willing to in the right circumstances. Inevitably it was a case of weighing up all the pros and cons of participating:

*“I would use them if I felt there was a need, or if I felt that for whatever reason the case that was being brought was less than defensible, so if I genuinely believed that we hadn’t followed due process, or if I genuinely believed we hadn’t followed our internal process, then I would have a duty to look at mediation prior to going to a tribunal as a way of trying to limit any potential loss or claim. So there is no rationale behind not using it other than there is only a need to use it when you believe you don’t have the opportunity to defend the claim robustly.” (employer, in-depth interview, no claim submitted)*

*“I suppose it’s difficult because if we had dismissed them then obviously we think that we have dismissed because we’ve got a reason, but I suppose it’s in terms of the whole process, and the likelihood of I suppose of winning a tribunal, and the effort involved in winning that tribunal” (employer, in-depth interview, no claim submitted)*

### **5.3.8 Perceived appropriateness of Acas involvement**

The final major barrier that was mentioned by employers was regarding the role and promotion of Acas as an organisation that was appropriate for them. It was felt that whilst for a small employer *“then you are reaching out for whatever free services you can get, if you are a larger employer and a more profitable employer, then actually Acas is not at the forefront of your mind. Acas could do with better promotion of its services to employers”* (employer, in-depth interview, no claim submitted)

It was in this context that it was felt that in some ways Acas was more appropriate for employees, and whilst it tries to promote itself as an impartial body that provides services to both parties in a dispute, it could be *“way down the list”* of the options to be used. Instead of using an impartial body, larger businesses often chose to use an organisation that specialised in providing business focussed support, for example a trade association.

---

<sup>11</sup> Percentages have not been reported due to the relatively small number of survey participants that were within this sub-group.

## **6 Conciliation**

Once a referral has been made by the Helpline adviser, the service standard Acas has set for PCC is that a conciliator will seek to contact the caller within two days. This section analyses whether this standard was met, and more generally examines parties' views of the conciliator. Perceptions of the conciliator were evaluated with respect to explaining the conciliation process, outlining the law, relaying proposals, helping understand the strengths and weaknesses of their case and explaining the respective pros and cons of resolving a dispute without an employment tribunal. Parties were also asked whether they trusted the information given by the conciliator and whether they felt they were impartial.

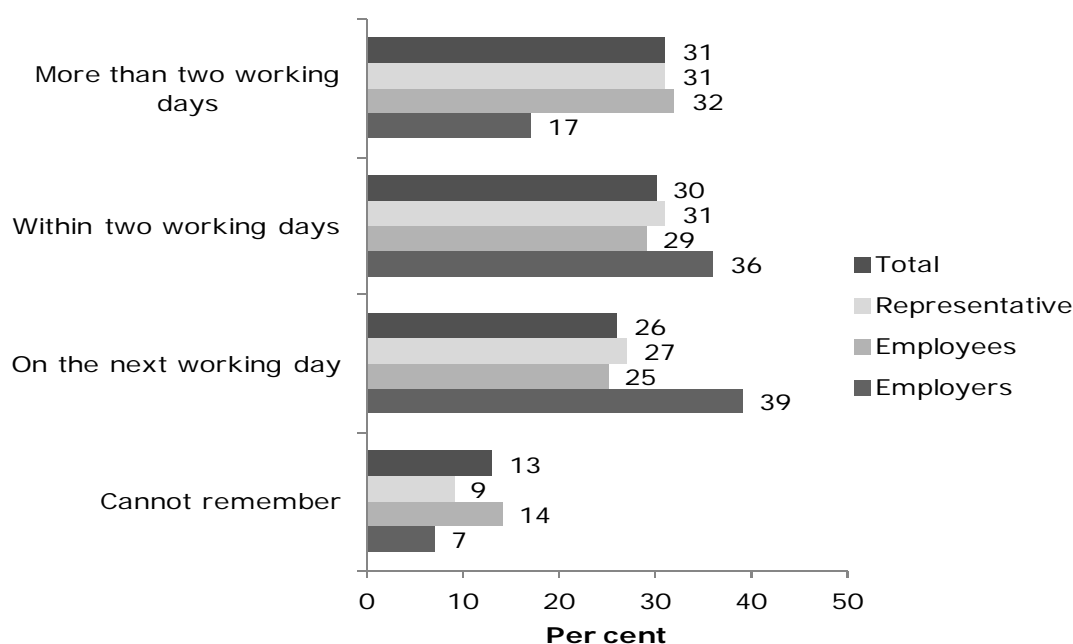
As part of measuring the wider impact of PCC, we asked employers whether the information they had received had made them do anything in order to avoid dealing with a similar dispute in the future. A prominent reason for promotion of earlier dispute resolution is to reduce the amount of time and money that parties spend dealing with an employment tribunal claim. Therefore, we compare the time that survey participants said they spent on a PCC case with results from SETA about the time spent on those disputes that progress to an employment tribunal claim.

### **6.1 Contact by conciliator**

When an individual has been referred from the helpline, a conciliator should follow up with the caller within two working days to discuss the case with them, and ask whether Acas could conciliate in the matter.

Returning to the quantitative survey, the majority of service users reported that they were contacted within two days of their accepting the offer to speak to an Acas conciliator. However, nearly a third had to wait more than two working days before they were contacted by the conciliator.

**Figure 6.1 Timeliness of contact**



Source: D1 – How soon after you accepted the offer to speak to an Acas conciliator were you contacted by one?; unweighted base: all sampled service users who called the helpline, 424 (representatives, 44; employers, 36; employees, 344).

Communication via telephone, e-mail, letter or fax were the most common means of contact in the large majority of cases covered by the research (93 per cent). Whilst representatives were the group most likely to have had at least one face to face meeting, albeit higher than anticipated, even here this was only in a minority of cases (17 per cent). This difference by service user group (shown in table 6.1) may be due to representatives being more likely to have been involved in more complex cases, which have historically been more likely to have needed a face-to-face meeting.

**Table 6.1 Method of contact**

Outcome	Employers	Employees	Representatives	Total
All by telephone, e-mail, letter, fax	92%	96%	82%	93%
Mostly by telephone, e-mail, letter or fax but with at least one face-to-face meeting	8%	4%	17%	7%
No contact	0%	<1%	1%	<1%

Source: D2 – Was your contact with the Acas conciliator...?; unweighted base: all sampled service users whose case was resolved / impasse, 784 (representatives, 104; employers, 347; employees, 333).

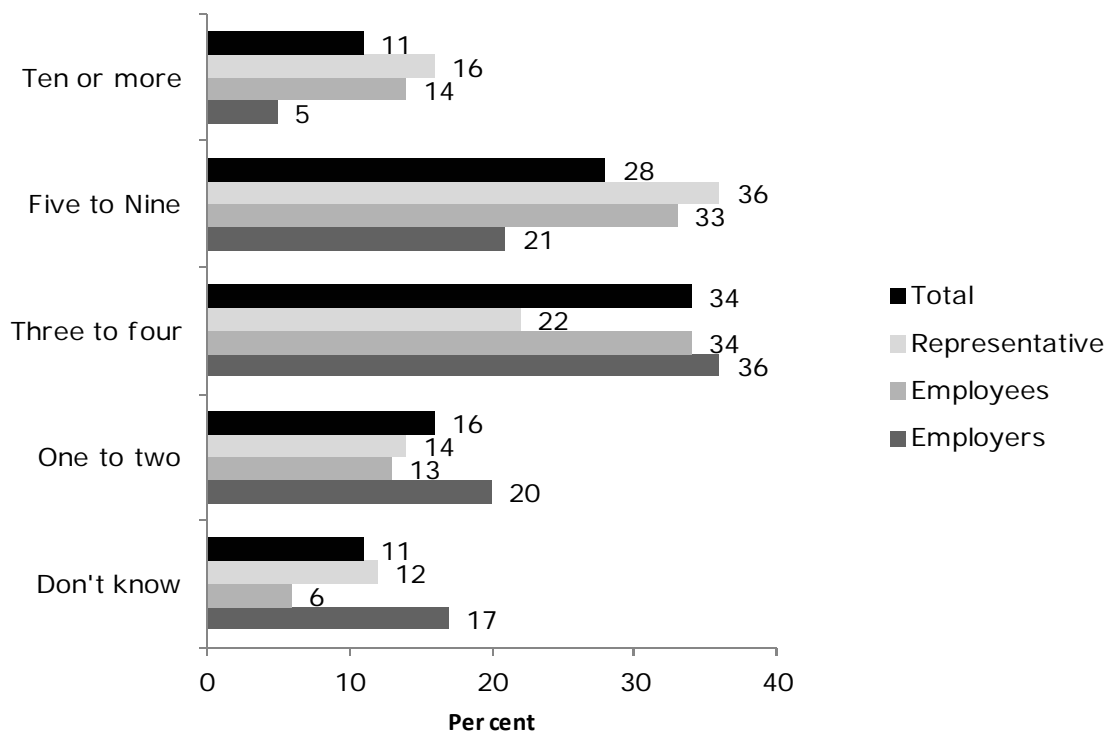
When asked about the number of times they had contact with the conciliator, employees and representatives tended to have had a higher number of contacts than employers (see figure 6.4). In the employees' case, this may reflect their role in initiating PCC cases. Employees and representatives typically had on average (median value) five contacts with the conciliator, but employers were on



average only in contact three times, with similar levels of contact for representatives.

Cases that ended in an impasse were more likely than those where the dispute was resolved to have involved only one or two contacts with the conciliator (20 per cent vs 13 per cent). This suggests that it was clear early on in the conciliation that there was no willingness to negotiate.

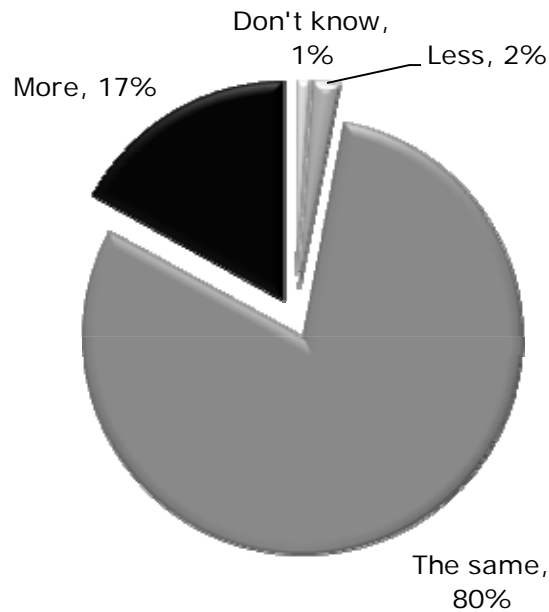
**Figure 6.2 Number of times in contact with conciliator**



Source: D3. How many times did you have contact with the Acas conciliator?; unweighted base: all sampled service users whose case was resolved / impasse, 784 (representatives, 104; employers, 347; employees, 333).

As detailed in figure 6.3, the majority of interviewees were content with the level of contact they had had with the Acas conciliator. However, in a similar question in the 2007 survey of conciliation in employment tribunal cases, just 10 per cent said that they did not have enough contact with the conciliator, compared with 17 per cent in the PCC survey.

**Figure 6.3 Preferred amount of contact with conciliator**



Source: D4. Would you have preferred more contact with the Acas conciliator, less contact, or about the same?; unweighted base: all sampled service users whose dispute was resolved / impasse, 784.

Employees were more likely than employers and representatives to have wanted more contact with the conciliator. This is in spite of the fact, as detailed earlier, that employees tended to have a greater level of contact with the conciliator. Very few participants, from any of the groups, would have preferred less contact with the conciliator. It is important that the role of the conciliator should be clearly explained to the parties involved and expectations managed, as these findings may suggest that employees are more likely to want conciliators to play a more consultative and supportive role.

**Table 6.2 Preferred amount of contact by service user type**

Outcome	Employers	Employees	Representatives	Total
More	9%	25%	9%	17%
The same	87%	72%	88%	80%
Less	2%	2%	1%	2%
Don't know	2%	1%	1%	1%

Source: D4. Would you have preferred more contact with the Acas conciliator, less contact, or about the same?; unweighted base: all sampled service users whose dispute was resolved / impasse, 784 (representatives, 104; employers, 347; employees, 333).

Where the PCC case had ended in impasse, service users were more likely to have preferred to have had more contact (24 per cent vs 12 per cent) than when it was resolved. Service users in standard and open-track cases were more likely to have wanted more contact with their conciliator than those in short-track cases (18 per cent and 21 per cent vs eight per cent). Where the conciliator contacted the initiating party more than two working days after the initial contact to the helpline, service users were more likely to have wanted more contact than where the contact was made earlier (39 per cent (n=32) vs eight per cent (n=12)).

## 6.2 Perception of the conciliator

Participants had generally positive views of the abilities of conciliators. The large majority of respondents rated the abilities of conciliators as good or very good across a range of activities. Approval was highest (“very good”) for conciliators’ ability to explain how the conciliation process would operate, and was also high for outlining the law as it related to individuals’ circumstances and in acting as an intermediary between employer and employee.

Interestingly, against this picture of general approval, those participants who had a negative view of conciliators’ abilities were almost as likely to have a very negative view (“very poor”) as a simple negative view (“fairly poor”), suggesting that in the relatively small number of instances where there was dissatisfaction with the conciliator, this dissatisfaction could be quite pronounced.

Encouragingly, perceptions of the conciliators for the PCC service were broadly in line with or higher than in the 2007 survey of conciliation in employment tribunal cases

**Table 6.3 Role of conciliator in providing information about the case**

	<b>Very good</b>	<b>Fairly good</b>	<b>Neither</b>	<b>Fairly poor</b>	<b>Very Poor</b>	<b>Did not do</b>
Explaining the conciliation process	60%	25%	6%	2%	2%	4%
Outlining the law as it is applied to your problem	52%	26%	8%	3%	3%	7%
Relaying proposals and offers to and from parties	51%	22%	6%	4%	5%	11%
Helping you understand the strengths of this potential claim	46%	26%	9%	6%	4%	9%
Helping you to consider the pros and cons of resolving the problem before the submission of a tribunal claim	45%	26%	8%	5%	5%	11%
Helping you understand the weaknesses of this potential claim	43%	23%	10%	5%	5%	12%

Source: D5. How would you rate the Acas conciliator in terms of ...?; unweighted base: all sampled service users whose case was resolved / impasse, 784.

In the PCC survey, when asked their perceptions of the conciliator, employees were notably more likely than employers and, in particular, representatives to rate the conciliator as good or very good.

- Outlining the employment law as it applied to your problem (employees, 84 per cent; employers, 75 per cent; representatives, 59 per cent);
- Helping you understand the strengths of this potential claim (employees, 76 per cent; employers, 70 per cent; representatives, 57 per cent);
- Helping you understand the weaknesses of this potential claim (employees, 71 per cent; employers, 63 per cent; representatives, 55 per cent);

- Helping you to understand the pros and cons of resolving the problem before the submission of a tribunal claim (employees, 75 per cent, employers, 69 per cent; representatives, 58 per cent).

Representatives would be expected to have started from a higher base of knowledge than employees and employers, and therefore, the conciliator would not necessarily explain as much to the conciliator. Therefore, for many of the service aspects the representative said that the conciliator 'did not do this'.

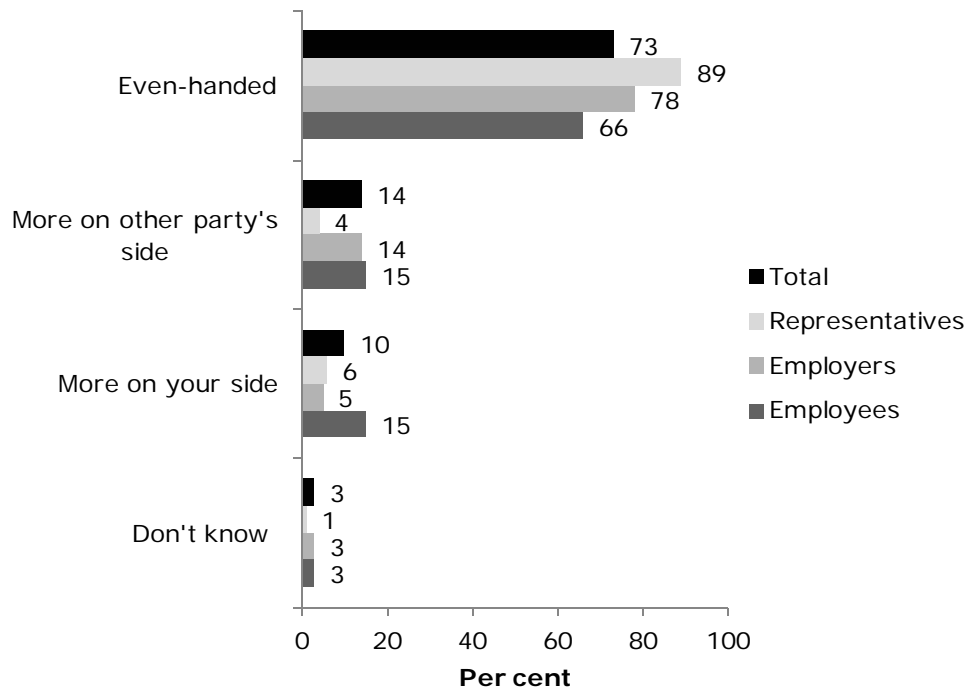
Service users who resolved their dispute through PCC were notably more positive ('very good' or 'good') than those where it had ended in impasse about several aspects of the conciliation service:

- Outlining the employment law as it applied to your problem (80 per cent vs 74 per cent );
- Helping you understand the strengths of the potential claim (75 per cent vs 67 per cent);
- Helping you understand the weaknesses of the potential claim (71 per cent vs 60 per cent);
- Relaying proposals and offers to and from the other party (82 per cent vs 62 per cent);
- Helping you to consider the pros and cons of resolving the problem before the submission of a tribunal claim (74 per cent vs 67 per cent).

When asked how they perceived the Acas conciliator, and whether they appeared to be partial to one side or another, the large majority felt that Acas had been even-handed in their handling of the case (73 per cent).

Employers and representatives were more likely than employees to think that the conciliator was even-handed (78 per cent and 89 per cent, compared to 66 per cent). Employees were split equally between whether they felt the conciliator had been more on the employer's or on their side (both 15 per cent).

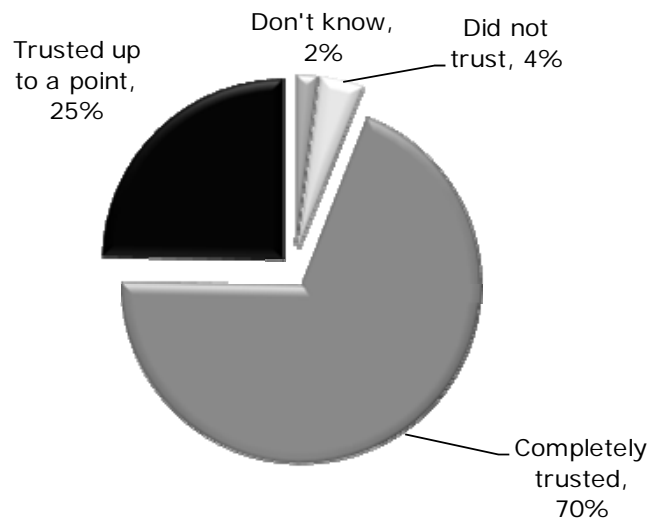
**Figure 6.4 Impartiality of conciliator**



Source: D6A/6B- Overall, did you feel you that the Acas conciliator was more on your side, more on the employer/employee's side or even handed between you?; unweighted base: all sampled service users whose case was resolved / impasse / resolved in initial discussions, 805 (representatives, 104; employers, 347; employees, 354).

A key part of the conciliator's initial role with the parties involved in any dispute is to build up a level of trust with them. This is important so that they feel that the conciliator is not acting for the other party. Therefore, it is a positive feature to note that the majority of participants said that they completely trusted the information given by the conciliator (70 per cent) and that a quarter trusted the conciliator up to a point.

**Figure 6.5 Level of service user trust in information given by conciliator**



Source: D7 – At the time how much did you trust the information given by the Acas conciliator...?; unweighted base: all sampled service users whose case was resolved / impasse / resolved in initial discussions, 805.

Representatives were more likely than employers or employees to have completely trusted the information given by the conciliator (see table 6.4). This may be due to their respective distance from the dispute, in that they were a third party to the dispute and so may be able to separate their emotions from the case. It also is perhaps a reflection of their prior knowledge and expectations of Acas.

**Table 6.4 Level of trust in the information given by the conciliator by service user type**

<b>Outcome</b>	<b>Employers</b>	<b>Employees</b>	<b>Representatives</b>	<b>Total</b>
Completely trusted	71%	66%	84%	70%
Trusted up to a point	26%	26%	12%	25%
Did not trust	3%	5%	2%	4%
Don't know	1%	2%	2%	2%

Source: D7 – At the time how much did you trust the information given by the Acas conciliator...?; unweighted base: all sampled service users whose case was resolved / impasse / resolved in initial discussions, 805 (representatives, 104; employers, 347; employees, 354).

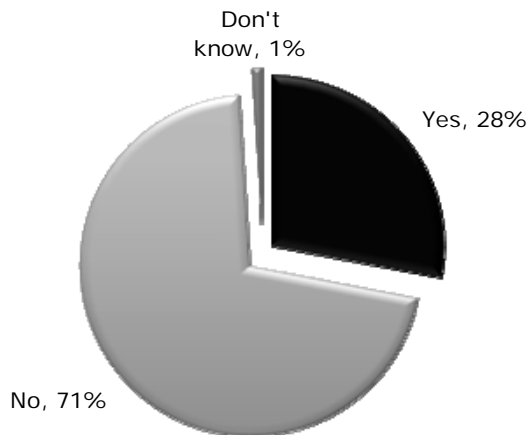
Service users in cases that had been resolved were more likely than those in cases that resulted in an impasse to have said that they completely trusted the conciliator (76 per cent vs 62 per cent). However, a further 31 per cent in impasse cases said they trusted the information given by the conciliator up to a point, suggesting there was at least some trust built up in almost all conciliation.

The level of trust that the service users expressed was linked to their perceptions of the impartiality of the conciliator. Those who felt the conciliator was even-handed or on their side were more likely than those who felt the conciliator was on the other party's side to trust the information given by the conciliator completely (even-handed, 78 per cent; on your side, 82 per cent; on other party's side, 23 per cent).

### **6.3 Employers taking actions as a result of PCC**

Over a quarter of employers (28 per cent) said that the Acas conciliator had provided them with information or advice that they felt would help them avoid having to deal with another similar dispute in the future.

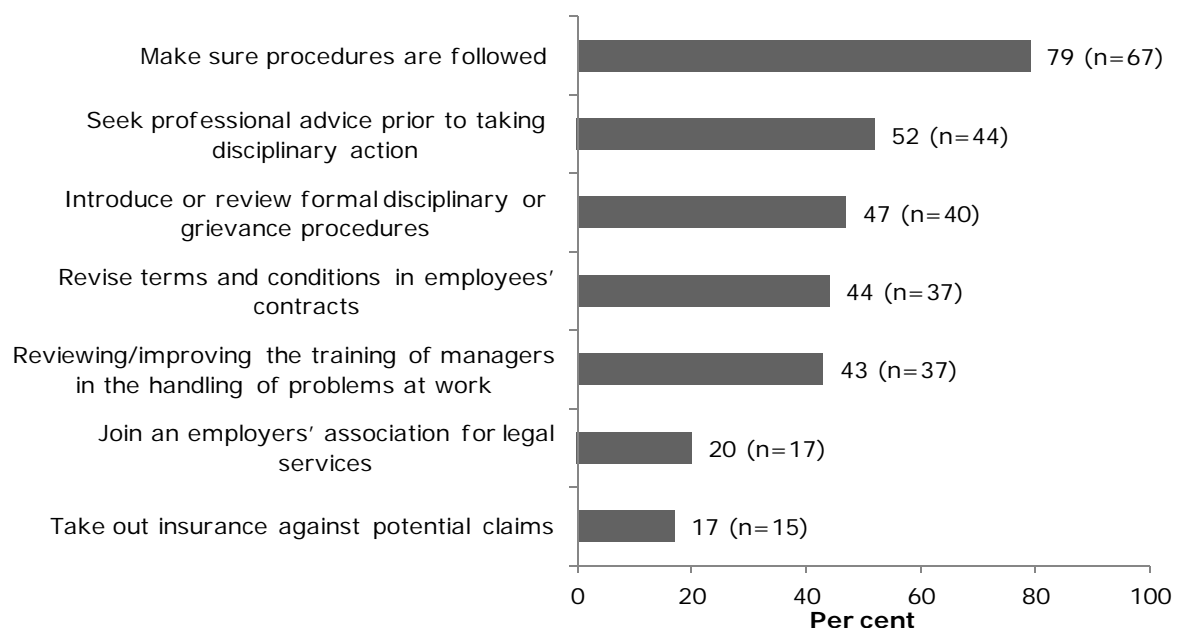
**Figure 6.6 Level of useful information provided to employers for future use**



Source: E20 - Did the Acas conciliator provide you with any information or advice which you believe will help you avoid having to deal with another case of this type in the future?; unweighted base: Employers whose case was resolved or impasse, 347.

Those who felt that the conciliator had provided them with information or advice that they felt would help them avoid dealing with another case in the future, were asked what actions they had taken as a result of PCC. The most common changes were that they would make sure procedures were followed, that they would seek professional advice prior to taking disciplinary action, that they would review their training of managers in dispute handling or that they would revise terms and conditions of employees' contracts (see figure 6.7).

**Figure 6.7 What actions has the organisation taken as a result of involvement in the PCC process?**



Source: E21. Has this experience of dealing with a PCC case resulted in the organisation taking any of the following actions ...; unweighted base: All employers who have made a change as a result of the conciliator, 98.

## 6.4 Time spent on PCC process

### 6.4.1 Employees

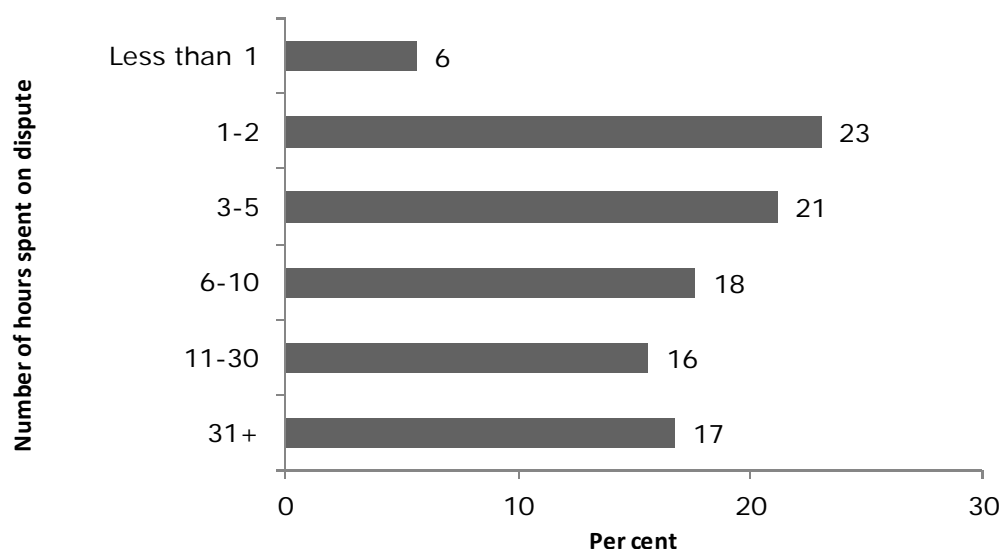
Employees who had participated in the PCC process were asked how long they had spent on that process in total between the time the assistance started and it ended<sup>12</sup>. There was a wide variation in the amount of time that participants spent on the case (as detailed in table 6.5 and figure 6.8).

**Table 6.5 Total hours spent on case by employees**

Statistic	Total
Mean	23.0
Median	5.7
Minimum	0
Maximum	448

Source: E1. How much of your time in total did you spend on the workplace problem from the time you received the offer of Acas assistance until that assistance ended?; unweighted base: employees whose case was resolved or impasse and gave an answer, 234.

**Figure 6.8 Number of hours spent by employees on the workplace problem**



Source: E1. How much of your time in total did you spend on the workplace problem from the time you received the offer of Acas assistance until that assistance ended?; unweighted base: employees whose case was resolved or impasse, excluding don't know, 234.

There was little difference in the total amount of time that employees spent by the different possible outcomes. Those who resolved it through an Acas settlement spent on average five hours, those who reached an impasse (due to running out of time) and those who reached impasse through no resolution spent six hours on the dispute.

Data from SETA (combined with data from the PCC evaluation) highlights the time savings that PCC can bring – where the employee was able to resolve the

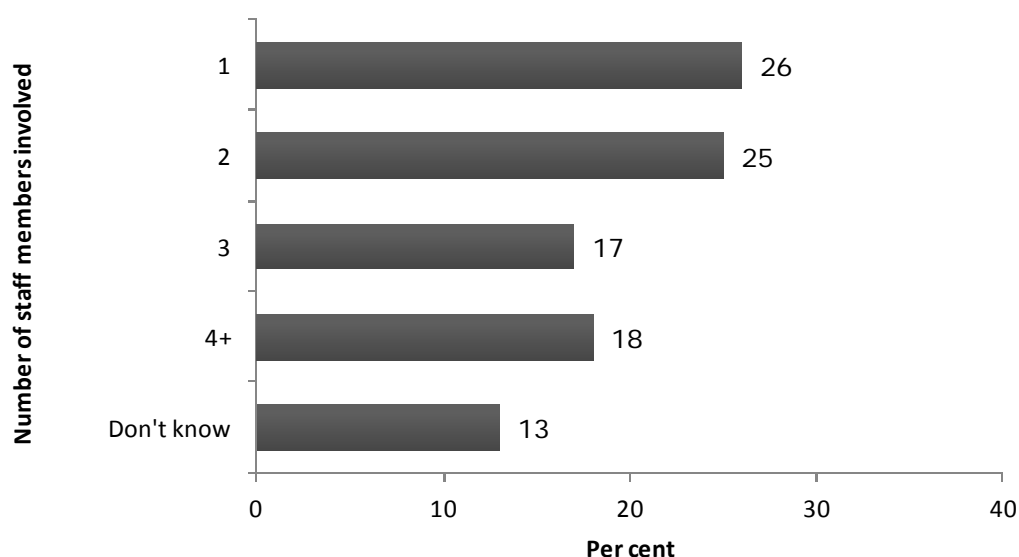


case through PCC they spent less than a day on the dispute, when it was resolved through IC they spent six days on it, and when it went to a full tribunal hearing they spent up to ten days.

### 6.4.2 Employers

In about half of disputes, only one or two members of staff spent time on in the PCC case (see figure 6.9).

**Figure 6.9 Number of persons involved and spent time on PCC case**



Source: E9. In total, how many people were involved and spent time on this Pre-claim Conciliation case? Please include yourself, other directors and senior managers and any other staff. Please only include staff in the organisation. Do not include any time spent by representatives or advisers who may have helped with the case; unweighted base: employers whose case was resolved or impasse, 347.

Employers were asked how much time in total each staff member had spent on the PCC case, this was so that a future cost-benefit analysis may be carried out. Therefore, for the purposes of this report, the total time taken by each business has been calculated, analysed and reported upon. There was substantial variation between employers in the total amount of time that was taken on the dispute. It ranged from just 0.1 hours to 320 hours; the variation is shown by the fact that whilst the mean is 21.2 hours (2.7 person days), the median value is eight hours (one person day).

**Table 6.6 Total number of hours spent on case**

Outcome	Total
Mean	21.2
Median	8
Minimum	0.1
Maximum	320

Source: total calculated from responses to time spent by employers questions (E11, E13, E15, E16); Base: all employers who were able to estimate the time taken to deal with dispute (241)

SETA data showed that employers reported that the mean number of days spent on an employment tribunal case was 13, and the median number of days was five. This indicates a substantial time saving where the case was resolved through PCC, rather than where a claim had been submitted.

In PCC cases, employers spent less time on resolved disputes than those where it had reached an impasse.

**Table 6.7 Total number of hours spent by outcome**

<b>Outcome</b>	<b>Impasse</b>	<b>Resolved</b>	<b>Total</b>
Mean	30.4	13.1	21.2
Median	12	6	8
Minimum	0.1	0.3	0.1
Maximum	320	140	320

Source: total calculated from responses to time spent by employers questions (E11, E13, E15, E16); Base: all employers who were able to estimate the time taken to deal with dispute (241 – impasse, 113; resolved, 128)

In line with expectations, those who were involved with an open track case had to spend longer on the dispute than those who dealt with a standard or short track case.

**Table 6.8 Total number of hours spent by period**

<b>Outcome</b>	<b>Short</b>	<b>Standard</b>	<b>Open</b>	<b>Total</b>
Mean	20.3	17.7	37.5	21.2
Median	5	8	15	8
Minimum	0.2	0.1	0.5	0.1
Maximum	235	156	320	320

Source: total calculated from responses to time spent by employers questions (E11, E13, E15, E16); Base: all employers who were able to estimate the time taken to deal with dispute (241 – short, 44; standard, 155; open, 33; no track identified, 9)

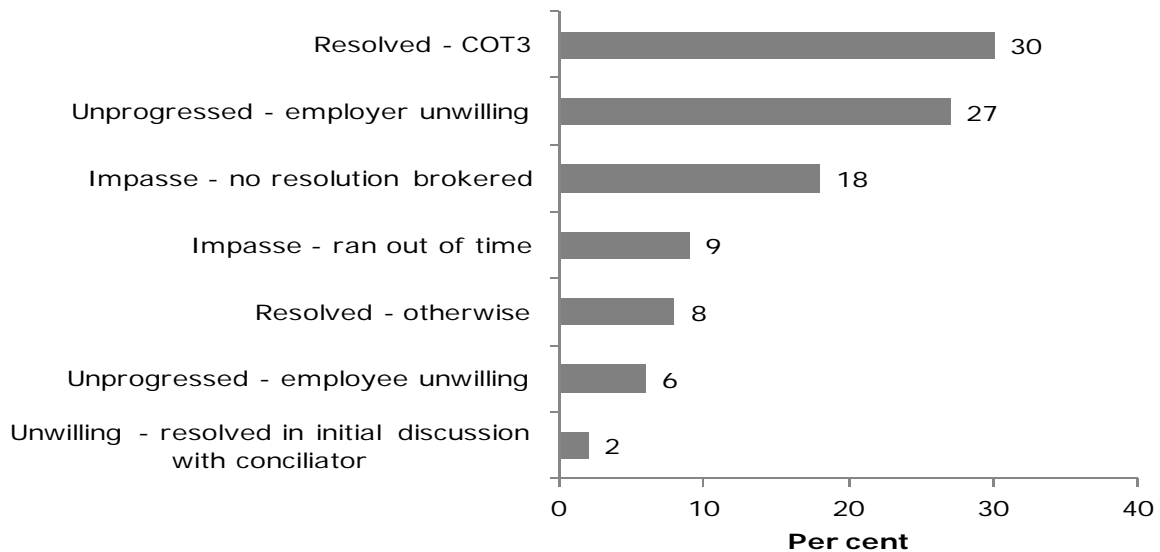
Just as the data from SETA and the PCC evaluation highlighted the benefits of earlier intervention to the employee, it also shows that the employer spends less time dealing with a PCC case. Where the employer resolved the dispute through PCC they spent less than a day on the dispute, when it was resolved through IC they spent five days and up to nine days where it went to a tribunal hearing.

## 7 Outcome of dispute

### 7.1 Outcome of PCC

As detailed in section 2, there are a number of different possible outcomes once a possible PCC case has been referred to the conciliator. The conciliator records the outcome of the referral in the Acas Management Information system. This information indicates that for the achieved sample, 27 per cent of referrals ended up as an impasse, 38 per cent were resolved, and 35 per cent were not progressed.

**Figure 7.1 Outcome of PCC referrals as detailed in sample**



Source – Acas PCC database; unweighted base: all sampled service users, 1188.

Table 7.1 details the outcome profile of the survey participants; represented cases were more likely than unrepresented to have ended in a resolution.

**Table 7.1 Outcome of sample by service user type**

Outcome	Employers	Employees	Representatives	Total
Unprogressed – employer unwilling	31%	25%	19%	27%
Unprogressed – employee unwilling	<1%	10%	4%	6%
Unprogressed – resolved in initial discussions	0%	4%	0%	2%
Impasse – no resolution brokered	21%	17%	12%	18%
Impasse – ran out of time	11%	8%	11%	9%
Resolved – COT3	28%	29%	47%	30%
Resolved – other	9%	7%	6%	8%

Source – Acas PCC database; unweighted base: all sampled service users, 1188 (employers, 478; employees, 589; representatives, 121).

The perceived impartiality of the conciliator was associated with the ultimate outcome of conciliation. Service users in resolved cases were more likely than those in disputes that ended in impasse to consider the conciliator as impartial or on their side.

**Table 7.2 Outcome of sample by perceived impartiality of conciliator**

<b>Outcome</b>	<b>On your side</b>	<b>On other party's side</b>	<b>Even-handed</b>	<b>Total</b>
Unprogressed – resolved in initial discussions	5%	3%	3%	2%
Impasse – no resolution brokered	14%	32%	27%	18%
Impasse – ran out of time	6%	16%	14%	9%
Resolved – COT3	54%	37%	46%	30%
Resolved – other	21%	11%	10%	8%

Source – Acas PCC database; unweighted base: all sampled service users whose dispute progressed to PCC, 782 (on your side, 74; on other party's side, 106; even-handed, 602).

Differences in the outcome profile was also seen in terms of the track, standard period were more likely than open to end in impasse due to no resolution brokered (19 per cent vs. 12 per cent), and were more likely than short to have not been progressed (28 per cent vs. 15 per cent). Short period disputes were more likely than standard and open to have ended in resolution that had not been finalised with an Acas COT3 form (22 per cent vs. 6 per cent and 9 per cent).

The only other area where there were significant differences in the outcome was employment sector, whilst parties from non profit / voluntary sector organisations were more likely than public and private sectors to have a 'resolved – other' outcome from conciliation and less likely to end up in impasse, employers in that sector were also less likely to be willing to take part in conciliation.

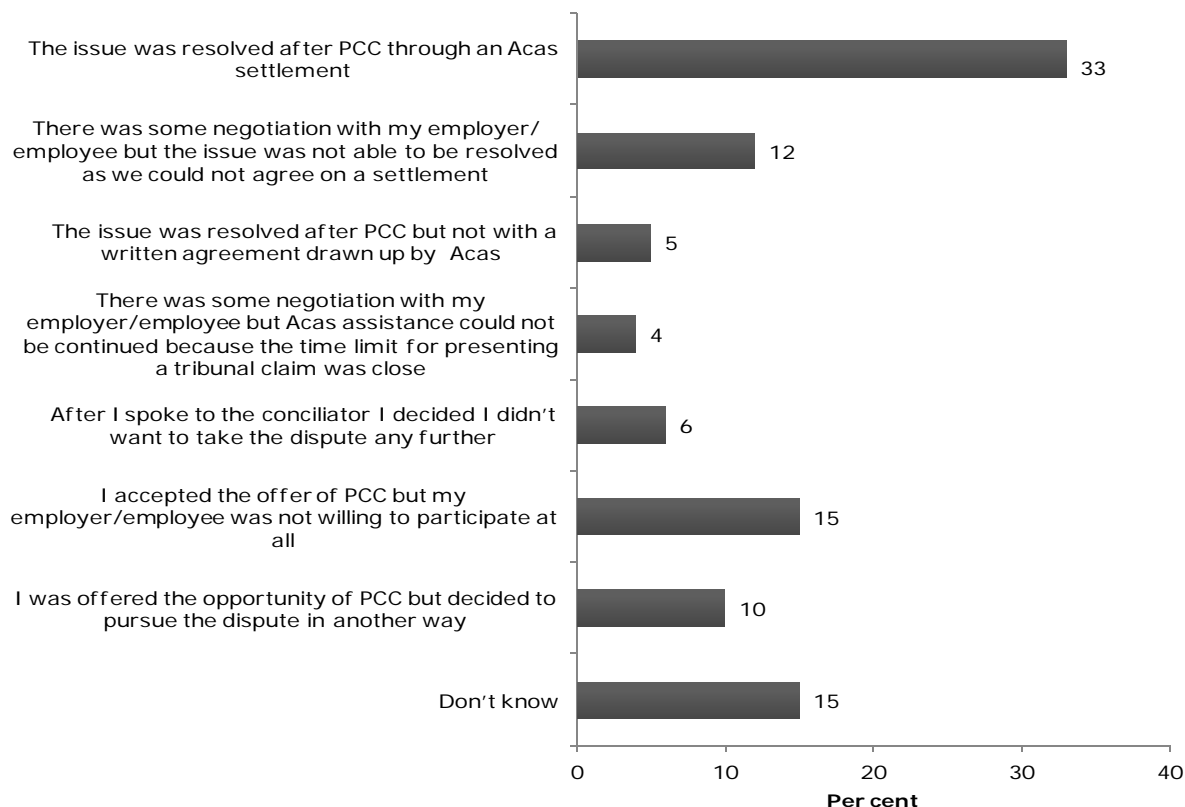
**Table 7.3 Outcome of sample by type of employer**

<b>Outcome</b>	<b>Private Sector</b>	<b>Public Sector</b>	<b>Non-profit / voluntary sector</b>	<b>Total</b>
Unprogressed – employer unwilling	27%	21%	37%	27%
Unprogressed – employee unwilling	5%	11%	2%	6%
Unprogressed – resolved in initial discussions	2%	3%	2%	2%
Impasse – no resolution brokered	19%	19%	6%	18%
Impasse – ran out of time	9%	9%	10%	9%
Resolved – COT3	31%	31%	27%	30%
Resolved – other	7%	6%	16%	8%

Source: Acas PCC database; unweighted base: all sampled service users, 1188 (private sector, 923; public sector, 131; non-profit, 55).

Survey participants were also asked about what they understood was the outcome of the service. According to the participant, the most common outcome had been resolution through an Acas settlement (33 per cent). However, approximately one in six (15 per cent) were unsure of what the outcome was.

**Figure 7.2 Outcome of PCC according to service user**



Source: B3 – What was the outcome of PCC; unweighted base: all sampled service users, 1188.

There were a number of reasons where conciliation was not able to resolve the dispute, and inevitably these differed for employers and employees. The most common for employees were that:

- the employer did not wish to participate / was not interested in talking (37 per cent);
- the offer was not good enough (19 per cent);
- the time limit was approaching (eight per cent).

The main reasons given by the employer were that:

- the other party wanted money and they were not willing to pay (32 per cent);
- they were not willing to talk to the employee (15 per cent);
- they felt they had no case to answer (eight per cent).

Participants whose dispute was resolved through an Acas agreed settlement (COT3) were asked what the terms of the settlement were – for most it was money (83 per cent), with a minority settling for a reference (25 per cent). A few

disputes were resolved either with an apology (three per cent) or a letter of explanation (5 per cent).

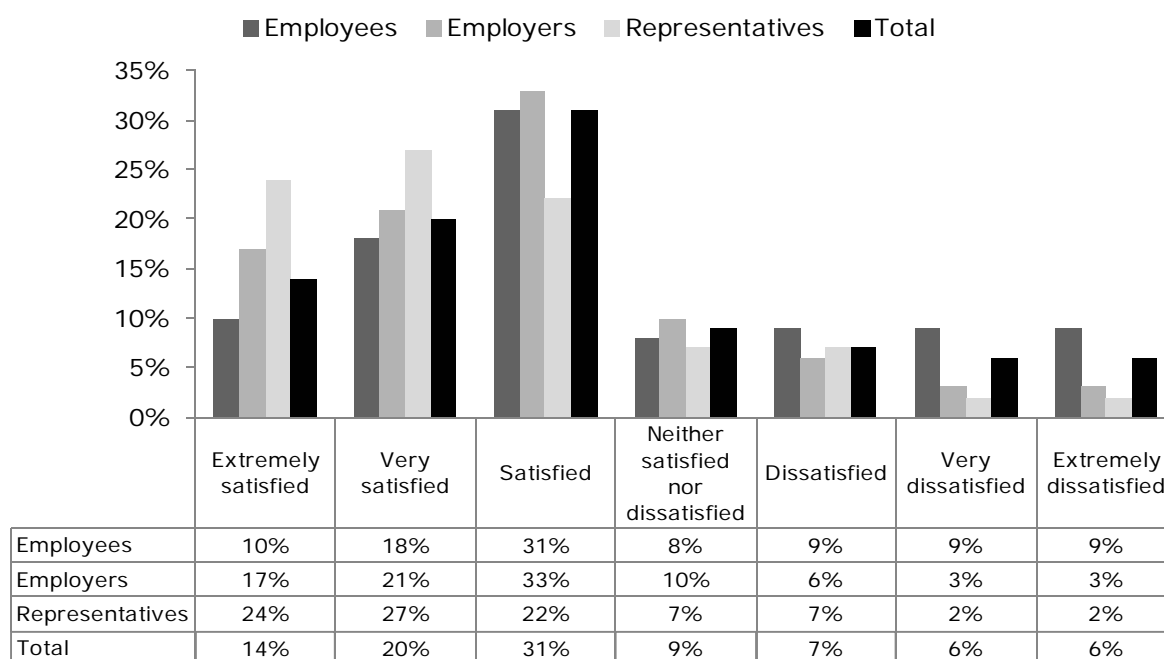
The monetary value of dispute settlements varied markedly; three per cent were worth between £1 and £100, 13 per cent £101-£500, 12 per cent £501-£1000, 30 per cent £1,001-£5,000, 12 per cent more than £5,000 and 30 per cent of survey participants refused to disclose how much the settlement was worth. The median monetary settlement was £1,500 and the mean value was £5,409. SETA data shows that the median monetary settlement for employment tribunal applications was £2,000 and the mean value was £5,431. Levels of settlement vary considerably according to the jurisdiction of the claims concerned. These averages are likely to be influenced by the differences between PCC and ET1 cases in terms of the mix of jurisdictions (especially the lower proportion of discrimination claims).

## 7.2 Satisfaction with dispute outcome

Service users were asked to put aside their views of Acas' service, and focusing just on the outcome were asked how satisfied they were with the outcome of their dispute. Overall 65 per cent were satisfied, 20 per cent were dissatisfied and 9 per cent were neither satisfied nor dissatisfied. This compares with the satisfaction rate of 69 per cent that was obtained in the 2007 Acas Individual Conciliation Survey<sup>13</sup>.

Employers and representatives were more likely than employees to be satisfied with the outcome (71 per cent and 73 per cent, respectively, compared to 59 per cent)

**Figure 7.3 Satisfaction with dispute outcome**



Source: E4 – Putting Acas' service to one side and focusing just on the outcome, how satisfied or dissatisfied were you with the outcome?; unweighted base: all sampled service users whose case was resolved or reached an impasse, 784 (representatives, 104; employers, 347; employees, 333).

Unsurprisingly satisfaction with the dispute outcome was linked to the outcome of PCC; those who had resolved their dispute were more likely to be satisfied than those where PCC had ended in impasse (82 per cent vs 43 per cent). Employers where the business had an internal HR department were more likely to be satisfied with the outcome than those without (77 per cent vs 64 per cent).

### **7.3 Continued employment**

An important rationale behind PCC is to intervene earlier in the dispute than previously in individual conciliation, and where possible to preserve the relationship between the employer and employee. However, most participants (95 per cent) stated that the employee had left employment with the employer at the time of being interviewed for this research, and only 5 per cent of employees remained with the employer. However, employees in cases that were resolved through PCC were more likely than those that reached an impasse to remain with their employer (seven per cent (n=31) compared to two per cent (n=6)). This is similar to the 2007 IC survey which found that 6 per cent of service users remained with their employer six months after conciliation.

Employees who were no longer with the business involved in the dispute were asked whether they were in work now; this was equally split (50-50) between those who were in employment and those who were not. Only 17 per cent of those who were not currently in employment had had any paid employment since leaving their employer.

The majority of those who had found employment after leaving their employer worked for a lower salary than previously (63 per cent), 22 per cent were paid more and 12 per cent were paid the same. This negative impact was particularly apparent for those who worked for medium or large employers (71 per cent and 76 per cent, respectively, were paid less; compared to 56 per cent who worked for small employer). Employees who worked in the private sector were more likely than those in the public sector to now work for less pay (64 per cent vs 55 per cent).

Employees who had managerial duties were more likely than those without to have found employment that paid less (74 per cent vs 58 per cent). Finally, those who had been previously working full time were more likely than those who were employed part time to have been paid less (68 per cent vs 45 per cent).

---

<sup>12</sup> The data was validated and checked against the length of time that the PCC case took to complete. Any employee who said that they had spent longer than possible on the case were identified and excluded from the analysis.

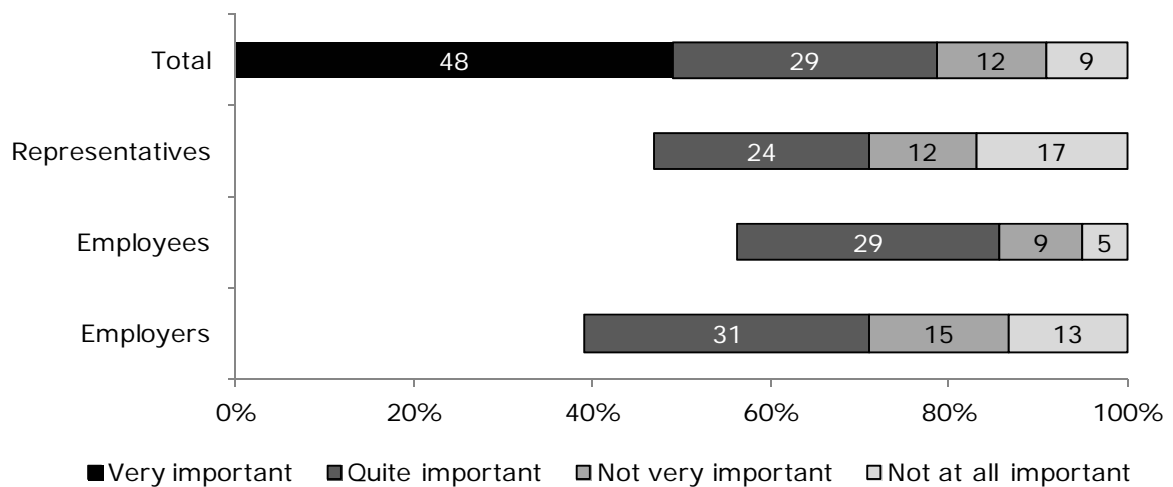
<sup>13</sup> Outcomes in PCC and ET1 conciliation are close enough to make some degree of comparison, but they do not provide a precise comparison. Therefore, comparison is there only to provide an indication for contextualising the results, and any differences or similarities may be due to the different survey methods used or due to a different profile of service users.

## 8 Overall perceptions of pre-claim conciliation

### 8.1 Impact of Acas involvement

A majority of all interviewees and all service user types considered that Acas involvement had been important (either very important or quite important) in helping them decide how to proceed with the dispute (77 per cent). This was highest among employees, where a majority considered Acas involvement had been very important (55 per cent), and lowest among employers, where 38 per cent considered this to have been very important. Only a very small minority in any group considered that Acas involvement had not been of any importance in deciding how to proceed.

**Figure 8.1 Importance of Acas involvement**

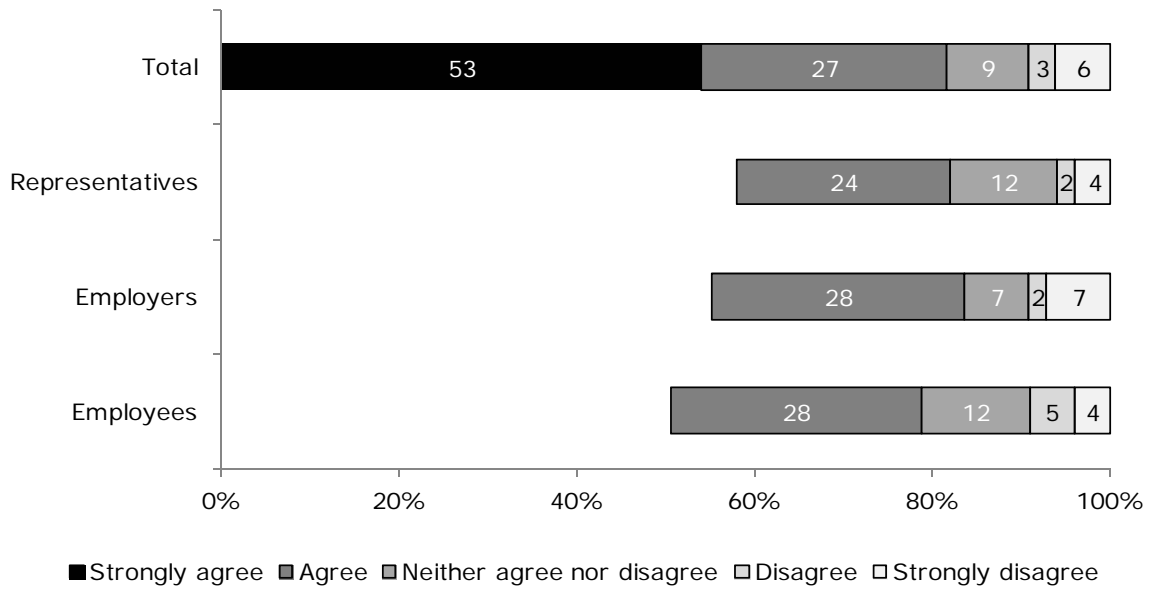


Source: D8 - How important was Acas involvement in helping you to decide on how to proceed with this dispute (ie to settle privately, settle through Acas or not settle)?; unweighted base: all sampled service users whose case was resolved / impasse, 784 (representatives, 104; employers, 347; employees, 333).

Those who had resolved their dispute through PCC were asked whether Acas involvement had been a factor in the decision to resolve the case, with a majority in each service user group strongly agreeing with this statement. Perception of this aspect of service was substantially higher in this survey than in the 2007 IC survey (80 per cent vs. 59 per cent).



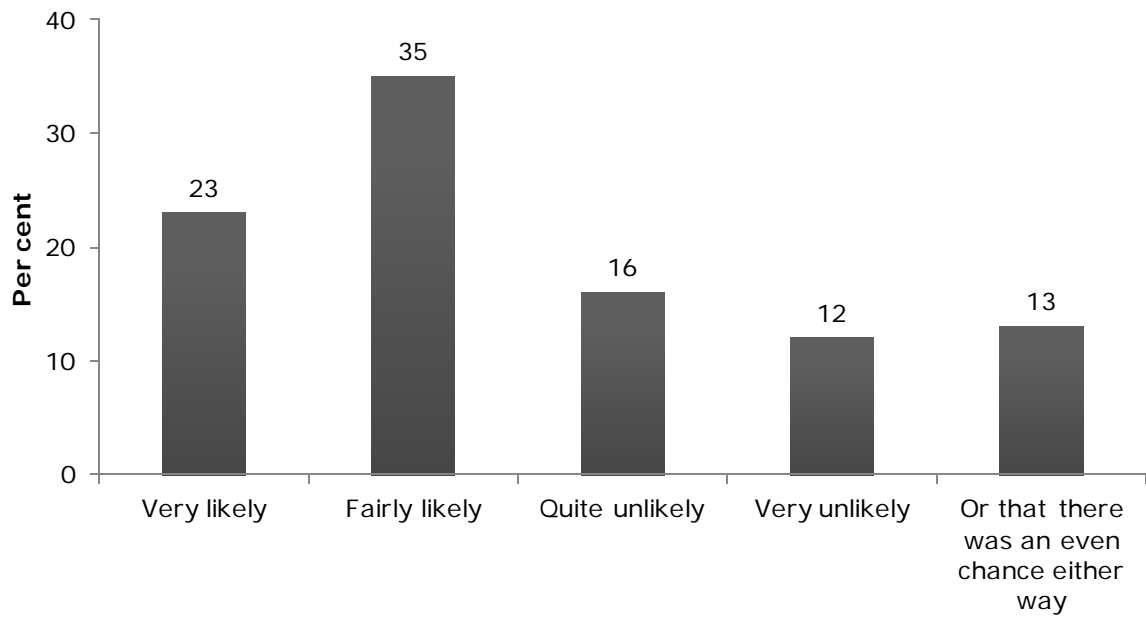
**Figure 8.2 Agreement that Acas was a factor in the decision to resolve the case**



Source: D9. Looking back, how much do you agree or disagree that Acas involvement was a factor in the decision to resolve the case?; unweighted base: all sampled service users who resolved the dispute, 482 (representatives, 83; employers, 210; employees, 189).

Employers and representatives of employers were also asked how likely it was that the organisation would have settled the matter without Acas involvement. Surprisingly, 58 per cent said that they would have settled the case without Acas involvement. The impact of Acas was more pronounced for small employers than large employers; 63 per cent of medium and large employers felt that they would have settled without Acas involvement, compared with 54 per cent of small employers who felt this way.

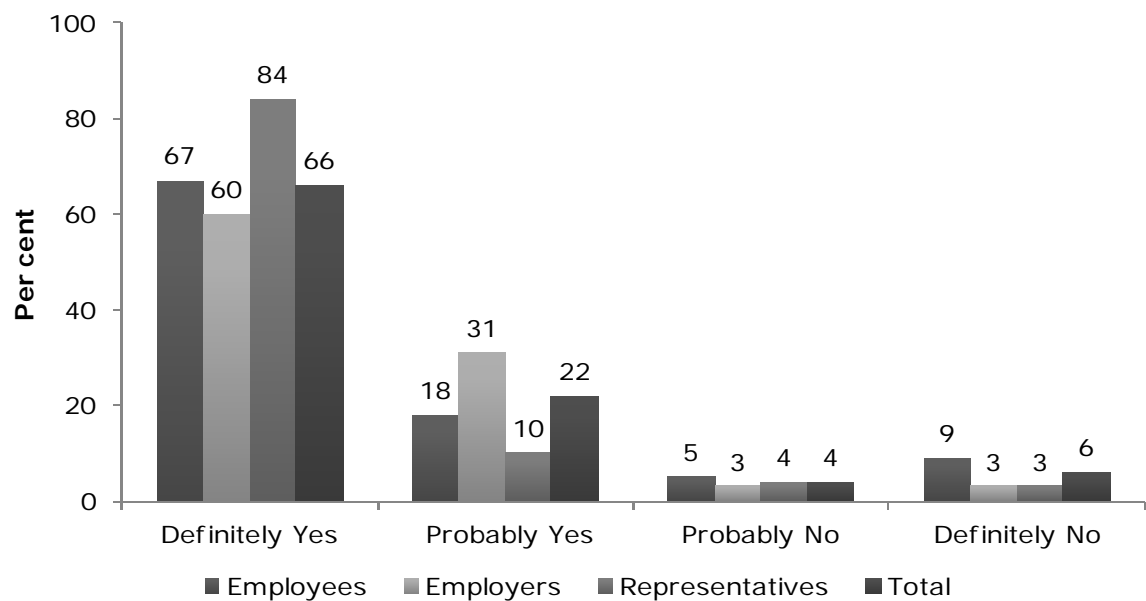
**Figure 8.3 Likelihood of settling without Acas involvement?**



Source: D11. Looking back, how likely do you think it is that your organisation would have settled the matter without Acas involvement?; unweighted base: all employers / employer representatives whose case was resolved, 293.

In spite of the high proportions who felt that the case would have been settled without Acas involvement, most service users said that they would definitely or probably use the service again. This suggests that service users whether or not they felt the case would have been settled without Acas involvement, considered that there were benefits in a negotiated settlement. This also re-iterates the positive experience of PCC that most service users had.

**Figure 8.4 Re-use of PCC**

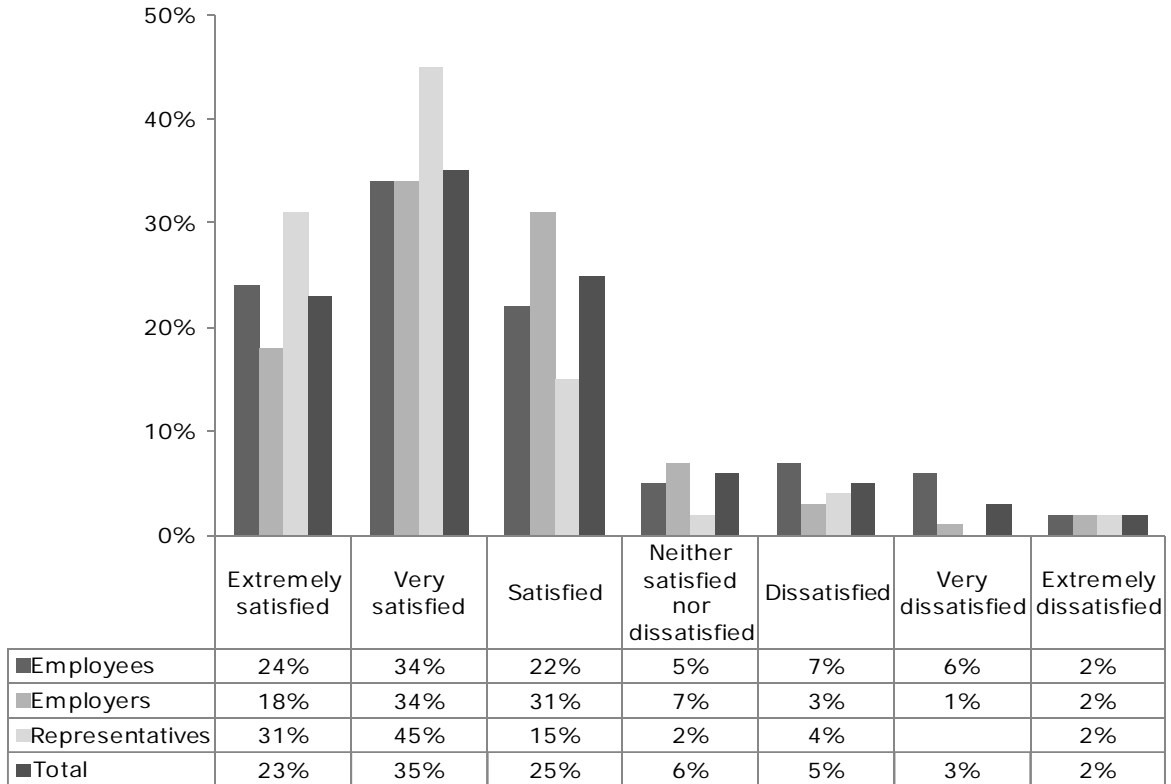


Source: D12. Would you make use of the pre-claim conciliation services of Acas again?; unweighted base: all sampled service users whose case was resolved / impasse, 784 (representatives, 104; employers, 347; employees, 333).

## 8.2 Satisfaction with PCC

Satisfaction with the PCC process itself, independent of the actual outcome, was high across all groups, with a majority in each group extremely or very satisfied with how the process had operated. Within this generally positive picture, levels of satisfaction were highest amongst representatives, and slightly lower among employers and employees. Encouragingly, satisfaction with the service was in line with that recorded in the 2007 IC survey (PCC 82 per cent vs. IC 81 per cent).

**Figure 8.5 Satisfaction with PCC process (independent of outcome)**



Source: E5 - Thinking about the process involved, and disregarding the actual outcome of your dispute, how satisfied or dissatisfied are you with the service you received from Acas in this case? Would you say you were...?; unweighted base: all sampled service users whose case was resolved / impasse, 784 (representatives, 104; employers, 347; employees, 333).

Where the case was resolved, service users were markedly more satisfied than where it had ended in impasse (satisfaction of 90 per cent compared to 72 per cent). Similarly, 95 per cent of those who were satisfied with the outcome were satisfied with the overall service, compared to 51 per cent of those who were dissatisfied with the outcome.

The 11 per cent (n=83) of service users who had said that they were dissatisfied with the service were asked why they were dissatisfied. Common themes to emerge were:

- They didn't take me seriously;
- They didn't try hard enough / had to chase them;
- It was difficult to get hold of Acas;

- They were not on my side;
- Lack of consistency / given conflicting information;
- Not given enough advice / information / guidance;
- Given poor / wrong advice / information;
- Time limit was up / not informed of time limit.

### **8.3 The benefits of conciliation**

Employees whose case had been resolved or reached an impasse were asked what the main benefits were from taking part in PCC rather than submitting an employment tribunal claim. The most commonly perceived benefits were that:

- It was faster (22 per cent);
- It saved going to a tribunal / court (15 per cent);
- Less stressful / less traumatic (12 per cent);
- Conciliator informative / explained everything (10 per cent);
- Got the right result / outcome (9 per cent);
- Was easier / convenient / less hassle (8 per cent);
- Reduced / saved on costs (8 per cent);
- Conciliator gave good advice / guidance (7 per cent);
- Conciliator was helpful / gave assistance (5 per cent);
- Conciliator was impartial / independent (5 per cent).

### **8.4 Segmentation of satisfaction**

#### **8.4.1 Background and method**

Segmentation was used in order to further understand what impacts upon satisfaction. Segmentation organises large groups of survey participants into smaller groups, so that members of a group are in some way similar to each other and different to those in other groups.

Segmentation using decision tree models successively partition a data set based on the relationships between a set of predictor variables and a target (outcome) variable. The resulting tree indicates which predictor variables are most strongly related to the target variable. CHAID offers a method of effectively searching for relationships between the predictor variables and a categorical outcome measure. It divides survey respondents into groups and further divides each group into subgroups based on relationships between key variables.

The variables that were used in the model contained both areas that were about Acas' level of performance as well as other external factors. The target variable was the overall satisfaction question, and the following questions were used as predictor variables because it was felt they may have an impact on overall satisfaction:

- A3. How did the employment come to an end?: Dismissed or not?;
- A6. Did you stop working because of the problem you had at work?;

- B14c. Did your workplace have written procedures for dealing with cases like this?;
- C2. Before you contacted Acas about this issue, were you considering making a claim to an employment tribunal?;
- C4. Did the Helpline advisor encourage you to use your internal workplace procedures?;
- C5. When the Helpline advisor described PCC to you, how suitable did it sound for your case?;
- C6. Did the helpline advisor discuss with you the time limits for presenting a tribunal claim?;
- D1. How soon after you accepted the offer to speak to an Acas conciliator were you contacted by one?;
- D2. Was your contact with the Acas conciliator...?;
- D4. Would you have preferred more contact with the Acas conciliator, less contact, or about the same?;
- D5. Outlining the (employment) law as it applied to your problem;
- D5. Explaining the conciliation process;
- D5. Helping you understand the strengths of this potential claim;
- D5. Helping you understand the weaknesses of this potential claim;
- D5. Relaying proposals and offers to and from the employee/employer/;
- D5. Consider the pros and cons of resolving the problem / before the submission of a tribunal claim/without submitting a tribunal claim;
- D6A. Overall, did you feel you that the Acas conciliator was more on your side, more on the employer's side or even handed between you?;
- D6B. Overall, did you feel you that the Acas conciliator was more on your side, more on the employee's side or even handed between you?;
- D7. At the time how much did you trust the information given by the Acas conciliator...?;
- D8. How important was Acas involvement in helping you to decide on how to proceed with this dispute (ie to settle privately, settle through Acas or not settle)? Was it...;
- D9. Looking back, how much do you agree or disagree that Acas involvement was a factor in the decision to resolve the case?;
- E4. Putting Acas' service to one side and focusing just on the outcome, how satisfied or dissatisfied were you with the outcome?;
- F12. Are you currently in paid employment?.

#### 8.4.2 Segmentation of results

Only certain factors proved to have an impact on satisfaction, and the key differentiating factors, in order of importance, of 'very / extremely' satisfied service users were:

- The perception of the conciliator helped the service user to consider the pros and cons of resolving a problem without the submission of a tribunal claim;
- Receiving at least enough contact from the Acas conciliator;
- Trusting the information received from the conciliator.

This shows the primary importance that conciliators are able to describe clearly what the relative benefits are that can be had from resolving a dispute without a tribunal claim. This reaffirms that it was important that the conciliator and helpline advisor were giving a clear explanation of exactly what conciliation could potentially achieve. Receiving enough contact from the conciliator was also important in order to ensure that the service user was satisfied with the service they received, and ultimately at the heart of the relationship was the level of trust that the conciliator was able to build up.

For employee service users the key distinguishers were:

- Receiving at least enough contact from the Acas conciliator;
- Trusting the information received from the conciliator;
- Perceptions about whether Acas impacted upon the decision to resolve the case;
- Being currently in paid employment.

This shows that receiving enough contact, and trust were still important for this sub-group. However, feeling that Acas impacted upon their decision to resolve the dispute was also an important factor. So, whilst the conciliator's ability to explain the pros and cons of resolving the dispute without an employment tribunal claim was not an important factor, their overall perception of how influential Acas were was an important determinant of overall satisfaction. This may not prove causation, as satisfaction with service / outcome could be a determinant of how influential they perceived Acas to be. Interestingly, and perhaps a reflection of how the dispute had affected them professionally and financially, whether they were currently in employment was also an important distinguishing factor.

Finally, for employer service users, the key factors were:

- The perception that the conciliator helped the employer to consider the pros and cons of resolving the problem without the submission of a tribunal claim;
- Importance of Acas involvement in helping decide how to proceed with the dispute;
- Trusting the information received from the conciliator;
- Whether workplaces had written procedures for dealing with disputes.

Therefore, of primary importance for employers was the perception that the conciliator and Acas in general were influential on their decision making process. So it was important that they were providing information that was helpful and adding useful knowledge to aid the employer's decision making for dealing with the dispute. There was also an external factor impacting upon their perceptions of the service, whether they had written procedures for dealing with disputes also proved to be important.

## **9 Conclusion**

### **9.1 Most service users were highly satisfied with PCC**

Service users were generally very positive about their experience of using PCC. It was felt that the conciliator had successfully explained the conciliation process, outlined the relevant employment law, relayed proposals to and from parties, helped to understand the relative strengths of their case, and the pros and cons of resolving a case without a tribunal claim. Therefore, most service users would choose to use PCC in the future if they had a similar dispute.

However, employees were less positive about several of the aspects of service; including being more likely to say that they would not use the service again in the future. Key differentiators as to why some service users would not use the service again included not being satisfied with the outcome or service, feeling that the conciliator was on the other party's side, and that they did not receive enough contact from the conciliator.

In this respect it was interesting that employees were more likely than employers to have wanted more contact from the conciliator, despite the fact that employees received a greater number of contacts from the conciliator on average than employers and representatives did. Similarly, those who wanted more contact were more likely to state that they would not use the service again (56 per cent). Therefore, this highlights that in the future, it will be important that employees' expectations of the conciliator, in particular, and of the conciliation process, in general, are carefully managed.

### **9.2 PCC can have a positive impact on dispute resolution**

PCC was able to help many service users resolve their dispute without a tribunal claim. It was perceived as important in helping them to decide how to proceed with their dispute, and was a factor in service users' decision to settle.

The dispute was more likely to be resolved when the conciliator was perceived by the service user as impartial. More generally the conciliator's ability may have impacted on the likelihood of a resolution; where the problem was resolved the service user was more likely (than where it ended in impasse) to have high perceptions of the conciliator. However, given that service users were more likely to be negative if they had an unsuccessful outcome this may only indicate that the outcome impacts on the service user perceptions.

Importantly there were considerable benefits to using PCC rather than proceeding with an employment tribunal claim. It was felt that it was faster, helped to avoid a tribunal, was less stressful, cost less, and the conciliator was informative. Encouragingly, approximately a quarter of employers suggested that information from conciliation had resulted in them making changes in their working practices in order to avoid a future dispute. The most common changes were making sure procedures were followed, seeking professional advice first, and reviewing their managers' dispute handling.

A key rationale for PCC when it was introduced was that it could help to preserve the employment relationship and potentially resolve a dispute without



employment ending. However, there was little evidence of this, only five per cent of employees were still with their employer at the conclusion of the PCC process. This is a similar proportion of service users in the IC 2007 survey and SETA 2008. This suggests that whilst disputes may be resolved by PCC more quickly than through an employment tribunal, there was no evidence that they were any more likely to result in employees' continued employment.

### **9.3 There were barriers to involvement in PCC**

Many employers and employees decided not to use PCC. The main obstacle for employers engaging with conciliation was that they strongly believed that they had acted fairly, and they had no need to negotiate with the employee. For employees, it was common that they had decided not to proceed because they had decided to drop the dispute entirely. This suggests that it may be more important in the future to focus more energy on promoting how PCC can help employers. This inevitably will involve setting out the benefits clearly to employers, and overcoming the potential barrier highlighted from the qualitative research that there was an underlying perception amongst some employers that Acas was more appropriate for employees.

There were a number of resolutions that were incorrectly coded, this may not necessarily present an immediate barrier to conciliation. However, in order to monitor effectiveness of the process, both in terms of reeling in the employee / employer and in terms of the actual conciliation it is important that the resolutions are correctly coded.

The research findings and positive qualitative interviews could be used to disseminate the message to employers that they can avoid the burden of a tribunal hearing with a mutually satisfactory conclusion.

More generally, the in-depth interviews highlighted that communication about the purposes and benefits of conciliation needs to be further clarified. The qualitative findings suggest that sometimes conciliation was rejected because it was not clear what it was. Employees may also have been deterred from using PCC because they felt that with the deadline for submitting a tribunal claim, this service was not a viable option. Therefore, it will be important to ensure that when contacted by Acas, both parties understand the benefits of conciliation, the process, the time-scales of the process, and the relative pros and cons of not taking part in conciliation.

### **9.4 A tribunal claim often follows unsuccessful conciliation**

Where a dispute was not resolved by PCC, it often resulted in a tribunal claim; about half of employers and employees reported that a tribunal claim had been submitted or intended to submit a claim. This was particularly pronounced where the dispute had progressed to conciliation, but had not been settled, than when it had not progressed to conciliation at all. However, it should be remembered that one of the key criteria that helpline advisers need to apply before referring a dispute for PCC is that the employee has indicated their intention to make a claim. The fact that some unresolved PCC cases do not progress to employment tribunal claims could suggest that entering into PCC can make employees reconsider their intention to pursue the legal route and therefore the impact of PCC goes beyond that of only the disputes formally settled through PCC.

The findings highlight the importance of the conciliator quickly following up the initial call to the helpline; where the conciliator had contacted the employee within a working day of the employee speaking to the Acas helpline, the dispute was less likely to have resulted in a subsequent tribunal claim.

In some ways the barriers to successful conciliation are similar to the barriers in successfully converting the referral to Acas' involvement in the dispute. The most important barrier is overcoming the other party's possible unwillingness to accept that there is a problem in the first place.

## **9.5 Recommendations**

There are a number of recommendations for Acas that follow from this research:

- Employees' expectations of the conciliator and conciliation more generally are carefully managed. Some of the feedback obtained within the research suggest that some employees seemed to expect more of a representative role from Acas, as opposed to an impartial role;
- It may be more important in the future to focus energy on promoting how PCC can help employers. Therefore, the perceived benefits of conciliation as opposed to a tribunal, namely that it is faster, costs less, is less stressful, and is informative should be promoted. As part of this promotion it will be important to overcome the perception that Acas is more targeted to employees rather than employers;
- It is important that conciliators and Helpline Advisers ensure when explaining conciliation that both parties understand the benefits of conciliation, the process, the time-scales involved and the relative pros and cons of not taking part in conciliation. Employees need to be reassured that deadlines for tribunal claims do not necessarily make PCC impractical;
- The short timescale for the conciliator for following up the initial call should remain in place, and depending on the organisational practicality, contact should be attempted the next working day. The results indicated that the longer the delay in contact the less likelihood of a successful outcome.

## References

Denvir, A., O'Regan, S., Williams, M., Cox, A. (2009) *Pre-Claim Conciliation pilot – Evaluation summary report*

<http://www.acas.org.uk/CHttpHandler.ashx?id=1079&p=0>

Fevre, R., Nichols, T., Prior, G., Rutherford, I. (2009) 'Fair Treatment at Work Report: Findings from the 2008 survey' *Employment Relations Research Series No. 103* <http://www.berr.gov.uk/files/file52809.pdf>

Gibbons, M. (2007) *Better dispute resolution - a review of employment dispute resolution in Great Britain* <http://www.berr.gov.uk/files/file38516.pdf>

Meadows, P. (2007) 'A Review of the Economic Impact of Employment Relations Services Delivered by Acas'

<http://www.acas.org.uk/CHttpHandler.ashx?id=743&p=0>

TNS (2008) *Service user perceptions of Acas' conciliation in Employment Tribunal cases 2007* <http://www.acas.org.uk/CHttpHandler.ashx?id=974&p=0>

## Appendix A Case Studies

### Case study 1 – An employee’s perspective - PCC can help to take some of the stress away from employment disputes

The employee collected insurance premiums for 4 years from clients’ properties, and ensured that the money was filed correctly in order to keep the workplace up to date. In 2009 he was made redundant from his employer, but, he felt that that they had acted unfairly in the case. Therefore, he contacted Acas to enquire as to whether they had acted with due process. Prior to contacting Acas he had been considering submitting a employment tribunal claim, but the helpline advisor went through some of the potential pitfalls:

*“I didn’t know anything about this conciliation process until I phoned up ... they said that they did this process and would I be interested in doing it, so I thought it was the easy option ... [they] warned me that if I went to a tribunal and lost my case, it was possible that the costs would be awarded against me”*

He was in regular contact with the conciliator dealing with the case, and over a few weeks she was trying to make contact with the previous employer. He felt that the conciliator *“was really good, excellent”* and *“knew exactly what she was doing”*. Whilst she was negotiating with the employer, the employee felt that she acted impartially and he did not think that *“she was swayed particularly on my behalf or the other way, I think she was quite fair and even-handed”*. It was particularly important for the employee that the conciliator did not say:

*“ ‘you’ve got to do this’ and ‘you’ve got to do that’, they still leave it to you, you make the final decision, they’re not pushing you into a decision”*

The employee felt satisfied with the final settlement, although he *“would have liked to get some more money, but in the end I was happy with what I got”*. He felt that a major reason that the employer was willing to settle the dispute before submission of a tribunal claim was due to Acas getting involved:

*“They act as a very good go-between, because I think when you’re in a situation like that, if you try to ring the employer up yourself there would be a lot of friction between you, whereas if you’re talking to an independent person you’re not going to fall out with them are you”*

The employee said that he was able to trust the conciliator and that he was very satisfied with the service. He *“couldn’t think of anything to improve it”* and would recommend the service to anyone with a dispute with their employer:

*“All I will say is that I was very, very pleased with the service I got and I will definitely recommend it to anybody because it takes the pressure off you having to try to sort something out yourself”*

**Case Study 2 – An employee’s perspective - PCC can help to re-open communication channels and resolve disputes without a change in employer**

The employee worked for a community charity, involved in project managing and managing a store. The organisation went through a difficult period which resulted in a change of management, through this it was felt by the employee that employment relations within the workplace “deteriorated pretty rapidly, over a matter of weeks”. The new management wanted to change working conditions and threatened the employee with redundancy if he did not agree to the changes. Therefore, he contacted Acas to understand what his legal standing was, however, he did not have high expectations of Acas:

*“I’ve had a previous dealing with Acas through another dodgy employer and I wasn’t very satisfied in that instance”*

However, in the case of PCC, he was very pleased with the service received, Acas helped by re-engaging both parties in order to resolve the dispute. Through the process, Acas acted as a ‘go-between’ the employee and the employer, and helping to ensure that all parties knew their rights and responsibilities.

Conciliation also helped to relieve some of the stress and burden associated with an employment dispute:

*“I went from a position where I wasn’t sort of communicating with my employer and nothing was getting resolved, the stress and the pressure was there too, you know, something happening that eventually made it all go away”*

As a result of conciliation, the employee was able to continue working for the employer for another three months following its resolution. Employment did come to an end, but it was unrelated to the dispute:

*“After that when I was finally made redundant, it wasn’t due to the problem, if you know what I mean, it was financial reasons that brought my employment to an end rather than this situation, which Acas straightened out”*

### **Case study 3 – An employee’s perspective - Acas should get involved earlier in a dispute**

The employee worked as a support worker within the housing sector, this involved attempting to secure housing for homeless people. The employee was suspended as a result of allegedly acting inappropriately to a colleague. Following the disciplinary process, the employee was sacked. He felt that he had been unfairly dismissed.

Acas were contacted from an early stage, however, Acas were only involved once the employee had been suspended pending dismissal. Whilst suspended, the employee found the dispute very stressful, and found the limits on Acas’ help at points quite frustrating:

*“Because they are meant to be impartial, I can understand why that is but I found it very frustrating, I was in a desperate situation where I was being marched all over ... and so I was desperate for help”*

Once Acas were able to intervene, the employee found that the process became a lot smoother and the employer acted more properly:

*It was that big name of Acas and their willingness to act on my behalf, act as a go-between, and I honestly think it went a lot smoother than it was going to go.*

The employee felt that due to him not being in a union, there was little support available to him. Therefore, whilst when Acas were involved, the process became smoother, it was felt that if involvement could be earlier then employment could have continued:

*“I honestly believe that if Acas were able to get involved prior to the sacking stage, it would never have come to that. If they could oversee it, I don’t think I would ever have lost my job ... I could have done with some help before I was help ... I knew what they were doing to me wasn’t straight and I needed some support”*

Whilst the employee had “nothing but praise for” pre-claim conciliation and that what was received was “professional and competent advice every time I phoned up”, it was not completely understood why Acas could not act as “some kind of judge, if you like, to oversee a process where somebody is shouting foul play”. If an organisation like Acas was able to be involved at an earlier stage, then employment relations could be improved:

*“If Acas got involved at an earlier stage they would prevent a lot more tribunals and probably a lot more unemployment, you know. What they do now is great with this Pre-Claim Conciliation, but why wait until then? Why not be pro-active so you don’t even get to the stage where money has to be talked about”*

#### **Case study 4 – An employer’s perspective - PCC can help to resolve a dispute without an employment tribunal**

The employer involved was within the services sector, working mainly on a seasonal basis. At the height of the season it has 6,000 employees and is spread across the whole of the UK. In a highly unionised environment, the employer finds that the employment relations climate within the workplace is challenging. The employee worked as a Senior Manager within the organisation, she was a long-term employee who was described as a *“respected and loved employee”*.

In the current economic climate, demand within the sector had decreased, which meant that new owners wanted to down-size the company due to a number of contracts that had been lost. The employee was made redundant; however, she was unhappy with the selection process. Therefore, the employer asked whether the employee would be prepared to use Acas to resolve their dispute. Given that he had used them previously he had clear expectations of what would be provided by Acas:

*“I think Acas automatically provide, because of their very status and standing an independent view. I thought they might be able to help her understand what her legal requirements were, and to help her understand the process that we put through”*

The employer felt that using Acas could help to preserve their relationship with the employee, and help to minimise the risk that an employment tribunal claim would be submitted:

*“If you are prepared to go to Acas, at least you have some grounds to go and move on ... [at a tribunal] there is a winner and a loser ... if you can avoid that sort of adversarial thing when somebody leaves ... you can leave with a bit of dignity as it were, and leave with a sort of ‘we did it properly’”*

For the employer, the burden of the case through PCC and if it had gone to a tribunal was incomparable:

*“If you go to a tribunal then you’ve got to get every single piece of paper known to man ... it’s an interminable process the tribunal process, I think it’s awful to be honest”*

The only criticism of the PCC service was that perhaps conciliators were not as experienced in financial awareness as they could be:

*“Whilst they are experienced negotiators, arbitrators, conciliators, even though they say they are experienced, it’s like a teacher, they’ve never seen real life sort of thing ... sometimes they are probably not fully aware of the commercial implications”*

### **Case study 5 – An employer’s perspective - PCC can help to get a quick resolution to a potential dispute**

The employer worked within the manufacturing sector and described themselves as a small to medium sized business. The employee had been employed for the company in excess of 20 years as a dispatch supervisor. However, the economic downturn had a negative impact on the business, and the number of employees had halved in the last few years.

As a result of the employee having been employed for a number of years, the employer was keen to ensure that the employee’s rights were respected fully and that the employment ended on an amicable basis. The employer, having heard of PCC through Acas training events, contacted Acas asking for conciliation.

The employer felt that the process was quick and smooth, and helped to ensure that there was no possibility of a tribunal claim. The main benefits were that it helped to ensure that the employee felt that he had been treated fairly:

*“If there is an outside person who can speak to openly outside the company, I just feel then that once they’ve had their rights pointed out to them and they’ve spoken to someone, they feel they have been treated fairly ... they have been given the opportunity to air any thoughts or concerns that they have”*

Whilst there were no areas for improvement, as it had worked out for the benefit of both parties, it was important that the conciliator always kept their word, which helped them make a quick conclusion to the dispute:

*“When he said he was going to contact me, he always contacted me ... he never let me down, he was always timely, it was all very good. I was kept well informed of what was happening”*





