

## Justice Committee

### Alternative Dispute Resolution

#### Written submission from the Advisory, Conciliation and Arbitration Service

1. Alternative dispute resolution (ADR) lies at the heart of Acas<sup>1</sup> and the services it provides. There are many definitions of ADR with texts on the subject commonly referring to terms such as conciliation, mediation, arbitration, early neutral evaluation, expert determination etc. ADR has emerged as a generic term to describe independent, third party intervention. Acas has traditionally made an important distinction between conciliation, arbitration and mediation.

In addition to these services, Acas provides information and guidance on a range of issues related to disputes; non statutory mediation and workplace training in mediation to accreditation level.

#### 2. Acas Conciliation

For Acas, conciliation takes two forms – collective and individual.

##### 2.1 Collective Conciliation

Acas has a statutory duty to promote the improvement of industrial relations (set out in The Trade Union and Labour Relations (Consolidation) Act 1992) (TULRA 92). Under Section 210 of the Act, Acas has the power to offer collective conciliation to parties in dispute between groups of employees, usually represented by trade unions, and their employers. This area of work is described by Acas as collective conciliation.

This work on collective disputes is vital in avoiding the adverse effects of industrial action wherever possible and in helping rebuild productive workplace relations quickly.

In 2016-17, Acas Scotland was involved in collective conciliation in 146 cases across a diverse range of employment sectors.

As in previous years, collective conciliation remained highly effective in 2016-17, resolving matters or helping those involved move towards a resolution in nine out of ten cases.

In those cases where the parties fail to reach a resolution in collective conciliation, Acas has the power under TULRA Section 212 to arrange for a collective employment dispute to be referred to an independent arbitrator or arbitrators, or the Central Arbitration Committee (CAC), with consent of all parties, to seek to settle a case.

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<sup>1</sup> The Advisory Conciliation and Arbitration Service (Acas) was established under the Employment Protection Act 1975. All data reported on business volumes in this note can be found in Acas' annual report :<https://www.gov.uk/government/publications/acas-annual-report-and-accounts-2016-to-2017>

It should be noted that participation in collective conciliation and arbitration is a voluntary process.

Most disputes in Scotland settle at collective conciliation stage, so the number of referrals to arbitration is small.

Acas in Scotland is also key to collective dispute resolution in the Scottish Prison Service and the Police Negotiation Board, where specific ADR services have been jointly agreed as the means of resolving all collective disputes.

User satisfaction with Acas collective conciliation is high, with an independent evaluation finding that 84% of employers and 89% of trade union representatives would use our services again<sup>2</sup>.

Access to Acas collective conciliation and arbitration is at no cost to the parties.

## 2.2 Individual Conciliation

In addition to its collective conciliation work Acas also has a statutory duty under Section 18 of the Employment Tribunals Act 1996 to provide individual conciliation in cases submitted to the Employment Tribunal service.

In 2014, Acas introduced an Early Conciliation (EC) Service following a Government review of dispute resolution. The aim of EC is to require those that intend to make a claim in an Employment Tribunal, to notify Acas first, so that Acas may offer all potential tribunal claimants the chance to resolve disputes prior to submitting a formal claim, with the potential for a quicker and lower-cost alternative resolution than that provided in a judicial forum.

Where a case is not resolved within a month, then claimants wishing to submit an Employment Tribunal claim may do so, with Acas individual conciliation remaining available to parties once a claim is lodged.

Last year Acas received over 92,000 EC notifications (circa 6700 in our Scottish office), broadly the same number as in the previous year. Most notifications (95%) came from employees while 5% were initiated by employers. The take-up of the offer of Acas conciliation was high: 82% of contactable claimants with an in-scope claim agreed to participate and 86% of respondents contacted wished to proceed with conciliation.

In 38% of cases where people took part in EC, the issue was resolved; either formally settled through Acas or resolved informally without the need for a written Acas agreement (for example through payment of wages which were owing).

Around 19% of EC notifications progressed to an Employment Tribunal claim and Acas conciliation at this stage resulted in settlement and withdrawal of 73% of ET claims (55% settled by formal Acas agreement, 18% being withdrawn by the claimant).

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<sup>2</sup> <http://www.acas.org.uk/media/pdf/1/b/Acas-collective-conciliation-evaluation-2016.pdf>

The volumes for 2016/17 were in a period where ET fees were charged. The recent High Court decision removed the requirement to charge fees for access to ET services. EC and ET volumes have risen since providing an early indication that those who may have been deterred by fees may now be more likely to convert into ET claimants following EC.

Acas has increased resource to meet the increasing demand.

Together these outcomes reflect an important endorsement of alternative dispute resolution.

Access to Acas individual conciliation is at no cost to the parties.

### **3. Acas Non Statutory Mediation**

In addition to individual and collective conciliation and arbitration, Acas also offers a charged-for mediation service in individual employment disputes.

Mediation is often used in situations where the issue manifests itself as a breakdown in working relationships. There may be no actual or potential employment tribunal proceedings, but there may be adverse impacts on how people feel about their work. These breakdowns in relationships often have wider implications in the workplace and can affect many areas including absence rates and productivity levels.

Acas mediators help the parties in the relationship breakdown to jointly find more constructive and mutually agreed resolutions to their issues.

Resolution of workplace relationship issues through mediation is recognised by employers as a means of achieving high performance workplaces.

In recognition of the effectiveness to employers of workplace mediation, Acas has established a training programme of accreditation for workplace mediators. This accreditation leads to the award of a Certificate in Workplace Mediation (CIWM). The CIWM has attracted participation from both SME and larger organisations in both the public and private sectors.

The CIWM training is offered both in- company and to individuals nominated by their employer to attend our open access training courses.

Mediation is seen as an effective means of resolving issues but is not a replacement for the use of traditional discipline and grievance procedures where appropriate.

### **4. Advice Services**

Acas believes that the provision of factual information can often lead to the resolution of workplace issues. We offer both Helpline and web based services in order to provide advice and information to employers, employees and employee representatives. This early stage intervention often leads to dispute resolution either

by providing factual information which resolves the issue or by providing guidance on alternative routes to resolution.

Noted below are the top issues dealt with by the Acas Helpline. These issues remain relatively constant, although their position on the hierarchy may change.

- Discipline, Dismissal and Grievance
- Contracts
- Redundancies, Layoffs and Business Transfers
- Wages and National Minimum Wage
- Holidays and Working Time
- Absence, Sickness and Stress
- Diversity and Discrimination
- Maternity, Paternity and Adoption

Independent evaluation shows that 89% of callers were satisfied with the service received; 62% of callers discussed their issue within their own organisation after calling Acas, and 48% applied or implemented changes recommended by Acas.

Both the Helpline and web based services are provided UK wide so discrete Scottish volumes are not available.

In 2016/17, the national Helpline answered 887,000 calls and our website recorded 11.8 million visits. Over 500,000 users asking 1.4 million questions on the automated 'Helpline Online' advice service.

ACAS

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