Research Paper

The Dispute Resolution Regulations two years on: the Acas experience

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FOREWORD

The proposals set out in the 2007 Gibbons Review of Dispute Resolution represented an important development in the approach to conflict handling in workplaces in Great Britain. In the period since, Acas has overseen a number of significant developments to reflect policy changes that emerged from the Review. In particular, we have established arrangements that place new emphasis on early dispute resolution. Such an approach is vital in addressing conflict and reducing the costs and burdens on employees and employers.

This report sets out progress over the two years since the Employment Act 2008 and its implementation in April 2009. The evidence presented will provide an important benchmark as Acas continues to develop its dispute resolution services.

John Taylor
Acas Chief Executive

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Annex A - Tables

ABBREVIATIONS	
Acas	The Advisory, Conciliation and Arbitration Service
BIS	The Department for Business Innovation and Skills
ET	Employment Tribunal
LFS	Labour Force Survey
PCC	Pre-Claim Conciliation
SETA	Survey of Employment Tribunal Applications
SME	Small and Medium Enterprises
TS	The Tribunal Service

INTRODUCTION

In March 2007, an independent review of workplace dispute resolution in Great Britain was published. The aims of the review, carried out by Michael Gibbons, were to appraise the statutory dispute resolution procedures introduced in 2004, and more generally, to consider options for improving employment dispute resolution. A key objective of the 2004 dispute procedures had been to encourage employers and employees to resolve disputes *inside* the workplace, avoiding the need for an Employment Tribunal, yet since 2004, the pattern of claims registered with the Employment Tribunal appeared to be one of growth. Against this context, the Gibbons Review sought options to 'simplify and enhance the framework of effective dispute resolution in the workplace'.

One key message emerging from Gibbons' enquiry was that prescriptive regulation had been unsuccessful and that measures should be simpler and more flexible. Following consultation, the Government responded specifying a range of legislative and non-legislative policy interventions. The policy changes aimed to affect the way disputes were handled both inside and outside the workplace, and to enable a more effective Employment Tribunal service.

Acas has played a key role in implementing the changes stemming from the Gibbons Review. The Acas Code of Practice on discipline and grievance was revised and a new Code and Guidance issued, and the time limits that had been imposed on conciliation were removed. The Department for Business Innovation and Skills (BIS) (formerly BERR, the Department, of Business, Enterprise and Regulatory Reform) provided resources to enhance the Acas helpline and to expand the provision of early conciliation for potential Employment Tribunal claims.

Most changes came into effect in April 2009 and the purpose of this paper is to evaluate the outcomes of the new Acas interventions over the two years since implementation. Although a key indicator of success would be a fall in Employment Tribunal (ET) claim volumes, identifying the effect of discrete policy changes on the rate of ET claims is difficult, not least because volumes are subject to a variety of factors including legislation and economic conditions. The fact that the first year of the DRR changes was subject to an economic recession made identification of changes in volumes even more complex. In addition, although Tribunals Service data show that the number of claims rose by 56 per cent between 2008/9 and 2009/10, to their highest level, 236,100, most of the increase was created by large scale multiple cases (where many claimants are involved in one dispute). A better indicator perhaps of changes in patterns of disputes is the volume of single claimant cases. This rose by approximately 14 per cent between 2008/9 and 2009/10[1], the first year after the DRR changes. This change has been attributed at least in part to the economic climate.

The focus of this paper is the customer experience and as such, the paper is complementary to BIS work in this area. Its purpose is to lay a foundation for future monitoring of dispute resolution activities and outcomes; to inform policy and practice; and to highlight what Acas is doing more widely to promote the Gibbons agenda in terms of earlier dispute resolution. Finally, the paper is likely to be of particular interest in the current consultation on dispute resolution, issued by BIS in January, 2011[2].

SECTION 1

DISPUTE RESOLUTION POLICY CHANGES

1.1 Routes to Resolution

Early resolution of employment disputes has been an important driver of government employment dispute resolution policy for some time. In 2001, *Routes to Resolution: Improving Dispute Resolution in Britain* set out the Government's policy on resolving disputes in the workplace. The paper proposed three principles for a modern dispute resolution system: access to justice; fair and efficient tribunals and a modern user-friendly public service. At that time it was felt that too many disputes were referred to employment tribunals without efforts first being made to resolve them in the workplace. The objectives of the changes at that time were to enable the early identification of grievances, encourage employers and employees to discuss disputes in the workplace and to promote effective alternative ways of resolving disputes. A framework to achieve this was laid out in the Employment Act 2002 and the details of how the new procedures would operate in practice were set out in secondary legislation, the Employment Act 2002 (Dispute Resolution) Regulations 2004, which came into effect in October 2004 along with a revised Acas Code of Practice.

The Regulations prescribed changes inside the workplace with the introduction of three-step disciplinary and grievance procedures which employers and employees had to comply with, before the dispute was referred to an employment tribunal. Outside the workplace, the Regulations introduced fixed periods on the time available for Acas conciliation, whereas previously Acas' statutory duty to conciliate subsisted up to the point where all matters of liability and remedy had been determined by an employment tribunal. The purpose of the new fixed conciliation periods (or 'tracks') 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. A 'short period' of seven weeks was allocated to relatively straightforward claims, for example, where an employer failed to pay a statutory or contractual entitlement, or failed to grant statutory rights to time off work. 'Standard period' cases, most commonly claims of unfair dismissal, were allocated thirteen weeks, while more complex cases comprising all claims involving allegations of workplace discrimination or detriment associated with public interest disclosures, were designated 'open period' with no time limits on conciliation. Acas could still exercise a statutory power to conciliate outside of the time limits but it was used sparingly because the intention of Parliament was that conciliation outside of the prescribed periods should only be used in exceptional circumstances.

At the time the Regulations were introduced the Government gave a commitment to review them after two years to see if the objectives had been met. In 2006, it decided to broaden the review to look at the whole dispute resolution framework and appointed Michael Gibbons as an independent reviewer.

1.2 The Gibbons Review 2007[3]

The overall objectives of the review were to reconsider the options for simplifying and improving all aspects of employment dispute resolution and to make the system work more effectively for employers and employees. Gibbons consulted with a spectrum of stakeholders including businesses, unions and Acas, and found that although many of the changes introduced in 2004 were considered sound in principle, they had generated unintended consequences in practice. The

prevailing view was that the statutory dispute resolution procedures had brought about some benefits but the disadvantages outweighed them. In particular, they had formalised disputes to such an extent that it was difficult to resolve problems informally, and the processes were too time consuming for managers, and stressful for employees. The presence of the procedures was perceived to be creating expectations that disputes would end in an employment tribunal claim. The statutory procedures were seen as especially problematic by small businesses.

The review reiterated the key aim of settling disputes earlier, reducing disruption to business', time and costs spent, and stress. It also suggested that earlier resolution could involve outcomes not available through the tribunal system, for example an apology, or changes in behaviour, and suggested that earlier dispute resolution may also preserve the employment relationship in some instances. Evidence submitted to the review had found that although the majority of individuals leave employment *before* submitting a claim, this is less often the case for individuals in discrimination cases. Once the claim was submitted, however, these individuals were likely to leave their employer. Gibbons' review endorsed views that mediation and other alternative dispute resolution techniques could be an effective means of achieving early resolution but found that parties were discouraged from finding early acceptable outcomes, instead becoming caught up in the process of the three step procedures.

The review also found that Acas conciliation was effective and well-regarded. However conciliation time limits had not had the effect of encouraging parties to settle their dispute early in the tribunal process; parties still tended to settle later in the process and where time limits had expired, Acas was not able to help to resolve the dispute. Whilst Acas could offer its services in circumstances where there may be a potential claim to the tribunal service, these cases were harder for Acas to identify and tackle. Overall then, structures were not conducive to Acas maximising opportunities for either early or late settlements in disputes.

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

- Remove fixed time periods for conciliation
- 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.

Gibbons argued[3]:

'*fundamentally, what is needed is a culture change, so that the parties to employment disputes think in terms of finding ways to achieve an early outcome that works for them, rather than in terms of fighting their case at a tribunal'* (p38).

1.3 Employment Act 2008 and changes since 6 April 2009

As a result, the (previous) Government published *Resolving disputes in the Workplace - A consultation* which proposed measures for taking the Gibbons Review forward so that:

- productivity is raised through improved workplace relations
- access to justice is ensured for employees and employers
- the cost of resolving disputes is reduced for all parties
- disputes are resolved swiftly before they escalate and
- employment rights are not diluted.

In May 2008, the Government issued its response to the consultation. The Employment Act 2008 came into force on 6 April 2009. It repealed the element of the Employment Act 2002 (Dispute Resolution) Regulations 2004, which had laid down the mandatory "three-step" procedures and paved the way for a number of policy changes with the following high level objectives:

- To improve workplace dispute resolution
- To encourage earlier and speedier resolution of disputes with positive employment relations outcomes
- To reduce the volume of tribunal claims
- To reduce the administrative burden and costs of conflict for employers, employees and the state
- To ensure a positive customer experience.

A new Acas statutory Code of Practice on discipline and grievance was introduced; and extra resources were used to enhance the Acas helpline and to offer employers and employees early conciliation for problems which are potential employment tribunal claims. Discretionary powers were conferred on Employment Tribunals to adjust awards if parties failed to comply with the Acas Code; employment tribunal claim forms were simplified; and tribunal powers were amended to enable them to reach a determination without a hearing. The Government also announced its intention of working closely with the workplace mediation community to encourage the use of mediation, where appropriate.

This paper focuses on changes made by Acas. The next section looks in detail at the nature of the policy changes, and following sections evaluate their impact.

SECTION 2

GOVERNMENT INTERVENTIONS AND ACAS RESPONSE

2.1 Removal of time restrictions on Acas' duty to conciliate

Fixed periods for conciliation were removed by the Employment Act 2008, which took effect from April 2009. Before that time, however, Acas Council decided that in all cases live at April 1st 2008 and those received by Acas on or after that date, Acas conciliators would be able to exercise the power to conciliate *at any time* between the end of the previously designated fixed period, and the point at which a Tribunal has determined all matters of liability and remedy[i].

2.2 Enhanced guidelines and incentives to encourage early dispute resolution

BIS requested that Acas review its Code in the light of the removal of the statutory three-step procedures. Acas formally launched a public consultation on the revised Code in May 2008. Following the consultation, from April 2009, Acas introduced a new short, non-prescriptive, principles-based statutory Code accompanied by comprehensive non-statutory guidance. The Code allows tribunals to consider the appropriateness of parties' behaviour relevant to the circumstances of a particular case, bearing in mind what would be appropriate for the size and resource of the employer and the nature and severity of the complaint.

The foreword to the Code highlights that employers and employees should always seek to resolve disciplinary and grievance issues informally and includes a reference to mediation. However, where an issue cannot be resolved informally, then it may be pursued formally. According to the Code, employers and employees should behave fairly and reasonably when taking formal action to resolve their dispute.

Although a failure to follow the Code does not, in itself, make a person or organisation liable to proceedings, Employment Tribunals are legally required to take the Code into account when considering relevant cases. A Tribunal will consider whether a failure to follow the Code was unreasonable and have the power to adjust awards by 25 per cent if parties are deemed to have failed unreasonably to comply with the Code.

The changes made to the Code of Practice were reflected in associated handbooks and booklets and the Acas website and training products were reviewed to reflect the changes. Acas developed a series of its 'Open Access' training courses (i.e. publicly advertised courses open to all businesses) on discipline and grievance. Acas ensured that all published content related to individual employment matters emphasised that individual differences and disputes at work should be resolved by means other than judicial determination and that rights enforcement through legal means should be very much a last and less desirable resort.

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[i] However, fast, standard and open 'periods' or 'tracks' are still used in description and analysis of claims within Acas, as they serve as a proxy for the complexity of the case and give an indication of proportion of hearing days saved if the case is resolved without going to employment tribunal hearing.

2.3 New Advice Service

Acas runs a national telephone Helpline providing information and support to employers, employees and third parties. BIS provided Acas with funding over three years to enhance this service to enable it to better support the promotion of early dispute resolution. The opening hours were extended, and as well as continuing to provide help and guidance to both employees and employers callers, trained advisers can inform the caller of their options for resolving disputes, including the implications of the tribunal process as well as available means of ADR. The new helpline also has the facility to signpost clients to other competent sources of assistance where relevant, and offer the opportunity of pre-claim conciliation in appropriate cases.

BIS, in consultation with Acas, appointed a team of consultants to provide expert support on the development of the new service. The changes to structure, resources and practices were as follows:

- A National Helpline manager was appointed.
- New telephony and call queuing systems to offer callers a better experience.
- The Advice Service was developed to operate as a single virtual helpline, managed as one entity but with staff continuing to be distributed between multiple locations.
- Opening hours were extended to improve accessibility and the service is provided between 08.00 to 20.00 on weekdays, and 09.00 to 13.00 on Saturdays.
- More advisers were appointed to increase capacity to bring staffing levels up to 150 full-time equivalents.
- Standard “models” for call handling and structure were devised, tested and refined, before being put into practice throughout the country.
- There was increased investment of time and resources in more training and development for advisers and managers.
- Call recording was introduced.
- A new data capture system was introduced to collect more information and to provide a better customer service to some repeat users.

The new helpline was fully operational by autumn 2009.

2.4 Additional conciliation service

Before the DRR changes, Acas had a statutory duty to provide conciliation in potential tribunal claims on request, where certain criteria were met. This was known as 'non-ET1' conciliation and was mainly requested by employers. As part of the DRR changes, in April 2009, Acas’ statutory duty to conciliate in non-ET1s became a 'power' giving Acas some discretion to choose the most appropriate potential claims to conciliate and BIS invested additional funding in Acas conciliation, to expand the provision of conciliation prior to the point at which a tribunal claim is lodged. This activity is known as Pre-Claim Conciliation (PCC) and is offered to callers to the Helpline who are involved in potential ET claims. PCC differs from non-ET1 activity because Acas actively seeks out appropriate cases through the Helpline promoting the service to both employees and employers. The rationale behind PCC is that if disputes that have potential to become a ET case can be identified before a formal claim is lodged, and the parties can be persuaded to conciliate at that stage, a significant proportion of potential claims will not enter the ET system, generating resource savings to employers, employees and the state.

Before these changes were implemented, BIS and Acas agreed that a pilot exercise should be carried out to identify demand for the potential service. A preliminary scoping exercise (so-called 'pre-pilot') was carried out in one Acas region in 2008 to enable Acas to devise criteria and draft procedures for adoption by helpline advisers and conciliators in the pilot. The main pilot was carried out in three Acas areas from June to November 2008. The findings from the pilot informed the development of the full PCC service roll-out in April 2009 which resulted in:

- Appointment of more conciliators to increase capacity
- Increased investment of time and resources in additional training and development for advisers and conciliators
- Adaptation of the new helpline data capture system to incorporate PCC referrals.

The pilot indicated a good level of demand for the new service.

Because of resourcing constraints, a limit was set for the year of 10,000 PCC referrals[ii]. Acas took the decision to offer the service to parties involved in potential claims that were: more complex (utilising the previous fixed period definitions to identify so-called standard and open track claims[iii]) mainly because these cases on average take more employer and employee time, and involve on average more hearing days than other types of cases making them, overall, more costly for parties and the state. However, the offer of PCC was extended to potential claims which would previously have been defined as fast track, mainly monetary claims, in late October 2009. Since April 2010, the PCC referral limit has been increased to 20,000 referrals for the year.

In order to support the PCC initiative, Acas carried out a programme of targeted profile raising among representatives and advisers, including solicitors, the Citizens Advice Bureau and Trade Unions. To raise awareness the service was given a symbolic image with a 'monster' creative telling potential service users that 'things don't have to get ugly'. This was placed on the Acas website homepage and the PCC landing pages. After the first year an evaluation[4] was published and in November 2010 press releases were issued to HR, business, small business and national industrial correspondents. An exclusive article was arranged with the Mail on Sunday and coverage was also received in the Daily Telegraph, Xpert HR and Clickdocs. Twitter was used to send the link to the Acas press notice to followers. A PCC video was placed on YouTube and information about PCC was included in the Acas monthly national e-connect newsletter.

2.5 Encouraging early resolution

The Government has also been working closely with the workplace mediation community to encourage the use of mediation, where this is appropriate. Acas has long been a provider of charged-for mediation where requested. It also runs certificated courses in workplace mediation (CIWM) and both services are regularly evaluated. Other activities to promote early resolution of disputes have included research jointly carried out with the CIPD resulting in the Acas/CIPD

[ii] A PCC referral is where a helpline adviser has outlined the option of PCC to a caller and the caller has agreed to be referred to a conciliator – but has not yet agreed to take part in PCC

[iii] see footnote i

Mediation: An *Employer's Guide*, which provides practical help for employers, trade unions and employees, and their representatives, in deciding whether, and in what circumstances, mediation may be suitable. In 2010 Acas also published, jointly with the TUC, a publication on mediation aimed at trade union representatives - *Mediation: A guide for trade union representatives.* The aim of both publications was to help raise the profile of mediation and inform the public debate about effective dispute resolution. In addition, Dr Paul Latreille was funded jointly with the Economic and Social Research Council (ESRC) and CIPD as an Acas Visiting Research Fellow to evaluate the state of play regarding mediation at work. Acas has continued to promote the value of mediation via material generated through the CIPD and ESRC funded initiatives [5] [6] [7] [8].

2.6 This report

After a brief discussion on the nature of the Acas evaluation programme, the remainder of the report sets out key findings from the Acas evidence base in respect of: the Acas Code of Practice and associated guidance; the enhanced helpline; pre-clam conciliation; and Acas mediation services. The report concludes with a discussion of some key aspects of our wider evidence base on effective workplace dispute resolution.

Data tables referred to are presented in Annex A.

SECTION 3

EVALUATION

The Acas Research and Evaluation Section undertakes an extensive programme of evaluation considering the efficiency, effectiveness and overall impact of all its services. This paper draws on a number of strands of this evaluation programme including evaluation evidence on PCC, the Acas Helpline, guidance and training services, and mediation.

One hallmark of the evaluation programme is its use of 'triangulation', incorporating both multiple methods, and multiple data sources[9]. The approach helps ensure a comprehensive and robust assessment of research questions: *data triangulation* facilitates cross-verification of different stakeholder perspectives; and *methodological triangulation* ensures the best match of research methods to research issues. An example is where issues raised through structured quantitative studies can be explored in more depth qualitatively and vice versa. In this paper, data from Acas management information systems provide a contextual backdrop, reporting take up of services, trends in usage and outcomes, together with limited evidence on the characteristics of users. This is supplemented by more analytical evidence drawn from sample surveys which provide a basis for understanding the prevalence of phenomena, and providing analytical capacity to investigate patterns of usage and outcomes. Qualitative data drawn from interviews and focus groups with service users provides greater depth of understanding of the customer experience, motivations, and factors contributing to particular outcomes. The evaluative approach also incorporates the views of service providers (e.g. Acas conciliators) since the evaluation framework places considerable emphasis on understanding processes including the delivery of services. The latter provides the key to understanding 'what works' in delivering efficient services which generate the strongest impacts.

In a majority of instances, evaluations are commissioned by Acas but undertaken by independent research agencies or academics. This independence is considered especially important in demonstrating the impartiality of assessment and in providing the benefit of viewing the world through the lens of a relative outsider.

The synergy between evaluation and policy development has been especially important in the Acas activity reported in this paper. Ex ante evaluations have informed policy roll out and assisted in identifying key policy objectives. In this context, opportunities to introduce measures of the counterfactual were explored during the design of the pilot evaluation for PCC. After scrutiny, the opportunity for such a measure was not deemed possible for three core reasons. First it was felt that the fact that Acas had (at the time of consideration) a statutory duty to provide pre claim conciliation (in the form of 'Non ET1s') compromised the scope for creating a control group. Second, the confidential nature of the Acas Helpline means that caller details are not routinely collated. Whilst special arrangements could be put in place to collect such information from callers who are referred to PCC in pilot areas, replicating such an arrangement to proxy a control group in non-pilot areas was not considered appropriate. Third, it was calculated that the process involved in the collection of contact information in control areas, would add considerably to average call times, and would have an unacceptable impact on service delivery.

Ex post evaluations are used to report against key performance indicators, the Service Level Agreement agreed with BIS (as Acas sponsor), and reporting in the organisation's Balanced Score Card. The evidence is used more widely to consider efficiency and effectiveness, as well feeding into exercises of reflective practice

with key Acas service providers. Evaluation data is also used to assess economic dimensions of service value. This includes cost benefit analysis as well as assessments of the wider impact of the service on the UK economy. Economic impacts are not considered in this paper though they will be identified as part of the BIS ongoing monitoring of the impact of the dispute resolution changes.

Funding for the Acas research reported here is drawn largely from Acas' research budget. One exception is the reporting of data and references drawn from non Acas research; and also the reporting of the work of Paul Latreille, funded in partnership with the ESRC and CIPD, as an Acas research fellow for a period in 2009. Another study reported in the paper is the Survey of Tribunal Applications 2008, which is jointly funded with BIS and the Tribunal Service.

SECTION 4

ACAS CODE OF PRACTICE ON DISCIPLINARY AND GRIEVANCE PROCEDURES

4.1 Aims

The aim of the 2009 Acas Code of Practice on Discipline and Grievance handling is to provide guidance to employers, employees and their representatives and sets out the principles for effective handling of disciplinary and grievance situations in the workplace. The Code is designed to encourage employers, employees and representatives to address workplace problems as easily as possible, in a manner which may help avoid recourse to legal proceedings.

4.2 Background

In April 2009, the 'three-step' regulations were supplanted by a new Acas statutory Code of Practice on Disciplinary and Grievance Procedures. The new Code – just 45 paragraphs in length – places less emphasis on the mechanics of managing disciplinary issues, grievances and dismissals in favour of broad principles, and is thus in line with the recommendations set out in the Gibbons Review. To accompany the new principles-based Code, Acas also produced a new non-statutory guide which provides more detailed information on handling discipline and grievance situations in the workplace.[iv] For further details, see Section 2.2.

4.3 Access to the Code and Guidance

Hard copies of both the Code of Practice and the accompanying non-statutory guide have been universally available to buy from the Acas website since April 2009. By the end of March 2011, 7,008 copies of the code had been sold to 1076 customers and 3,775 copies of the non-statutory guidance ordered by 1,183 customers. A pdf download of the Code has also been available free of charge from the Acas website and by September, 2010 it had been downloaded more than 120,000 times and a web version had generated more than 175,000 page impressions. More than 15,000 copies had been issued by local Acas offices.

4.4 Code-related Acas training courses

Acas 'Open Access' courses are aimed at delegates ranging from those from very small businesses with little or no Human Resources (HR) experience to larger businesses with HR professionals. The emphasis is on encouraging good practice in the workplace as well as ensuring an understanding of legal compliance. As well as being split into topics, Open Access events can be split into 'event types'; those concerning the code are:

• Key Point Sessions – Short two-hour events which aim to cover the key issues, intended to be most useful to small and medium sized organizations that do not have access to an HR specialist.

[iv] It should be noted that the Code only applies to disciplinary action based on conduct or performance, it does not extend to redundancy dismissals or non-renewal of fixed term contracts. Both the Code itself and the accompanying guide are available to download at: http://www.acas.org.uk/index.aspx?articleid=2174

• Getting It Right Sessions – These events are aimed at the same audience, lasting approximately four hours allowing delegates more time to explore the issues.

Courses that to varying extents can be said to have 'majored' on the Code are:

- Managing Discipline and Grievance (Getting It Right),
- Discipline and Grievance - A new approach (Key Point and Getting It Right)
- Discipline and Grievance (Gibbons) Educating Employers (Key Point)

In addition, a small number of ad hoc evening courses with external speakers from the Employment Tribunals Service called: New Acas Discipline and Grievance Code of Practice (Key Points) have been held.

Attendance at Code-related Acas training courses

Acas formally launched public consultation on the revised Code in May 2008 and Table 4.1 (See Annex A for all tables) tracks the uptake of Code-related training courses from just before this date until March 2011. In total, Acas trained 6,869 delegates in such courses with a majority of delegates (3,533 of the total) attending between January to March 2009 before the Code was officially launched and 1,401 being trained immediately afterwards in April to June 2009. These 6,869 delegates attended 402 events (29 events in 2008, 247 in 2009 and 126 in 2010/11).

As is the case with Acas training in general, smaller workplaces were more likely to be represented at Code-related training sessions than larger workplaces, with delegates most likely to come from workplaces with 10-49 employees (Table 4.2).

Awareness and use of the Code

A 2011 private sector business poll commissioned by Acas found that 43 per cent of organisations were aware of the Code and 32 per cent knew of the guidance[10]. Larger organisations were more likely than smaller enterprises to have prior knowledge of either document: 41 per cent of those with workforces of fewer than 10 employees were aware of the Code as compared to 50 per cent of all other businesses. The equivalent figures for the guidance were 28 per cent and 43 per cent.

The poll explored the impact of the Code on disciplinary and grievance procedures and practices within companies. It found that 41 per cent of organisations with a formal grievance procedure and 40 per cent of those with a disciplinary procedure had either introduced or amended that procedure since April 2009. Of these, a majority (83 per cent and 82 per cent respectively) reported that they had made the changes as a result of the Acas Code. Hence 29 per cent of all businesses with procedures had changed/introduced a grievance procedure and the same proportion had introduced or amended a disciplinary procedure due to the Code. However in most cases the kinds of changes made to procedures were small with 63 per cent of those making any procedural changes reporting that these were limited to "minor amendments". This may be explained by the fact that although the new Code is shorter than the preceding version, at its heart it contains the same basic principles of encouraging workplaces to hold face to face discussions, encourage concerns to be expressed in writing, and that workplaces ensure that appeals procedures are in place.

The impact of the Code on workplace *practices* was examined by a question which asked whether the organisation, when handling employee grievance or discipline issues used: a written document designed specifically for the organisations or

industry; the Acas Code and/or guidance; or both or neither of these. This found that in respect of both disciplinary and grievance handling: 10 per cent of companies referred just to the Code, and a further 5 per cent to both the Code and their own documents. In respect of both kinds of issue, around a third of businesses referred only to their own documentation, whilst the remainder did not use either kind of reference document.

Acas also commissioned a qualitative evaluation of the Code[32]. The aims of this evaluation were to:

- Identify the range of understanding of the Code amongst employers, employees and their representatives.
- Describe the range of experiences of using the Code amongst employers, employees and their representatives.
- Explore the impact of the Code on policy and practice for disciplinary and grievance procedures.

The main findings from this research are set out in the following box:

Findings from qualitative research with users of the Code[32]: 38 employers, employees and their representatives:

Understanding of the Code

- The visual presentation, length, language and the Code were generally viewed positively and seen as an improvement to the preceding 3-step procedure.
- The Code's aims were correctly understood.
- The legal status of the Code was less well understood.

Handling disciplinary and grievances

- Views on using a principles-based Code were mixed. Most were positive about its flexibility and were confident about interpreting and applying its principles. Some concerns were raised by employee representatives about employers interpreting the lack of legally required processes as an opportunity to 'weaken' the employee position.

Impact on policies, procedures and handling

- The Code was said to have resulted in an increased emphasis within organisational policies on *informal resolution*. Beneficial changes to organisational policies and procedures were seen to be reflected in more positive handling of cases and in faster resolution of issues.
- The Code was felt by employee representatives to have had a negative impact on case handling in specific employers, who used the flexibility enabled by the Code to 'weaken' the employee position.

Impacts on profile of disciplinary and grievance

- The Code was seen to have produced a decrease in the number of disciplinary and grievance cases in some organisations, as a result of earlier or more informal dispute resolution.
- Lay representatives and full-time officers described a changing profile of cases with greater involvement for them in more serious cases, because less serious cases had reached a resolution prior to their involvement.

Impact on escalation toward Employment Tribunal

- Where implementation of the Code had resulted in more informal and/or early resolution, it was anticipated there would be a concurrent decrease in the number of Employment Tribunal claims.
- Where cases did reach Tribunal, it was anticipated that the Code would assist employers to gain a 'fairer' outcome.

SECTION 5

ACAS ENHANCED HELPLINE

5.1 Aims of the Acas enhanced Helpline

The Helpline offers information and advice on a wide range of employment relations subjects. Using resources received in 2009, Acas created an enhanced Helpline which aims to effect longer-term, substantive impacts through the prevention of disputes and the improvement of the effectiveness of working practices. The service also has capacity to refer some callers to PCC where they considering submitting a claim to an Employment Tribunal.

5.2 Background

The Acas Helpline provides practical guidance for employers, employees and their representatives with the aim of ensuring that callers are conversant with their respective duties and entitlements under relevant employment law, and according to good practice. Annually, the Helpline handles around one million calls. Callers should be able to take an informed course of action following their call.

Helpline centres are located in Acas offices around the country though there is a single telephone number. As well as changes to the structure and resources of the enhanced Helpline, outlined in Section 2.3, changes have also been made to the way that Helpline advisers actually handle calls, with a new focus on earlier resolution of disputes. To this end, information and advice is now tailored with the explicit aim of aiding the caller in resolving their dispute at the earliest possible stage. This includes options for resolving disputes informally as well as options for identifying whether a caller is eligible for PCC and referring them to an Acas pre-claim conciliator if they wish.

Rather than burden the caller with a mass of up-front information, the Helpline adviser will issue advice in actionable portions, typically inviting the caller to make secondary contact as required in order to be further guided through their 'dispute resolution journey'.

5.3 Monitoring and evaluating the Helpline

Between 2009 and 2011 the Helpline was evaluated with reference to the following key performance indicators under its Service Level Agreement with BIS[v]:

- Calls answered in no more than 30 seconds: the target for 2009/10 was 90 per cent
- Call quality: an average of 2.5 (where 2 represents an acceptable quality score)
- Helpline adviser availability: an average of 23 hours per week is the target

Outturns for these targets are identified from Acas Management Information data. The Helpline is also evaluated regarding its performance measured by means of customer survey:

- Callers satisfied with the service: 95 per cent of callers either extremely, very or fairly satisfied

[v] These were slightly amended for 2011/2012

- Callers who were able to take clear action following their call to Acas helpline: with a target of 70 per cent of callers answering in the affirmative.

This chapter draws on two sets of data:

- Acas management information, mainly collected via the Data Capture System (DCS). DCS data covering the 2008/9 financial year has been taken as the pre-Gibbons 'benchmark'. This is contrasted with DCS data covering the 2010/11 financial year; the first where the enhanced service can be said to have been fully operational (i.e. following the transition period, with all reforms having properly bedded in).
- Two waves of customer surveys commissioned by Acas to consider the changing Helpline caller experience between two discrete time points in 2009 – a baseline survey with those who called in January 2009 and a second survey with those who called in October 2009[11].

5.4 Helpline call volume metrics

Table 5.1 shows average monthly call volumes increased considerably over the period; up from almost 60,000 calls in May 2009 to a monthly average in excess of 78,000 calls per month across 2010/11. More than 4,000 were answered during the new extended helpline hours.

Fewer calls were 'hanging up' whilst still in the queue. Table 5.1 shows that call 'abandonment' had considerably fallen off – the proportion of those entering and exiting the queue without their call being answered standing at eight per cent of calls in 2010/11, down from 43 per cent in 2008/9.

The target of 90 per cent of calls answered in 30 seconds had not been met although figures were improving. Half of all callers in 2010/11 got through within 30 seconds, compared with 22 per cent in May 2009. Average call waiting time fell from 203 seconds in May 2009 to a monthly average of 103 seconds in 2010/11, a reduction of more than one and a half minutes spent in the queue per caller.

This improvement was borne out by the two-wave survey: 91 per cent of callers got through either immediately or 'reasonably promptly' in October 2009 compared to 52 per cent in January 2009. Consequently callers' satisfaction with the length of time taken to answer the call improved, from 57 per cent in wave 1 to 89 per cent in wave 2. Improvements did not come at the expense of call duration. The average call in 2010 was six minutes and 50 seconds, 34 seconds longer than the May 2009 average.

5.5 Customers and customer experience

Caller and call type

Table 5.2 shows that employees make up the largest proportion of callers, 61 cent of all callers in 2010/11 coming from this group. They are followed by employers, 24 per cent, of callers in the same period. The trend over time seems to be for an increasing proportion of calls from employees. In the 2008/9 baseline period, the employee/employer proportions had stood at 56 per cent and 30 per cent of callers respectively.

Table 5.3 shows that the demographic profile of callers has changed very little since the enhanced Helpline was instituted; women continue to be overrepresented among callers: 63 per cent of callers in 2010/11 were women.

Table 5.4 shows that organisational characteristics are similarly broadly unchanged between the two periods; most callers continue to come from workplaces with under 50 employees.

The breakdown of call subjects in 2008/9 and 2010 demonstrates the Helpline's role as a gauge of changing trends in GB employment relations. Table 5.2 shows the most common subject covered in survey respondents' calls to the Helpline in 2010/11 was 'discipline, dismissal and grievance' (32 per cent). In 2008/9, 'redundancy, layoffs and business transfers' were the most common (28 per cent) – possibly reflecting the changing GB economic climate. Nevertheless the make-up of the five most prevalent call subjects did not alter across the period.

For each call, the Helpline operator makes a record of the stage of the dispute resolution process that the enquiry has reached. Thirty five per cent of all calls handled in 2010/11 were recorded as 'information requests', and 65 per cent related to a dispute resolution process:

- 32 per cent related to enquiries which had reached the point of 'informal action' – the caller had either begun informally discussing the problem with management/employees or else was advised to do so;
- 32 per cent of calls related to situations which had progressed to the stage of 'formal action' – i.e. formal disciplinary or grievance procedures had begun;
- Less than two per cent of calls related to an issue that had gone as far as the Employment Tribunal stage.

5.6 Outcomes and impact

Employees' Employment Tribunal decisions

It is significant that so few enquiries have reached the stage of an Employment Tribunal and the fact that so many calls were made at the point at which only informal action had been taken is also consistent with the policy emphasis on early dispute resolution, although we do not have comparative data before the introduction of the enhanced Helpline service. Survey findings also show that, irrespective of their stage in the 'dispute resolution journey', a majority of callers reported that they felt able to take clear action following their call to Acas Helpline. The 70 per cent target for this was exceeded in October 2009 – 88 per cent of wave 2 respondents confirming that their call had helped them decide 'what to do next'; slightly up from 84 per cent at wave 1.

Another, aspect of the impact of the Helpline which has resonance with the wider policy objectives following Gibbons is the scope of the service to influence callers' decisions on whether or not to submit Employment Tribunal applications. In particular, the goal is to provide sufficient information to potential applicants to inform their judgement about whether or not to submit a claim. Former and current employees were asked:

- if they had been thinking about making a claim to the Employment Tribunal (ET) before calling the Helpline'
- if they had discussed the option of making an ET claim during their call;
- if they had actually gone on to make an ET claim following their call;
- how important their call to the Acas Helpline had been in helping them decide whether or not to make a claim to the Employment Tribunal.

Thirty two per cent of survey respondents at wave 2 of the survey confirmed that they had been thinking about making an ET claim before their call, with 56 per cent stating that they had *not* been thinking about making a claim. Of all employees, following their call:

- 12 per cent confirmed they had made a claim.
- 24 per cent had not made a claim *but were thinking about it*
- 64 per cent had not made a claim *and were not thinking about doing so.*

These findings are similar to both wave 1 and the 2007 survey.

Eighty four per cent of callers who had originally been considering a claim before their call, said that the call was either 'very' or 'fairly' important in helping them decide whether or not to make a claim. Of those callers who had been considering an ET claim prior to calling but subsequently did not make a claim (and were no longer thinking about doing so), 86 per cent credited the Helpline as having been important in helping them reach this decision. Overall, *23 per cent of all employee callers considering an ET claim decided against this course of action as a result of their call to the enhanced Helpline.*

Employers' policies and procedures

Fifty two per cent of employers at wave 2 of the survey had updated or improved existing policies as result of their call to the Acas Helpline. A further 33 per cent had implemented new policies at their workplace as a result of their call to the Acas Helpline, similar to findings to wave 1.

5.7 Caller experience

Service ratings

In most cases, customer ratings have remained very high. For instance, survey respondents were asked to rate the information provided in their call: 90 per cent of wave 2 callers agreed that the information had been 'valuable' to them, 87 per cent agreed that the information provided had answered their enquiry in full.

Satisfaction

Overall satisfaction with the service has historically been high and indeed reached its acme in 2009: 95 per cent of wave 2 callers stated that they were either extremely, very or fairly satisfied, with 81 per cent of callers 'highly' (extremely or very) satisfied, compared with 75 per cent in wave 1 of 2009. Given the existing high levels of satisfaction this increase should be regarded as positive.

In general, likelihood of re-use is high amongst Acas Helpline callers, with 97 per cent answering that they would use it again in future, similar to findings from previous surveys. Ninety seven per cent stated that they were likely ('very' or 'fairly') to recommend the Helpline to a friend or work colleague.

In summary then, the trend has been for continuity, with in some cases small improvements in what were extremely high levels of caller satisfaction prior to the service being enhanced.

SECTION 6

ACAS PRE-CLAIM CONCILIATION

6. 1 Aims of Acas Pre-Claim Conciliation (PCC)

The main aim of PCC is to identify disputes that are on the verge of becoming employment tribunal claims and resolve them before they enter the tribunal system. Within that, PCC has the following objectives:

- To encourage earlier and speedier resolution of disputes with positive employment relations outcomes
- To reduce the administrative burden of conflict and produce time and cost savings for employers, employees and the state
- To ensure positive customer experience

6.2 Background

Pre-Claim Conciliation is the expansion of the service provided by Acas in Employment Tribunal claims, known as individual conciliation (IC). Since it is offered prior to claims being submitted it represents a pro-active promotion of early dispute resolution. Employees or their representatives who are considering submitting an Employment Tribunal claim (ET1) may seek advice from an external body, including calling the Acas Helpline before doing so. The Helpline adviser may give them information which leads to a decision not to make a claim but with the new PCC service, those who remain intent on doing so may be referred if they are eligible for Acas conciliation.

The eligibility criteria for PCC are: that the employer is not insolvent; that the employee would be eligible to submit an ET1 in terms of jurisdiction of their case and time limits; and the caller has already made efforts to resolve the issue through their organisation's internal procedures, and that the caller intends to make an ET claim. The majority of cases come via the employee, though less frequently, the caller to the helpline may be an employer whose employee is intending to make a claim and conciliators may sometimes receive direct approaches from employers or representatives to conciliate in a potential claim.

Where the criteria are met, the Helpline adviser outlines the PCC service and invites the caller to consider it as an option. Those who are interested are referred to a PCC-trained conciliator and the caller is told they can expect to hear from the conciliator within two working days. The conciliator will call to confirm whether the referral from Helpline is appropriate, i.e. the eligibility criteria are met, and if they are, will discuss the PCC process and possible outcomes in more detail. If the caller wishes to proceed with PCC, the conciliator will then try to secure the other party's agreement to conciliate. Acas has defined three types of outcomes for PCC 'unprogressed', 'resolved' and 'unresolved'. These can be expanded as follows:

- Unprogressed
    - Employee decides not to proceed
    - Employer/employee uncontactable
    - Employer declines to participate
- Resolved
    - After discussions with conciliator, the employee decides not to proceed with the dispute

    - Dispute settled via Acas
    - Dispute privately settled after discussions with a conciliator
- Unresolved
    - Parties cannot reach an agreement
    - Discussions have to be abandoned before settlement because the deadline is approaching for submission of an ET claim.

6.3 Monitoring and evaluating PCC

In order to monitor how well PCC meets its aim of promoting early dispute resolution, Acas has an agreed set of targets under its Memorandum of Understanding (MoU) with the Department with policy responsibility for the area - BIS. Measurement of its performance against targets is based on Acas Management Information data. The metrics and associated targets are:

- Appropriate Referral Rate: 90 per cent[vi] of PCC referrals from the helpline are appropriate
- PCC Conversion Rate: in 70 per cent of appropriate referrals, both parties agree to enter into PCC
- PCC Resolved Cases: implemented for 2010/11: 40 per cent of appropriate PCC referrals are resolved
- ET claims Avoidance Rate: no employment tribunal claim for the same dispute is submitted within three months after the PCC referral is closed: 70 per cent of all PCC appropriate referrals.

The remainder of this section looks first at the extent to which PCC is meeting these targets. It then evaluates the effectiveness of PCC from the user perspective.

6.4 PCC Referrals and Conversions to Cases

Appropriate and inappropriate referrals

Table 6.1 shows that for the year 2009/10, 9,758 PCC referrals were made by helpline advisers, so just under one per cent of answered helpline calls were seen as eligible for PCC. Both the number of referrals and the referral rate increased significantly when PCC was offered in potential claims under fast track jurisdictions in October 2009 (see Section 2.4). In the second year of PCC, the number of referrals and the referral rate has continued to rise and at the end of March 2011 stood at 17,781 referrals, accounting for just under two per cent of all helpline calls during 2010/11.

What proportion of these were deemed “appropriate” for PCC once the issue was explored in greater depth by a conciliator? Overall, across 2009/10, the ‘appropriate referral’ rate was 89.3 per cent - slighter lower than the target of 90 per cent. However, through 2010/11, this steadily increased and at the end of the second year of PCC, the annual rate stood at 93.5 per cent, ahead of the target.

Acas conciliators record the reasons why relevant referrals are defined as “inappropriate”. In 2010/11 the most common reasons were;

[vi] In a similar way to post-claim conciliation, percentages are based on net cases, adjusted to take account of multiples (where there is more than one claimant involved in the same dispute against one organisation).

- tribunal deadlines being too close
- eligibility to make the claim being in question for other reasons
- employers who were insolvent/near insolvency or ceased trading
- an ET claim had been submitted between the referral and the offer of PCC.

Conversions and barriers to conversion

At the end of the first year the proportion of appropriate referrals where both parties agreed to participate in conciliation - the PCC 'conversion rate' - was 64 per cent, six percent below the MoU target. The reasons identified from the Acas MI data for failure to convert are listed in order of prevalence:

- The conciliator could not gain employer consent to take part in PCC.
- The conciliator was unable to make substantive contact with one or the other party.
- The employee was unwilling to proceed after talking to the conciliator.
- The issue was resolved after the first discussion with a conciliator.

The parties' perspective on the conversion issue is available via survey and qualitative data collected for the first whole scale evaluation of PCC[4]. This highlighted the main reasons why *employers* declined to take part as:

- they believed they had a strong case
- they did not understand fully what Acas could offer employers in these circumstances.

The main reasons *employees* decided not to proceed were:

- a lack of awareness about both the PCC process and the employment tribunal process
- worry about missing deadlines for submitting an employment tribunal claim.

However, some employees declined because had decided to drop the issue because they wanted to avoid the stress involved in pursing the dispute.

From April 2010, the conversion rate improved considerably to exceed both the 2009/10 rate and the target rate. At the end of March 2011, the annual rate stood at 80 per cent (Table 6.1).

6.5 PCC Outcomes

Resolved Cases

Moving on to look at the outcomes of PCC cases, Table 6.1 shows that the proportion of PCC referrals that were resolved was 34.0 per cent at the end of the financial year 2009/10, and rose steadily through 2010/11, exceeding the target of 40 per cent and ending the second year with an annual rate of 47.7 per cent.

Reducing Employment Tribunal claims

The last MoU target for PCC relates to the avoidance of Employment Tribunal (ET) cases. Explaining the factors that underpin ET patterns is complex[12], not least because volumes are subject to a variety of factors including legislation and economic conditions. The first year of PCC, 2009/10, for instance was subject to the economic recession; during that period, 46 per cent of gross ET cases received by Acas included Unfair Dismissal as one of the jurisdictions compared to

40 per cent of cases in 2008/09, a factor which has been attributed at least in part to the economic climate.

At a simpler level, it is possible to measure the relationship between PCC and ETs by tracking the proportion of employees involved in PCC referrals who do and do not go on to submit claims[vii]. Of the appropriate PCC referrals which were closed between January 2009 and December 2009, 70 per cent did not subsequently lead to the submission of an ET claim. This post-PCC ET avoidance rate was improved on in 2010 to 73.7%, which exceeded the target of 70%.

Preserving the employment relationship

One of the drivers of earlier dispute resolution is the possibility of preserving some employment relationships. According to SETA 2008[19], once the Employment Tribunal case was closed, only eight per cent of claimants were still with the employer against whom they had made the employment tribunal application. However, there is little evidence that PCC has been more successful in preserving employment relationships. The PCC evaluation found that only five per cent of employees were still with the same employer at the time of the survey interview, often a reflection of the type of cases that are being referred for PCC, with high proportions of unfair dismissal and redundancy jurisdictions which necessarily imply that employment has already ended or is about to end. For example, examination of Acas Management Information data shows that in 2009/10, the jurisdiction of Unfair Dismissal was present in 46 per cent of all ET cases compared to 69 per cent of all PCC cases. In contrast all the discrimination jurisdictions had higher incidences as a proportion of total cases for ET than PCC: in December 2010, 28 per cent of ET cases were discrimination cases compared with 10 per cent in PCC. Cases involving discrimination are the ones where the claimant is more likely to still be with the employer at the point at which the claim is submitted.

6.6 The customer experience

Amongst its recommendations, a Royal Commission on Trade Unions and Employers Associations in 1968 - the Donovan Commission - sought to enhance the existing industrial tribunals to handle a wider range of labour disputes. The report of the Commission has provided an important reference point for examining aspects of employment relations over the past half century. In relation to tribunals Donovan set out a vision that would offer an 'easily accessible, speedy, informal and inexpensive procedure for achieving a settlement of disputes'[13] (para 577) These specific criteria have been used extensively to evaluate the Employment Tribunal service[14] [15] and since they are implicit in the aims and objectives of PCC, they provide a useful means of evaluating the customer experience. The following compares findings from the first year's evaluation of PCC[4] with those of the Survey of Employment Tribunal Applications 2008[19].

6.6.1 Easily Accessible?

<u>Characteristics of workplaces</u>

There were some differences between the type of employers involved in PCC and those involved in employment tribunal cases. Table 6.2 shows that the following types of workplaces are significantly *less* likely to be among PCC referrals:

[vii] This is calculated by tracking individual cases through the Acas management information system.

- Public sector (12 per cent compared with 19 per cent)
- Large workplaces with more than 250 employees (13 per cent compared with 19 per cent)
- Organisations with internal HR departments (55 per cent compared with 62 per cent)

Hence, there is some evidence then that PCC is accessed more by smaller workplaces without an internal HR department.

Characteristics of employees

In terms of job-related characteristics, Table 6.3 shows that:

- Part-time workers are similarly underrepresented in both PCC and ET claims compared to the general working population) (16 per cent, 13 per cent and 23 per cent respectively)
- Trade union members are under-represented in PCC compared to both ET claims and the general working population (10 per cent, 25 per cent and 27 per cent respectively)
- The median earnings of PCC claimants is similar to that of ET claimants but is lower than the median for the general working population (£20,000 compared with £22,000).

In terms of personal characteristics, Table 6.3 shows that:

- Compared to the working population, where women represent 49 per cent of the workforce, they are under-represented in PCC and ET claims (PCC 41 per cent, ET claims 40 per cent). Whether this may be explained by the under-representation of part-time workers needs further exploration.
- Younger workers (16-24 years) are under-represented in PCC and ET claims but although older people (55+) are over-represented in ET claims the proportion involved in PCC is similar to the working population.
- People with a long-standing illness or disability were under-represented in PCC compared to both ET claims and the workforce.
- Compared to ET claimants, there were fewer Black, Asian or Mixed employees in PCC (12 per cent ET claimants, six per cent PCC).

Characteristics of potential claims

It may be that some of the differences between PCC, ET claims and the workforce in terms of ethnicity and disability, mentioned in the two bullet points above, may be explained by the under-representation of potential claims of discrimination in PCC (see 6.5 above). At the end of the 2009/10 year, 13 per cent of PCC referrals involved open track jurisdictions which cover mainly discrimination disputes compared with 27 per cent of Employment Tribunal cases, although comparisons here are problematic because of the introduction of fast track cases in PCC from October 2009. However, since April 2010, this pattern has endured. In Employment Tribunal cases, open track discrimination cases consistently comprise just over a quarter of all cases; in PCC this figure is approximately 10 per cent of all cases.

For reasons that need further exploration, employees with potential discrimination claims are less likely to call the Acas helpline or accept the offer of a PCC referral than employees involved in other jurisdictions, possibly because in discrimination claims, employees are more likely to be legally represented[16], and currently representatives are less likely to take part in PCC.

6.6.2 Informal?

A main concern regarding the Employment Tribunal system has been the increasing legalism associated with the growing complexity of case law in many jurisdictions. Research has consistently shown that claimants in more complex cases feel at a disadvantage if they do not have a representative[17] [18], particularly as employers are more likely to have access to representation. SETA 2008 shows that:

- 32 per cent of claimants and 54 per cent of employers nominated a professional representative on the ET Forms
- 46 percent of claimants and 60 percent of employers used a representative to help with their case on a day-to-day basis.

There are fewer representatives involved in PCC than in employment tribunal cases. The PCC evaluation showed that 9 per cent of PCC cases were represented (two-thirds of them by professional representatives), including six per cent of employers and ten per cent of employees. This lower level of representation is not completely explained by the differences in composition of jurisdictions between PCC potential claims and ET claims and suggests that PCC *is* offering a more informal service.

6.6.3 Speedy?

Although recent figures for duration of ET cases are not available, we can compare time spent by employees and employers on a PCC case compared to the submission of a claim[viii]. Because of the wide variation in time spent, for both processes, we compare the median estimates. These show that PCC carries a significantly lesser time burden both for employees and employers.

- Employees spent a median of 7 days on an ET claim; slightly more than 8 days if the claim went to hearing and more than 6 days if the claim was settled by Acas. This compares with a median of 5.7 *hours* on a PCC case.
- For employers, the median was 5 days; 7.5 days if the claim went to hearing and 5 days if the claim was settled by Acas. This compares with a median of 1 day for PCC cases.

6.6.4 Inexpensive?

Acas along with BIS economists have calculated that PCC results in substantial savings for employees and employers, including staff time and administration and legal costs[ix]. The average cost of resolving a claim through PCC for employers is £475.39 and the average cost of dealing with an employment tribunal claim is £5684.96. For employees, the average cost of resolving a PCC case is £78.09 compared with £2928.74 for dealing with an employment tribunal claim.

6.6.5 Customer satisfaction

The findings suggest that PCC offers a faster and more informal option to submitting an Employment Tribunal claim, saving employers and employees time and money. Another way to evaluate PCC is to explore customer satisfaction.

[viii] Using data collected in the *Evaluation of the first year of Acas' Pre-Claim Conciliation service* and comparing with similar data collected from *Findings from the Survey of Employment Tribunal Applications 2008*

[ix] Using data collected in the *Evaluation of the first year of Acas' Pre-Claim Conciliation service, Findings from the Survey of Employment Tribunal Applications 2008, Acas Management Information data, Annual Survey of Hours and Earnings 2010 among other sources*

Satisfaction with Acas conciliation in ET cases is consistently high. Acas commissioned independent research in 2007 which found that 81 per cent of customers were satisfied with the conciliation service[20] and 82 per cent were satisfied in the 2010 study[21]. There was a similar overall satisfaction rate among PCC users, where 82 per cent were satisfied with the service. Satisfaction was highest among representatives compared with employers and employees (89 per cent, 83 per cent and 80 per cent respectively). As would be expected, satisfaction was much higher when the case was resolved than when it reached an impasse (90 per cent compared to 72 per cent).

However, SETA 2008[19] suggests lower levels of satisfaction with the wider ET service than with the conciliation element, particularly among employers (74 per cent employees and 65 per cent employers were satisfied with the ET service).

Reasons why the small percentage (11 per cent) of customers were dissatisfied with PCC were largely associated with difficulties in contacting the conciliator, needing more advice or guidance, or that time limits curtailed the intervention.

6.6.6 Benefits of PCC

According to SETA 2008, 44 per cent of claimants in ET cases named the non-financial impacts of making a claim which included:

- stress
- depression
- emotionally draining experience
- loss of confidence or self-esteem.

The PCC evaluation found that the three main perceived benefits for employees in PCC cases that had been resolved or had reached an impasse, compared with submission of an ET claim were:

- PCC was faster
- PCC saved going to a tribunal
- PCC was less stressful/traumatic

In the qualitative interviews, employers identified time saved and the possibility of preserving the employment relationship as benefits, as demonstrated in the case study below.

In terms of the wider impact of PCC on organisations, the PCC evaluation found that 28 per cent of employers said the conciliator had provided them with information or advice that would help them avoid a similar problem; as a result, most commonly employers changed existing practices/procedures and would seek professional advice before taking disciplinary action.

Case study – An employer's perspective - PCC can help to resolve a dispute without an employment tribunal[4]

The employer involved is 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 involved in the case worked as a Senior Manager in the organisation, and was a long-term employee, described by the employer 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 PCC process avoided the heavy burden of the case going to a tribunal:

> *"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"*

6.7 The delivery story – challenges, skills and outcomes

An important element of monitoring the effectiveness and impact of a service is to consider issues of process – how a service is delivered, how providers interpret their role including what constraints and challenges they face. In order to capture this information two focus groups were carried out with a total of 15 conciliators experienced in conciliation in both PCC and post-claim IC cases. The evidence from the work is being fed back within Acas as part of an ongoing commitment to reflective practice. Two issues are of particular relevance in the context of this report since they emerged as principle challenges. These are: the absence of initial paperwork in PCC cases; and the process of 'cold calling' employers.

The absence of initial paperwork

In a post-claim IC case, the conciliator receives the claim form (ET1) and a written response (ET3) and is able to see how the case is being argued by the parties. The absence of these forms poses a significant challenge to the conciliators. Firstly, well developed listening skills are required to absorb and sort through a large amount of information received in an initial phone call, often by highly emotional people who are discussing the issues in depth for the first time.

Without the written information, there is a greater need to balance obtaining the necessary information and curtailing party's propensity to talk at length about their case. Conciliators found themselves having to be more direct, with claimants in particular, using questioning techniques to continually focus them back to the salient points.

When an ET claim has been submitted, there has been time and space since the dispute emerged, so the parties may be a lot calmer and have found a level of acceptance about their situation. The claimant will normally have spoken to family or friends about their complaint, or taken advice and had to formulate their thoughts to put them in writing on the ET1. Without this process having taken place, contact through PCC can be highly emotive.

"They are the same people obviously but when you get the IC case there's a distance. They've had to think about their claim put it on an ET1 and by the time you get the ET1 it's been a further two or three weeks, they've processed it a lot more and are more settled about what they want to do about it. With the helpline referral they're a lot more stressed about the issues".

The challenge of cold calling employers

When conciliators call employers to invite them to take part in PCC, this is often the first time that an employer is aware that the employee is thinking of submitting a tribunal claim.

"We have to break the news that someone is thinking of claiming against them so it can be quite tricky to manoeuvre round that and it can be really difficult…"

Conciliators had to manage the emotions of the employers and some were on the receiving end of abuse.

"I would say that in 18 years of working in IC I've had more abusive people to deal with on PCC than in any of my IC cases".

Conciliators understood that the likelihood of helping parties to reach a resolution is far stronger if a good working alliance has been developed (identified by Dix (2000)'s study of post-claim conciliation as 'reflexive intervention'[x]) and felt certain pressure knowing they did not have the post claim IC opportunity to build a rapport over a number of contacts with the parties. Unless they were able to reel the employer in on initial contact and get them to engage in PCC, the conciliator had to bow out of the process.

It was important to capture the attention of the employer immediately in the first conversation to convey their impartiality and impress they were there to help both parties. A priority was to make it really clear what the role of Acas was and that they were not "*the employment police"* trying to get money on behalf of the claimant, but were offering a service: *"things are won or lost in the first couple of conversations".*

This meant that they had to use different tactics from post-claim conciliation. Rather than the introduction style usually used in post claim cases, which focuses on the process of conciliation, they felt that keeping the initial discussions informal was important otherwise the opportunity to engage the employer was lost. The pace of information was crucial "*you don't steam in but conversely you don't take too long otherwise you've lost them".* Conciliators spoke about changing the terminology that they use, for example some ring the employer and ask 'can we talk?', then explain the concerns the employee had brought to the attention of the help line, offering the employer the opportunity to discuss it and keeping language as 'neutral' as possible.

The PCC evaluation[4] found that it was often difficult to persuade employers that they "*have a problem"* and that the service was appropriate to them. Conciliators in the focus groups felt that by pointing out that the employee had called the helpline as they were unhappy and that the problem was unlikely to go away, or to highlight that the employee wanted to resolve matters rather than go down the legal route, they were able to engage most employers in initial discussion. They then were able to point out the relevance of the service and the benefits of PCC.

Some conciliators very early on in the conversation invited the employer to tell them if they thought the other side had no case, pointing out that this would be helpful for them to go back and explain the situation to the employee. It was a way to engage the employer, it let the conciliator have the information they needed to view the situation and if the claim was misconceived let them got back to the employee with a full explanation.

Finally, conciliators felt that the "*reputational awareness*" of Acas was seen as a facilitator to engaging the employers, and introducing themselves as an Acas member of staff did actually mean something.

PCC Outcomes

Conciliators felt that early contact provided a better opportunity to look at resolving the dispute without monetary consideration.

"They haven't got the pound signs flashing in their eyes and quite often it's other things that they're looking for, like a reference or apology or something to make the situation right".

[x] Dix, G (2000) Operating with style: the work of the ACAS conciliator in individual employment rights cases in Towers, B. and Brown, W. (eds.) Employment Relations in Britain: 25 years of the Advisory, Conciliation and Arbitration Service Oxford: Blackwell

PCC also provided scope for a repair of the working relationship and there had been some success in negotiating the re-instatement of employment contracts. Examples included the conciliator identifying and explaining that there had been a complete misunderstanding on both sides within two days of the incident. In another case an employee was able to go back to work after a couple of days as the employer still needed someone to fill her post and she realised she needed her job. Post claim opportunities like these are less likely; by the time the claim is processed and the conciliators makes contact, things have moved on and the parties have become entrenched.

Conciliators also felt that as well as being a challenge, PCC being available for a limited period was also a facilitator. Often in post claim cases the parties become more entrenched as the process drags on and something which would have settled for a small sum early on develops into a claim with a huge schedule of loss (valuation of the claim put forward by the claimant). Getting the parties to focus on the issues early on can avoid this.

"I think the beauty of PCC is we're resolving it quickly"

SECTION 7

PROMOTION OF MEDIATION BY ACAS

7.1 Background

Problems associated with terminology and in particular an overlap in what constitutes conciliation and mediation have undermined the evidence base on 'mediation'. In this section 'mediation' is taken to mean the provision of non-statutory dispute resolution by an independent third party. Mediation, may address matters which are, or are not, covered by employment law. This is distinct from the statutory conciliation provided by Acas in Employment Tribunal claims, or prior to a formal Tribunal claim being submitted (PCC).

Interest in workplace mediation has gathered pace in recent years. However the actual services provided by Acas predate Gibbons. This section reports on evidence on the take up and outcome of mediation services provided by Acas. The following section looks at the wider evidence on mediation.

7.2 Acas and mediation

Acas has a long standing tradition of providing mediation in situations of individualised conflict. Its two principal offerings are:

- the provision of mediation by an Acas adviser between disputing parties, and
- access to a five day accredited course in mediation either for individuals, or for a group of employees within an organisations perhaps where they wish to set up a mediation scheme. Individuals undertaking the course have the opportunity to gain a Certificate in Workplace Mediation (CIWM).

Acas mediation in individual cases

Acas management information records the take up of mediation, and follow up surveys are conducted both with mediation participants and those commissioning Acas' involvement in order to gain feedback on their experiences[23].

- The number of mediations conducted annually has been stable over the past three years: Acas carried out 228 in 2008/09, 238 in 2009/10 and 223 in 2010/11.
- Resolution rates through Acas mediation are high: almost three quarters (73 per cent) of participants said that mediation had either 'completely' or 'partly' resolved the issue, and 82 per cent of those who resolved their case were satisfied with the outcome.
- A majority (79 per cent) of mediations address conflicts between employees and someone in authority, with 68 per cent being between employees and their line managers. Women were in a majority among disputants (62 per cent) responding to the Acas survey.
- Commissioners rated the following as a 'high risk' if mediation had not taken place:
    - Staff absenteeism by 71 per cent (N=97)
    - A negative impact on wider working relationships by 69 per cent (N=98)
    - The conflict resulting in an ET claim by 33 per cent (N=95).

Acas Certificate in Individual Mediation (CIWM)

Management information on take up is supplemented by feedback sheets completed at the end of training courses[23], and in 2009 a follow up survey was carried out[24].

- Between 2008 and 2010, take up of the CIWM increased: 289 individuals in 2008/2009 and 339 in 2009/10, an increase of 17 per cent. However, there was a decrease in 2010/2011 with 235 CIWM trainees.
- Across 2008/2010, 31 organisations received the CIWM training in house, to enable them to set up a mediation scheme.
- Participants are mainly in an HR role though some are in other management roles, trade union work or independent consultants. 71% of CIWM trainees in 2010/11 were female.
- *All* trainees were either 'satisfied' or 'very satisfied' with the course, and 93% awarded the highest possible rating, with all participants (N=174) reporting that the training had completely or to a large extent 'met their learning needs'.
- At the end of the course, ratings were high among trainees in terms of the level of confidence they felt in tackling mediations. However, the follow-up survey found that use of mediation was low: in the year following the course, half (43 per cent) said they had not participated in any cases; of those that had, a majority (40 per cent) had undertaken between one and three cases [24].
- In the year following training, 104 trained mediators had undertaken and completed 237 cases and of these, 96% had resulted in a success with a fully resolved or partially resolved outcome.
- Mediation was part of written procedures in the organisation of around half (47 per cent) of respondents and in two thirds of these cases, the respondent claimed that mediation was written into the procedures as a direct result of the training. Mediation was more commonly used in grievance and disciplinary situations when it was part of the procedure, or a formal 'scheme' had been established. Overall however, routine use of mediation was not common: 19 per cent said grievance cases 'always' or 'usually' referred to mediation, and the equivalent figure for disciplinary cases was 11 per cent [24].
- Other benefits were commented on:
    - 88 per cent said the course helped them beyond their role as a mediator for instance in improving their style of communication, and offering a new perspective on conflict. 94 per cent described the course as 'very' or 'fairly useful' in their work, particular skills identified were listening and questioning skills, remaining objective and impartial
    - Around a third, (30 per cent) said relations between managers and employees more generally had improved since the training.

The following case study looks in more detail at the introduction of mediation arrangements following Acas CIWM training inside an organisation.

Case study – Introducing Mediation into Cheshire Police Constabulary

In 2009, staff from Cheshire Police undertook the Acas Certificate in Workplace Mediation (CIWM). This case study reports on their experiences.

Cheshire Constabulary has approximately 3200 employees. At the time of the study they had 17 mediators who had received Acas accredited mediation training in-house. Before the introduction of mediation, official grievances had been dealt in a similar manner to criminal investigations, where evidence was gathered over a protracted period whilst relations could continue to deteriorate between the affected parties. Staff did not trust the system which possibly contributed to poor morale ratings evident in staff surveys around that time.

Senior managers recommended a review of the dispute resolution procedures and as a result, an in-house mediation scheme was recommended. Acas was selected to provide training because of its reputation and because the training was accredited. The course was well received by the organisation and by the mediators for comprehensively meeting its objectives

Trained mediators felt that they gained much from the course, particularly in terms of their communication and listening skills. They felt much more confident in their mediating ability, due to the sound foundation of structured knowledge provided and the key skills learnt such as reframing to isolate key issues, retaining impartiality, and not leading. These skills have proved eminently transferable to other parts of their role, such as management and dealings with the public.

Since the course a mediation scheme has been set up at Cheshire Constabulary. It has been widely publicised in internal communications but take up has been much lower than expected. However, there is a consensus that the CIWM training has produced able mediators and that the set up of the scheme has ultimately lead to disputes being resolved that might have otherwise proceeded through more formal procedures or reached tribunals.

Employment problems are expected to remain at similar levels, but informal and early resolution is felt to be on the increase. This can include resolution that falls below the radar - managers have been encouraged to identify and solve problems before they become serious, when previously they might have been left to escalate and trigger more formal procedures.

The organisational picture is less clear with regard to the impact of the CIWM training. There were already shifts before the training to earlier, more open and informal techniques for communication generally and dispute resolution in particular. The intention was to set up a mediation scheme once the training had taken place and by providing the organisation with effective mediators the training has clearly facilitated this goal and also given the organisation the confidence to write mediation in to the Grievance Procedure.

SECTION 8

EXPANDING THE EVIDENCE BASE ON MEDIATION

Although lagging behind the United States in terms of research on mediation, a body of information is beginning to develop in the UK on the impact of workplace mediation. In order to further develop this evidence base and to provide context and direction for the further development of Acas dispute prevention and resolution services, the Acas Research and Evaluation Section has developed a research programme focussing on the effective dispute handling including a strand on mediation[xi]. In addition, Acas Research has also pursued an agenda relating to conflict management at work. Space precludes a detailed synopsis of findings but aspects of the emerging evidence are summarised here as part of the critique of developments in dispute resolution since the Gibbons Review.

8.1 How extensive is use of workplace mediation?

It is not possible to gain a statistical measure of recent changes in mediation across the GB workplaces since there is no representative benchmark data predating the Gibbons Review, nor a single robust measure on the take up of mediation in recent years. This is because sample surveys have tended to focus on particular sub groups of the population. The 2011 Workplace Employment Relations Survey[xii] will address this by providing evidence from a representative cross section of GB workplaces on the use of mediation, and the extent to which it is embedded in discipline and grievance procedures.

This section focuses particularly on a recent Acas commissioned poll of private sector companies in Britain[25]. This, together with WERS 2011 data, provide a baseline for future monitoring.

In the Acas 2011 poll[25], mediation was defined as a 'form of dispute resolution in which a neutral third party, from inside or outside the workplace, helps people find a mutually acceptable solution'. The poll found that 64 per cent of managers had heard of mediation (88 per cent in larger work places (500 plus employees)).

Of those that had heard of mediation:

- Seven per cent of organisations had used mediation.
- Use of mediation (on at least one occasion) is greater among larger private sector workplaces and the proportion that had used mediation increases significantly with employment size, from five per cent of the smallest organisations to nearly 50 per cent of the largest organisations.
- In an earlier SME poll in 2008 (1-249 employees) 11 per cent had used mediation[26] compared with seven per cent of SMEs in the 2011 survey.
- Employers in the finance sector showed the highest level of awareness of mediation, but very little use (less than 1 per cent). In contrast, of the employers in the transport and communications sector who had heard of mediation, just over 20 per cent had used it; and there were above average proportions of employers using mediation in the agriculture, manufacturing and business service sectors.

[xi] A series of project have been commissioned on the take up and experience of mediation. These include polls in 2008 and 2011, case studies, and work funded jointly with the ESRC. See section 2.

[xii] (www.bis.gov.uk/policies/employment-matters/research/wers/wers2011)

- Frequency of use of mediation tends to be low: the 2011 found that nearly half (46 per cent) of those who had used mediation, had not done so over the last twelve months; and a majority who had used it, had done so only once.
- Mediation had been provided by an external mediator in 44 per cent of organisations, compared with 34 per cent where mediation was provided from inside the organisation.
- The most frequently cited use was in response to relationship breakdown. In the 2011 poll, just under 4 in 10 said it was used to deal with relationship breakdown between employees and around the same proportion that it was used in conflict between employees and line managers. Other matters such as performance management, discipline and workload, as well as absence and discrimination were cited but were less common in the 2011 than the 2008 SME poll.
- Asked why they had *not* used mediation, the most commonly cited reason (given by 93 percent of 'non users') was that their workplace had not experienced 'any problems that would suit mediation' – it is may be that the latter reflected a lack of understanding of the nature of mediation, as well as a perceived absence of problems at work.

Research carried out by CIPD in 2008 and 2010, despite using purposive samples drawn from CIPD membership[xiii] matches the trends found in the Acas polls: levels of awareness being relatively high, but use across workplaces being lower; and workplaces making relatively infrequent use of this form of dispute resolution. Overall parties report very positively on the benefits of mediation but tend to be most likely to rate mediation poorly where their most recent cases had failed to resolve the dispute[6 8]. To varying degrees, costs have also been cited as a deterrent, as well as lack of awareness of what mediation involves.

8.2 Mediation – its strengths and weaknesses

One of the most frequently articulated benefits of mediation is its potential to address interpersonal conflicts. Evidence suggests that the power of mediation to reopen communication channels is especially valuable, allowing individuals the time and space to address issues around their own behaviours and gain an understanding of how language and actions impact on others [13 7 28]. Where mediation is used, the impacts can include better future working relationships; and providing a forum for enabling jointly agreed resolutions [29 7]. Wider benefits may include reduced absence, less reliance on formal grievance or disciplinary procedures and in some instances, avoidance of ET claims.

The relationship between mediation and the volume of ET claims requires careful handling. Not all cases which go to mediation address areas of conflict which are covered by legal jurisdiction. If one criterion for judging mediation in the future is the effect it has on reducing Tribunal volumes, the impact may not be considered substantial. Nonetheless, many of the difficulties in relationships at work may well be associated with actions such dismissal handling, and discriminatory and negative behaviours, which may be the subject of tribunal claims. In this sense it is not possible to create a clear boundary between which issues are suited to mediation compared to those that might form the basis of an ET claim. The 2008 CIPD survey, just under half (49 percent) of respondents said that a benefit of

[xiii] Therefore samples tend to be with larger workplaces and reflect the views of people more interested in mediation

mediation was its potential to reduce volumes of ET[xiv]. This compared with 83 per cent who emphasised the benefits of mediation in improvements in working relationships.

Some evidence points to the need to moderate use of mediation. First, mediation should not be seen as a substitute effective line management. Second, an area that remains unclear is which types of interpersonal conflict are best suited for mediation. A concern is that mediation may be a screen hiding (possibly repeated) misconduct and, more importantly, a deviation from the pursuit of a workplace's disciplinary or grievance procedures[xv]. There is also a view that the relative 'informality' of mediation might be used against the parties (although in reality, the mediation practiced by Acas and other providers is a formalized process). Such 'allegations' of informality may refer to a number of factors including the private nature of mediated outcomes and hence that they cannot establish precedent [31]. Other practical constraints stem from the challenges of embedding mediation: of gaining buy in from all workplace players; of ensuring a genuine understanding of what mediation involves; and allowing sufficient time for in house mediation schemes to be established[xvi].

8.3 Mediation and wider cultural change in workplaces

Gibbons recognised that for many workplaces, a shift to early and less adversarial dispute resolution would require a cultural change. To what extent can mediation be considered a vehicle for bringing about a change in the way that organisations approach dispute resolution? Acas has begun work on identifying which factors motivate organisations in how they tackle conflict. The evidence suggests that mediation might be one such vehicle, though its place in dispute resolution processes might need to be flexible – being of value either before or after grievance or disciplinary procedures. One case study undertaken of a PCT[29] found that the introduction of mediation had a powerful impact in handling individual conflicts, and in reducing adversarial relations more generally. In this workplace, the context for change was predicated particularly on the existence of a pre-existing partnership arrangement and second, on active union participation in the scheme. This wider area of conflict management, including a focus on mediation and other forms of conflict handling, will continue to be a focus for Acas research programme in the forthcoming period.

[xiv] One benefit of mediation in this context may be that it reduces the uncertainty associated with external adjudication and hence provides greater control over the dispute (for discussion see Lipsky, D., Seeber, R. and Fincher, D. (2003) *Emerging Systems for Managing Workplace Conflict*, San Francisco: Jossey-Bass.

[xv] For a fuller discussion see Dix G., B. Davey and P. Latreille *Bullying at Work: Acas Solutions*, in Tehrani, N (ed) forthcoming Bullying at Work Symptoms and Solutions, Routledge: London 2013

[xvi] See discussion in Acas/CIPD *Mediation: Guide for Employers* 2007

SECTION 9

CONCLUSIONS

Acas' Mission is to improve organisations and working life through better employment relationships. It aims is to support employers and employees through the provision of impartial advice and information, and by offering dispute resolution services. Reflecting both its statutory and non statutory roles, and building on experience gained over thirty years, Acas shares the view of successive Governments that employers and employees should be supported and encouraged to resolve disputes inside the workplace as early as possible. This approach maximises the opportunity for ensuring harmonious employment relations, reducing the burden of costly conflict, and creates an environment in which productivity and positive workplace outcomes are more likely to be sustained.

The Gibbons Review found that the 'three step statutory procedure' for responding to discipline and grievances had resulted in formality of conflict handling becoming the norm and that expectations that disputes would end in an Employment Tribunal claim had increased. This situation lead Gibbons to call for a 'culture change' and enhanced flexibility in achieving early, more positive outcomes to conflictual situations. Acas has played a key role in the responding to the call for change. This report has reviewed progress to date.

9.1 Regulation and Procedures

Acas sees its role as both supporting workplace parties in understanding and operationalising regulations and the law; and at the same time promoting a voluntarist approach to conflict handling encouraging positive behaviours and where possible, collaboration between workplaces parties. To this end, the new principles-based Code of Practice on Disciplinary and Grievance Procedures whilst still promoting a formal approach to disputes at work, provides a simplified framework for organisations and employees to respond to problems at work. Since the launch of the Code, Acas' training courses have been well attended especially by employers from smaller organisations. Nonetheless, findings from a 2011 business poll show that nearly two years after its introduction, only half of private sector organisations knew about the Acas Code, pointing to a need for greater awareness raising. There is evidence, however, that the Code is having an impact on policies and procedures; the same poll found that four in ten businesses made changes to their disciplinary and grievance procedures since April 2009 and most of these were as a result of the new Code. The Code appears to be successful among employers who have used it, but some problems have been identified in understanding the legal status of the Code. Where disputes do go to an ET hearing, it remains to be seen how Tribunal Chairs will interpret compliance with the Code.

9.2 Earlier Dispute Resolution

The enhancements to the Acas helpline have resulted in a considerable increase in calls taken over the past two years with many callers taking advantage of the new extended hours. Satisfaction with the service remains high. Approximately one-quarter of employee callers considering a ET claim decided against doing so on the basis of the information they received during their call.

Referrals from the Helpline to Acas' PCC service have steadily increased over the two year period under review. Fewer than three in ten of PCC referrals have gone

on to become ET claims, although further research is needed to estimate any effect on overall Tribunal volumes. However, compared with ET claims, PCC has been shown to be a more informal process, saving employers and employees time and money. Customers are no less satisfied with the outcomes of PCC than they are with ET claims; and satisfaction with the service is high with employers in particular appearing to be more satisfied with PCC than the ET process. PCC also seems to be successful in appealing to smaller, private sector businesses that may be more vulnerable when there are problems in the workplace. However, at present, it is accessed less by the public sector, large organisations with a greater trade union presence, the reasons for which are unclear.

There is little quantitative evidence that PCC is meeting the aim of preserving more employment relationships than is the case in ET claims. However, in qualitative research, Acas conciliators reported a higher rate of cases ending with reinstatements and apologies than they feel can be achieved from conciliation in ET claims. PCC seems to attract fewer discrimination cases, and it is these cases where earlier resolution is more likely to result in preservation of the employment relationship, and greater savings to the parties achieved if legal resource can be avoided. There are also challenges in getting employers to participate, especially when the first time employers hear of the service is when the conciliator 'cold calls' them. These issues are exacerbated by the fact that the Acas Helpline serves as the main route to PCC, which can at best only provide partial access. Current proposals in BIS' *Resolving workplace disputes - public consultation (2011)* to extend PCC to all potential claimants, if implemented, would help address issues of accessibility.

Gibbons had found that the previous statutory procedures were especially problematic for small businesses and it is noteworthy that the new Acas services have been found useful by this sector; employers and employees in smaller workplaces are delegates on Code-related training courses, callers to the Helpline and users of PCC.

9.3 Alternative approaches to dispute resolution

Early dispute resolution can take many forms ranging from 'a quiet word' through to more proactive line management and more structured approaches such as the use of mediation. On the latter, there is evidence that many small businesses are yet to be persuaded of the value of using mediation. The finding that cost may be an issue points to the need for considering how mediation may be made more accessible for smaller businesses with no access to HR expertise. There are indications that mediation is more likely to be used by large organisations although further research is needed to quantify this particularly in the public sector. Even among workplaces that have opted to use mediation, there is evidence that usage is not frequent and that a lack of understanding by both employers and employees as to the role of mediation and how it should be used might be barriers. Despite this, mediation is well-regarded especially by organisations that have used it and there is a growing body of evidence on its effectiveness as a means of resolving workplace disputes particularly interpersonal conflicts. Evidence also indicates the potential wider value of mediation for helping reduce negative workplace outcomes such as absenteeism, and improving opportunities for preserving employment relationships both individually and collectively.

On the latter important case study evidence has shown that the introduction of mediation into an organisation can impact more widely on the conflict management culture, contributing to a more trust-based approach to handling difficult employment relationship issues. More research is needed in this area to

establish whether this finding can be generalised more widely both in relation to mediation, and other alternative dispute resolution strategies.

9.4 Future Research

Stemming from changes that have arisen post the Gibbons Review, this paper has focussed largely on the area of individualised conflict. For the future Acas will be seeking to develop a framework for further exploring how best to address workplace conflict at both the individual and collective level. This will include close monitoring of individual Acas mechanisms for offering dispute resolution; and adopting a wider lens to ensure that there are appropriate synergies between different approaches in order to maximise impact. Particular questions around mediation remain important. These include the need to monitor take up across and within workplaces; the costs and benefits of mediation; and an assessment of the sustainability of mediation, both in terms of the viability of workplace mediation schemes, and outcomes of individual mediation cases. Beyond direct Acas services, research will continue to explore the factors inside the workplace which are most likely to contribute to a positive conflict handling approach. This is a wide ranging agenda. It will seek to consider the role of managers, representatives and employees and how they approach conflict; which mechanisms are most effective and why; and whether there are opportunities for creating an overall conflict management strategy which prioritises early and effective dispute resolution.

SECTION 10

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ANNEX A

TABLES

Table 4.1: Delegates attending Code-relevant Open Access training courses, April 2008 to March 2011

Year	Discipline and Grievance (Gibbons) Educating Employers (Key Point Session)	Discipline and Grievance - A new approach (Getting It Right Session)	Discipline and Grievance - A new approach (Key Point Session)	Managing Discipline and Grievance (Getting It Right Session)	New Acas Discipline and Grievance Code of Practice (Key Point Session)	Total
April to June 2008			20	151		171
July to September 2008				85		85
October to December 2008				128	73	201
January to March 2009	455	418	2453	207		3533
April to June 2009	50	402	868	81		1401
July to September 2009		234	68	87		389
October to December 2009		195	72	130		397
January to March 2010		71	41	123		235
April to June 2010				147		147
July to September 2010				151		151
October to December 2010				74		74
January to March 2011				85		85
Total	*505*	*1320*	*3522*	*1449*	*73*	*6869*

Source: Acas Management Information

Table 4.2: Code-relevant Open Access training courses by training delegate's workplace size and calendar year					
No of employees at the delegate's workplace	2008	2009	2010	2011	Overall
1-4	13%	12%	9%	8%	12%
5-9	4%	4%	5%	2%	4%
10-49	30%	29%	31%	35%	29%
50-99	14%	17%	14%	20%	17%
100-249	18%	18%	16%	18%	18%
250-499	8%	9%	13%	11%	9%
500-999	8%	6%	6%	4%	6%
1000 or more	4%	6%	4%	2%	6%
Total	*454*	*5,720*	*607*	*85*	*6,869*

Source: Acas Management Information

Table 5.1: Helpline call volume metrics

Metric	Baseline: April 2008 - March 2009 (*= Where no baseline data exists the May 2009 figure is cited)	Follow-up: April 2010 – March 2011
Average monthly volume of calls answered by the Acas Helpline	59,774	78,747
Average monthly volume of calls answered during the extended helpline hours**	3,870*	4,055
Proportion of helpline calls abandoned	43%	8%
Average helpline call duration (seconds)	376 secs	410 secs
Percentage of Helpline Calls answered within 30 seconds	22%*	51%
Average Acas Helpline call waiting time (seconds)	203 secs*	103 secs

Source: 'Avaya switch' telephony data (except ** Data Capture System)

Table 5.2: Helpline caller types and subjects

	Baseline: April 2008 - March 2009	Follow-up: April 2010 – March 2011
Breakdown of Acas Helpline caller types		
Employee	56.3%	61.4%
Employer	29.5%	23.7%
3rd party employee	11.2%	10.9%
3rd party employer	2.0%	2.0%
Agency worker	0.2%	0.7%
Other	0.8%	1.3%
Breakdown of Acas helpline call subjects		
Redundancies, lay offs and business transfers	27.9%	20.9%
Discipline, dismissal and grievance	26.6%	31.7%
Contracts	16.4%	18.2%
Holidays & working time	12.2%	13.4%
Absence, sickness and stress	8.5%	9.4%
Base	*717,288*	*814,228*

Source: Data Capture System

Table 5.3: Helpline - customer demographics

	Baseline: April 08 - March 09	Follow-up: Jan – Dec 2010
Gender*		
Female	64%	63%
Male	36%	37%
Base	*717,288*	*814,288*
	Survey Wave 1 (Jan 2009)	**Survey Wave 2 (Oct 2009)**
Age		
18-24	3%	3%
25-34	18%	17%
35-49	40%	41%
50-59	24%	25%
60-64	9%	6%
65+	3%	3%
Not answered	3%	5%
Base	*2,018*	*1,885*
Ethnicity		
White British	93%	88%
Other	4%	9%
Not answered	3%	3%
Base	*2,018*	*1,885*
Does caller have long-term illness, health problem or disability?		
Yes	9%	10%
No	83%	80%
Not answered	8%	9%
Base	*2,018*	*1,885*
Religion or belief		
Christian	72%	69%
None	22%	24%
Other	2%	4%
Not answered	3%	3%
Base	*2,018*	*1,885*
Sexual orientation		
Straight	94%	92%
Gay/Bisexual	1%	2%
Not answered	5%	7%
Base	*2,018*	*1,885*

Source: Waves 1 & 2 customer survey data (*except Data Capture System)
Note: Percantages are rounded hence may not sum to exactly 100%

Table 5.4: Helpline - organisational characteristics

	Survey Wave 1 (Jan 2009)	Survey Wave 2 (Oct 2009)
Number of employees at workplace		
1-4	14%	12%
5-9	17%	16%
10-49	38%	36%
50-99	11%	10%
100-249	9%	11%
250-499	4%	5%
500+	6%	9%
Base	*1,873*	*1,738*
Is workplace part of larger organisation?		
Yes	41%	46%
No	59%	54%
Base	*1,911*	*1,790*
If Yes=Number of employees in organisation		
Less than 50	9%	7%
50-249	18%	15%
250-499	12%	9%
500-999	11%	10%
1000-4999	23%	21%
5000+	28%	38%
Base	*590*	*612*
Industrial classification		
Manufacturing	13%	10%
Construction	12%	10%
Retail, Htl, Rstrnt	22%	20%
Trans, strg, coms	6%	7%
Finance & Real E	20%	20%
Pub Ad, Educ, Hlth	18%	24%
Other	8%	9%
Base	1,872	1,773
Does organisation have HR specialist or department?		
Yes	43%	48%
No	57%	52%
Base	*1,826*	*1,736*

Source: Waves 1 & 2 customer survey data
Note: Non-responses are excluded from all bases

Table 6.1 PCC Referrals, Conversions and Outcomes

Description	April 2009-March 2010	April 2010 – March 2011
PCC Referrals		
Volume of PCC referrals from Helpline	9,758	17,781
PCC referral rate (percentage of answered helpline calls)	0.96%	1.90%
Percentage appropriate referrals	89.3%	93.5%
Conversion from referrals to PCC cases		
PCC Conversion rate (of appropriate referrals)	64%	80%
Reduce tribunal claims		
ET claims Avoidance Rate (based on appropriate referrals)**	70.0%	73.7%
Resolution rates		
PCC resolution rate (of PCC referrals)	34.0%	47.7%

** based on closed PCC referrals – lagging indicator
Source: Acas Management Information data

Table 6.2 PCC - Characteristics of employers

	PCC	SETA
Sector	*%*	*%*
Private	77	72
Public	12	19
Non-profit/voluntary	5	8
Don't know	7	1
Number of employees at workplace	*%*	*%*
1-49	60	57
50-249	23	24
250+	13	19
Resources for dealing with personnel	*%*	*%*
Internal HR department	55	62
Used external department	38	38
Has internal legal department	19	20
Trade Union or staff association present	*%*	*%*
Yes	26	32
No	74	67
Base	*478*	*2007*

Source: Evaluation of the first year of Acas' Pre-Claim conciliation service: Infogroup/ORC 2010
Findings from the Survey of Employment Tribunal Applications 2008 BMRB;

Table 6.3 PCC - Characteristics of employees

	PCC	SETA	Labour Force Survey
Personal Characteristics			
Gender	*%*	*%*	*%*
Male	59	60	51
Female	41	40	49
Age	*%*	*%*	*%*
16-24	10	8	15
25-34	21	20	22
35-54	51	53	47
55+	15	20	16
Ethnicity	*%*	*%*	*%*
White	91	86	91
Black	3	5	1
Asian	2	5	5
Mixed	1	2	2
Chinese(only in LFS)			1
Other	2	2	2
Don't know	*	*	*
Refused	1	1	*
*Long-standing illness/disability**	*%*	*%*	*%*
No	87	78	77
*PCC question worded differently to SETA and LFS			
Job related characteristics			
Hours worked	*%*	*%*	*%*
Full-time	82	82	72
Part-time	16	13	23
Temporary	2	4	6
Earnings			
Median	£20,000	£20,000	£22,984
TU Membership	*%*	*%*	*%*
Yes	10	25	27
No	90	74	73
Don't know	*	1	*
Length of service	*years*	*years*	
Mean	5	6	
Median	3	3	
Base	*589*	*2020*	*44,771*

Sources: Evaluation of the first year of Acas' Pre-Claim conciliation service 2010 Infogroup/ORC; Findings from the Survey of Employment Tribunal Applications 2008 BMRB; Labour Force Survey Winter 2008

Annex B

Data sources generated by Acas Research and Evaluation referred to in this paper are set out below

Code of Practice (Section 4)

1. Evaluation of Acas Code of Practice on Disciplinary and Grievance Procedures – Natcen, Acas Research Paper XX/11 *forthcoming*

2. Williams M., F. Neathey and G. Dix. (2011) *Workplace conflict management: awareness and use of Acas code of practice and workplace meditation – A poll of business* Acas Research Paper XX/11, forthcoming

Helpline (Section 5)

1. Thornton A. and N. Fitzgerald (2010) *Helpline evaluation 2009* -Acas Research Paper 03/10.

Pre-Claim Conciliation (Section 6)

1. *Evaluation of the first year of Acas' Pre-Claim conciliation Service* prepared by Acas Research and Evaluation Section and Infogroup/ORC International
Acas research paper 08/10.

2. *Service user perceptions of Acas Individual Conciliation in Employment Tribunal cases 2007* TNS-BMRB Acas research paper 07/08.

3. *Service user perceptions of Acas conciliation in Employment Tribunal cases 2010,* Infogroup/ORC Acas research paper 02/11

Mediation (Section 7)

1. Mitchell D and W Mitchell *An evaluation of the impact of the internal workplace mediation training service*: Acas internal report 03/09

2. *Certificate in Workplace Mediation (CIWM) training: responses from trainees* 1 April 2010 to 30 September 2010: Acas internal report 07/10.

3. *Individual Mediation: responses from participants and commissioners* 1 April 2010 to 30 September 2010 Acas internal report 06/10

4. Acas/CIPD – 8 Case studies on mediation – reported in Latreille's thematic review (2011 forthcoming) and the Acas/CIPD *Mediation: A Guide for Employers*, and Acas/TUC *Mediation: A guide for trade union representatives*

5. 2. Williams M., F. Neathey and G. Dix. (2011) *Workplace conflict management: awareness and use of Acas code of practice and workplace meditation – A poll of business* Acas Research Paper XX/11, forthcoming

6. Johnston, T. *Knowledge and use of Mediation in SMEs* - Acas Research Paper 02/08

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