

Research Paper

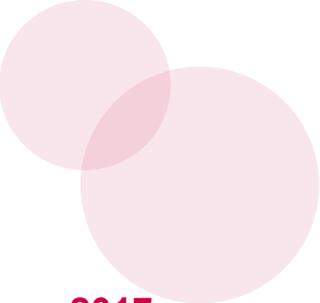
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Acas Early Conciliation decision-making:
Exploring the behaviours of claimants who neither
settle nor proceed to an Employment Tribunal

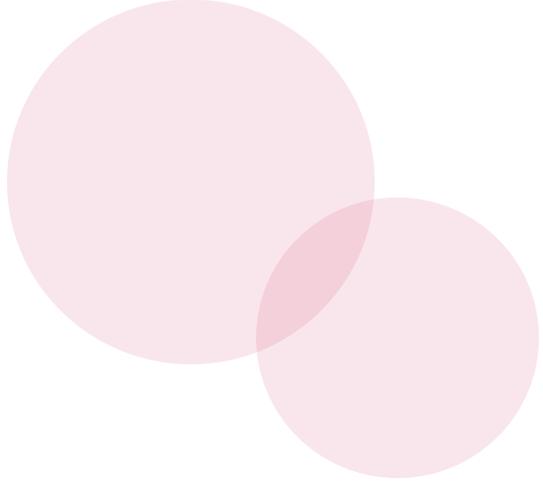
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(NatCen Social Research)

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Disclaimer

The views in this Research Paper are the author's own and do not necessarily reflect those of Acas or the Acas Council. Any errors or inaccuracies are the responsibility of the author alone.

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Acas Early Conciliation decision-making:

**Exploring the behaviours of claimants
who neither settle nor proceed to an
Employment Tribunal**

**Research report prepared by NatCen Social
Research for Acas**

**Authors: Nilufer Rahim, Hannah Piggott, Malen Davies, Emily
Cooper, Francesca Day**

October 2017

DISCLAIMER

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LIST OF CONTENTS

1	INTRODUCTION.....	4
1.1	Policy background	4
1.2	Overview of the EC and ET1 process	5
1.3	Research aims	5
1.4	Research methodology	5
1.5	Interpreting the findings.....	7
1.6	Structure of the report	7
2	EARLY CONCILIATION NOTIFICATION.....	8
2.1	Factors leading to EC notifications	9
2.2	Desired outcomes at the notification stage	13
3	EARLY CONCILIATION	16
3.1	Experiences of first contact with Acas after notification	17
3.2	Experiences of those who took up EC	18
3.3	Experiences of those who did not take up EC ('no claimant engagement')	21
3.4	Experiences of those whose employers did not engage with EC ('no respondent engagement')	22
4	EMPLOYMENT TRIBUNAL CLAIM DECISION-MAKING	24
4.1	When decisions were made.....	24
4.2	Key factors that informed decisions.....	25
4.3	Influences on decision-making	33
4.4	Outcomes experienced	35
5	REFLECTIONS ON THE SERVICE PROVIDED BY ACAS	37
5.1	EC notification	37
5.2	Early Conciliation.....	39
5.3	Post-EC experiences	44
6	CONCLUSIONS	46
6.1	What insights have been generated about this group of claimants?.....	46
6.2	How could the delivery of the ec service be improved?.....	48

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GLOSSARY

COT3	An Acas settlement document that is signed by both parties as a formal record of the agreement. This is a legally binding contract preventing an individual from making an employment tribunal claim in this matter.
Early Conciliation Certificate	A document issued by Acas which legally permits an Employment Tribunal claim to be made. The certificate confirms that the Early Conciliation requirements have been met.
Early Conciliation (EC)	An Acas service introduced in April 2014, since when claimants have been required to notify Acas of their intention to lodge an employment tribunal claim, and will be offered the opportunity to engage the services of an Acas conciliator, who will seek to resolve the dispute without going to court
EC notification form	For tribunal claims lodged on or after 6 May 2014, it is a legal requirement, unless an exemption applies, for a claimant to have made an EC notification to Acas. The notification form is an online document that is completed by a potential claimant. The form can be completed online or by hard copy or via the telephone if a claimant has accessibility needs.
EC Support Officer (EC SO)	The person at Acas who makes first contact with potential claimants to gather basic information on the dispute itself and who provides information about EC. An EC SO may also issue a certificate directly when requested or where Early Conciliation is not deemed appropriate.
Employment Tribunal (ET)	An independent judicial body established to resolve disputes between employers and employees over employment rights. The tribunal will hear claims about employment matters such as unfair dismissal, discrimination, wages and redundancy payments.
ET claim form (ET1)	A document that is completed by a claimant who wishes to proceed to ET. It asks for details about the claim including the background, dates and people involved. In the majority of cases the form can only be completed once the Acas EC certificate has been issued.
Track	Acas classification of cases that broadly reflects the old system of 'three period categories' whereby ET cases were allocated jurisdictional 'tracks': <ul style="list-style-type: none">• 'Fast track' cases involving straightforward questions of fact that can be quickly resolved should the case reach a hearing• 'Standard track' cases involving somewhat more difficult issues and requiring a greater degree of case management• 'Open track' cases involving the most legally complex issues and generally requiring the most amount of resource to resolve
Tribunal fees	In July 2013 ET fees were introduced by the Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013. ET fees were abolished in July 2017 in a Supreme Court ruling.

EXECUTIVE SUMMARY

This report presents evidence from qualitative research exploring the experiences, behaviours and needs of Acas Early Conciliation (EC) users who neither settle at EC, nor proceed to making an Employment Tribunal (ET) application.

The research used 35 in-depth interviews with a broad range of claimants (employees) to develop greater insights into the motivations of this group and gather evidence to help Acas improve the delivery of the EC service. Fieldwork took place before the abolition of ET Fees in July 2017.

The notification stage

Claimants' disputes were wide-ranging. Simpler cases tended to be focused around non-payment of wages and changes in terms and conditions, such as holidays and working hours. More complex cases included unfair and constructive dismissal, unequal pay, victimisation, harassment and discrimination.

Claimants generally tried to resolve their disputes internally with employers before notifying Acas, through informal discussions or more formal grievances or appeals processes. Common reasons for why both approaches were unsuccessful included: claimants being ignored by employers; employers taking no action and an inability to reach a satisfactory agreement.

A number of factors triggered claimants' EC notifications:

- Perceived poor handling of the dispute by the employer
- Nearing the deadline to make an ET claim
- Recommendations from family, friends, lawyers or trade unions
- Losing access to lawyers or trade unions
- A sense of injustice stemming from unfair treatment by employers.

Despite the fact that claimants went through with notifying Acas, a number of concerns were reported at this stage. They include: antagonising employers by escalating the issue; concerns about tribunal costs; damage to future employment prospects, and; doubts over the strength of their case.

The conciliation stage

Claimants' main motivation to engage with EC was to achieve a settlement. Their failure to do this caused disappointment and this was compounded among those who did not think conciliation was carried out effectively. In some cases this left claimants feeling demotivated by their experience and affected subsequent decision-making around ET claims.

Claimants who did not engage in EC either wanted a private resolution or wanted to proceed straight to ET. In some cases conciliators, solicitors or trade union representatives had advised against engaging with EC without having exhausted internal processes, such as appeals and grievance procedures, or due to concerns that it might undermine negotiations about private resolutions.

A lack of employer engagement could cause claimants concern about the likely success of settling their dispute at ET. However there were also examples of it spurring claimants on to continue to ET.

Employment Tribunal decision-making

Decisions about making ET claims were often multi-faceted and inter-related. Key factors that informed decisions not to proceed to ET included:

- **Financial factors.** While ET fees have now been abolished, tribunal fees and wider legal costs, played a strong role in decision-making.
- **Lack of confidence in a positive outcome.** The perceived power of employers or lack of faith in justice undermined confidence. Lacking evidence or being discouraged by lawyers, unions and conciliators had a similar effect.
- **Emotional state.** The anticipated mental and emotional impact of tribunals and claimants' current state discouraged ET applications.

When multiple barriers combined they intensified the impact of others on claimants' decisions. For instance, if a claimant thought they were less likely to win, they were more concerned about financial risks and emotional impacts.

Other reasons for not applying to ET included a perceived lack of support from Acas, lawyers or trade unions; negative career impacts; running out of time to make a claim; and concerns over time and hassle of the process. In addition, some claimants reached a private resolution with their employers.

Desired outcomes and how they evolved over time

Claimants' desired outcomes and intentions towards making ET claims either stayed the same or evolved as they progressed through their dispute resolution journeys.

Most widespread across the sample was the desire to settle and avoid ET due to a range of financial and other concerns about ETs. A second group however wanted to go all the way to ET to gain justice, at least initially.

While some claimants had already decided against making an ET claim at the point of notification (due to fees, hassle etc.) and did not change their minds, others were against it at the outset but later became open to making a claim and subsequently changed their minds again.

Those who were more open-minded at the beginning experienced barriers during the EC stage or subsequently. The timing of these decisions was affected by when they received important details (such as information about the cost of the tribunal fees), and the interaction between different barriers.

Overall, claimants felt varying degrees of satisfaction with the outcome of their decision. Levels of satisfaction were based on what their intended outcome had been and whether their decision was driven by positive alternatives to ET or negative consequences of ET.

Reflections on the service provided by Acas

Feedback about initial contact with Acas following notification was generally positive. Staff were described as polite, sympathetic, reassuring, encouraging and informative. Positive experiences of conciliation were characterised by effective communication, information provision and clarity about the conciliators' role.

Related to this, claimants' understanding and expectations of Acas' role and remit affected their experiences of the service and in some cases went on to influence ET decisions. Negative experiences were shaped by the (mis)perception that Acas had more clout with employers and would act on their behalf.

Suggestions on the way the EC service could be improved include:

- Clearer and timelier information, presented visually, about the EC process, highlighting important points such as timescales
- Better management of claimant expectations of the service, by emphasising the impartiality of conciliators and the limits of Acas' power or authority
- Greater communication from conciliators about EC negotiations to keep claimants informed of progress
- More information about the options available if conciliation failed and proactive contact from the conciliator after the Certificate was issued.

1 INTRODUCTION

This report presents evidence from research exploring the experiences, behaviours and needs of a subset of Acas Early Conciliation (EC) users: claimants (employees) who neither settle at EC, nor proceed to making an Employment Tribunal (ET) application.

1.1 Policy background

Acas provides information and advice to employers and employees on workplace relations and employment law. One service provided by Acas is EC, which was introduced in April 2014. The EC process attempts to resolve workplace disputes prior to them being escalated to ET in order to save all parties time and money.

Of the employees who initiate EC, a substantial proportion (65 per cent of all claims from April 2015 – March 2016) neither achieve a settlement through EC nor go on to submit an ET claim despite fulfilling the requisite requirements.

A survey conducted as part of the 2015 EC evaluation¹ offers some insights into the barriers faced by this group. Of the reported obstacles to making an ET claim, tribunal fees were found to be the most prevalent (26 per cent). Other factors include the issue being resolved in another way; a lack of confidence in the success of the case; it being too stressful to continue; running out of time and thinking the case would be thrown out at tribunal.

Little more is known about the motivations of this group and the reasons underpinning their decisions not to make an ET claim. With limited in-depth information on this issue, Acas commissioned this research to expand the existing evidence base and allow for greater insight into this group of claimants. Evidence from this research will also help Acas improve the delivery of the conciliation service.

1.1.1 ET fees

It should be noted that the context of wider changes to how workplace disputes are dealt with has changed significantly since this research was commissioned. Most importantly, the ET fees regime introduced in July 2013 (less than a year before the introduction of EC) – which pre-empted a 70 per cent drop in ET claims – was abolished in July 2017. This Supreme Court ruling was made on the basis of concerns that fees restrict rights of access to justice through the tribunal system².

The findings of this research, which took place before this ruling, should be considered with this development in mind. This report offers rich insights into the wide range of barriers people experience in making ET claims, and highlights the importance of ET fees as a barrier under the fees regime. However ET fees will have less relevance for individuals intending to pursue a tribunal claim in future.

¹ Downer, M. et al (2015) Evaluation of Acas Early Conciliation 2015. London: Acas.

² Asb law. 2017. Employment tribunal fees abolished. Available at: <http://www.asb-law.com/what-we-say/articles/articles/articles-2017/employment-tribunal-fees-abolished#.WYSAJ02ovmQ>

1.2 Overview of the EC and ET1 process

If an individual intends to make a tribunal application, they are in most cases required to first notify Acas (so an offer can be made to attempt to resolve the dispute by means of its EC service). The notification can be made through an online form on Acas' website (www.acas.org.uk/earlyconciliation) or by hard copy or telephone if claimants have accessibility needs. The online form asks for the name and basic contact details of the claimant and the employer they are lodging a claim against.

After notification, Acas makes phone or email contact with claimants to verify the information provided, learn more about the claim and explain EC. If the claimant wants to participate in EC the conciliator will approach the employer. If the employer does not wish to participate, or if Acas cannot make contact with the employer (or employee), the EC certificate is issued.

While notifying Acas is a mandatory requirement, conciliation is voluntary for both employees and employers, who can each stop whenever they wish. Conciliation is free of charge for both sides and is usually carried out over a series of telephone calls between the conciliator and each party.

The service is impartial; conciliators do not represent or advocate for either the employee or the employer. However they do help each party understand the strengths and weaknesses of their case, the perspectives of the other party and explore options for resolving the situation. The conciliator will also provide information about the tribunal process.

During the conciliation period, the time limit for submitting a tribunal claim (3 or 6 months depending on the nature of the claim) is paused for up to a month (extendable by a fortnight by mutual agreement of parties). When the period is over, the limitation period resumes, though conciliation continues to be available. At the end of EC, if an agreement (COT3³) has not been reached, a certificate is issued by Acas which legally permits an ET claim to be made (ET1). Claimants then have at least one month to submit an ET claim.

1.3 Research aims

The research had two key aims, to:

- Develop greater insights into claimants who do not proceed to submit an application for ET after notification through the EC process despite not settling at EC i.e. they neither settle nor proceed
- Gather evidence to help Acas improve the delivery of the EC service.

1.4 Research methodology

An in-depth qualitative approach was used to meet these research aims. A summary of the sampling and recruitment of participants and data collection process are given below. Further details and research tools can be found in Appendix 1.

³ Legally binding contract issued by Acas precluding individual from making an ET claim in this matter

1.4.1 Sampling and recruitment

A sample file of potential participants was provided to the research team by Acas in May 2017. Letters providing details of participation were then sent to 350 people inviting them to participate in the research. The EC notifications of the selected sample had been made between October and December 2016, (before ET fees were abolished). Phone calls were then made by the research team after a two-week opt-out period and a screening exercise was conducted to ascertain eligibility for the research among those willing to participate.

A total of 35 employees were recruited to the sample. The sample was selected purposively⁴. The achieved sample included a mix of claimants in relation to the following primary criteria (see Appendix 1 for further details):

- **Jurisdictional track:** The complexity of the case and the level of resource needed to deal with it including 'fast', 'standard' and 'open' track cases
- **Engagement with EC:** Participation in EC in which EC occurred or did not either because the claimant or employer did not engage
- **Reason for not making an ET claim:** including but limited to chance of success; the issue being resolved; stress; tribunal fees; wider costs; and running out of time
- **Role of Acas:** Whether Acas was factor in the decision not to make and ET claim to varying extents and not at all
- **Whether a private resolution was reached:** without formally settling using Acas and without attributing the resolution to support from Acas.

The sample was also balanced in terms of gender, and included different age groups; income bands; hours; contract types; occupations; employment sectors; and employer sizes. Claimants who were represented during EC by a trade union or other representatives were excluded from the research. The sample did however include union members and members of sector-specific trade bodies or associations, and may have received advice and support through these channels.

1.4.2 Data collection

In-depth interviews were used to map the full range of experiences, reasons and circumstances of claimants in this group. A topic guide, designed in collaboration with Acas, was used to guide interview discussions (see Appendix 2). The themes covered included:

- Background of participant including details of the workplace dispute
- Dispute resolution journey –the different steps taken and participants' mind-set about EC and their ET claim
- Decisions around why an ET claim was not taken forward
- Suggestions for improving or developing the EC process.

Interviews took place in June and July 2017 and lasted between 29 and 64 minutes. They were conducted by telephone at times convenient to participants. With permission, interviews were audio recorded and transcribed verbatim. Each participant received a £30 cheque to thank them for their time and contribution.

⁴ Purposive sampling is a non-probability sampling method that involves a conscious selection of people to include in the sample who exhibit the characteristics of the social process or phenomenon under study

1.5 Interpreting the findings

Verbatim quotations and case illustrations are used to illuminate findings. They are labelled to indicate jurisdictional track, EC engagement, main reason for not making an ET claim and a unique serial number. Further information is not given in order to protect the anonymity of research participants. Quotes and case studies are drawn from across the sample. Quotes from 27 individuals were used.

The report avoids giving numerical findings, since qualitative research cannot support numerical analysis. This is because purposive sampling seeks to achieve range and diversity among sample members rather than to build a statistically representative sample, and because the questioning methods used are designed to explore issues in depth within individual contexts rather than to generate data that can be analysed numerically. What qualitative research does do is to provide in-depth insight into the range of experiences, views and recommendations. Wider inference can be drawn on these bases rather than on the basis of prevalence.

1.6 Structure of the report

The findings of the research are reported in the next four chapters.

- Chapter 2 looks at the circumstances which led claimants to submit their EC notifications. It also explains how claimants learnt about notifying Acas and their intentions around making an ET claim at this initial stage.
- Chapter 3 explores claimants' experiences of EC and its effects on their mind-sets about making an ET claim. It outlines their experiences of initial discussions with Acas and their understanding of conciliation at this stage.
- Chapter 4 focuses on claimants' reasons for not making an ET claim. It considers the timing of decisions and the factors influencing them. It also discusses the outcomes claimants experienced as a result of not taking their case forward.
- Chapter 5 examines claimants' views on what worked well and less well about each stage of the EC service offered by Acas and their suggestions for improving the service.

The final chapter of the report; Chapter 6, draws conclusions from the findings of the research and summarises recommendations for improving the EC service.

Technical details, research materials and references are provided in the appendices.

2 EARLY CONCILIATION NOTIFICATION

Unless an exemption applies, claimants are legally required to make an Early Conciliation (EC) notification to Acas in order to make an Employment Tribunal (ET) claim. The notification form is an online document that requests basic details about the claimant and the respondent. It contains a link to information about the EC process, which claimants are expected to read before completing the form.

This chapter discusses the factors and circumstances which led claimants to submit their EC notifications. It describes the nature of their workplace disputes and the steps taken to resolve them before notifying Acas. It then explains how claimants learnt about notifying Acas and what prompted them to do so. Finally the chapter explores claimants' intentions around making an ET claim at this initial stage.

Key findings

- The sample was designed to include a diversity of disputes, ranging in complexity. Simpler cases tended to be focused around non-payment of wages and changes in terms and conditions. More complex cases included unfair and constructive dismissal, unequal pay, harassment and discrimination (section 2.1.1)
- Claimants generally tried to resolve their disputes internally with employers before notifying Acas, through informal discussions or more formalised grievances or appeals processes. These approaches were unsuccessful because complaints were reportedly ignored by employers; employers took no action or it was not possible to reach an agreement (section 2.1.2)
- Claimants had no prior knowledge of EC unless they had previous experience of workplace disputes from a claimant, employer or union perspective, or if they were familiar with employment law. EC notifications therefore did not tend to be planned ahead. Instead claimants notified Acas after coming across the requirement through online research into their rights or signposting from others (section 2.1.3)
- A number (and often a combination) of factors triggered claimants' EC notifications: perceived poor handling of the dispute by the employer; nearing the deadline to make an ET claim; recommendations from family, friends, lawyers or trade unions; losing access to lawyers or trade unions and a sense of injustice stemming from unfair treatment (section 2.1.4)
- Despite the fact that claimants went through with notifying Acas, a number of concerns were reported at this stage. They include antagonising employers by escalating the issue; concerns about tribunal costs; damage to future employment prospects; and doubts over the strength of their case (section 2.1.4)
- Claimants' desired outcomes and intentions towards making an ET claim at the notification stage fell on a broad spectrum. On one end, claimants had decided not to make an ET claim due to finances, stress, hassle and unlikely success of the case. Towards the middle, claimants preferred to settle but were prepared to go to ET if necessary. On the other end, claimants actively wanted to take their employers to ET, at least initially, to gain justice (section 2.2)

2.1 Factors leading to EC notifications

2.1.1 Nature of workplace disputes

Acas classifies cases under one of three jurisdictional 'tracks'. Tracks vary according to the complexity of the case and the level of resource needed to deal with it. The sample for this research included a balance of claimants from the three 'tracks' to ensure coverage of a range of cases. They include:

- **'Fast track'**. Cases that involve relatively straightforward questions of fact that can normally be quickly resolved should the case reach a hearing. This includes non-payment of wages, and changes to terms and conditions such as pay, entitlements or holidays
- **'Standard track'**. Cases that involve more difficult issues and require a greater degree of case management. Issues may include unfair or constructive dismissal cases
- **'Open track'**. Cases that involve the most legally complex issues and generally require the most amount of resource to resolve. Cases may involve harassment and discrimination, for example on the grounds of race, religion, gender and disability.

In line with these definitions, fast track disputes among participating claimants tended to be focused around non-payment of wages, including unpaid overtime and wage cuts, non-payment of other monies owed such as personal funds used to pay for work expenses, and changes in terms and conditions, such as notice periods, holiday entitlements, working hours and flexible working arrangements.

As above, standard and open track cases of participating claimants tended to be more complex. They included unfair dismissal cases where claimants reported having been let go or made redundant without due process. Cases also included constructive dismissal, where claimants described being forced to resign due to unfair recruitment practices or the failure of employers to safeguard them for example, against workplace bullying or by not making reasonable adjustments. Other cases related to allegations of unequal pay, victimisation, harassment and discrimination.

2.1.2 Steps taken to resolve workplace disputes prior to notification

In some cases claimants did not attempt to resolve workplace issues with their employers before notifying Acas or did not see this as an option. These were cases in which claimants had been dismissed and went straight to EC notification on the advice of friends or experts or could not make contact with their employers again after being dismissed.

More commonly across the sample, claimants did try to resolve their disputes with their employers before notifying Acas. Their attempts either took the form of informal discussions or more formalised internal processes such as grievance procedures and appeals processes following dismissal or redundancy. EC notifications were then made as a last resort because attempts to resolve the issue were not successful. Alternatively if claimants were mid-procedure, notifications were often made to ensure they did not miss the deadline to lodge an ET claim. This, and other triggers to notifying Acas are discussed further in section 2.1.4.

Informal discussions took place by email or in person and were either one-off or lasted several months. Claimants described discussions with line managers, senior managers, HR staff and sometimes a combination of these roles. In some smaller and family-run businesses discussions were held directly with claimants' bosses or their family members.

The results of these discussions were wide-ranging but culminated in an EC notification either because claimants felt they were getting nowhere or feared they would not reach a resolution. Claimants described situations in which they failed to reach agreement after protracted conversations with employers or where discussions ended with employers ignoring claimants or simply taking no action.

Employers were also reported to have responded by denying claimants' allegations around for example, withholding wages or dismissing the claimant unfairly. Alternatively employers refused to give claimants what they wanted, such as a written apology, reasonable adjustments or their job back. In other cases, reporting issues to employers was said to have made the situation worse, resulting in dismissal, resignation or a decline in claimants' mental health.

More **formal processes** often started informally with email correspondence and informal meetings and subsequently escalated into written grievances or formalised meetings involving solicitors, employment agencies, and occupational health and trade union representatives. Grievances had either been unsuccessful, or were reported by claimants to be ignored or repeatedly deferred by their employers. In these cases claimants suspected employers to be using delaying tactics to use up the time available to make an ET claim. While Acas typically advises claimants to exhaust internal grievance procedures before submitting an EC notification, in these situations claimants reported having to make an EC notification mid-procedure to seek a swift resolution and avoid missing the deadline to make an ET claim.

Those who had been dismissed or made redundant went through formal appeal processes against these decisions, but were unsuccessful.

2.1.3 Learning about Early Conciliation

Claimants' awareness of Acas prior to submitting an EC notification was mixed. Some claimants had some awareness of Acas and EC; while others knew of Acas but not EC and some were unaware of both. Even those with some awareness of Acas and a basic understanding of EC were not fully informed or up to date about the conciliation process.

Those with **some awareness of Acas and EC** prior to notification had either:

- Dealt with employee issues or a workplace dispute as an employer, for example in senior management or HR, in some cases representing their employer at ET
- Taken an employer to ET in a previous job role
- Been involved in union activity in the workplace
- Studied related topics such as Employment Law and in some cases voluntarily represented others at ET.

These individuals were already aware that they needed to go through Acas to initiate the ET process and learnt more about EC by using the Acas website or calling its helpline.

Claimants who were **aware of Acas but not of EC** had sought information from Acas in relation to employment issues in the past, either on behalf of people they managed at work or themselves. In one case a claimant had used information from the Acas website to produce a formal written grievance.

Like the group above, these claimants already knew that Acas would provide information on employment relations and went on to find out about EC through the Acas website and helpline or had learned about EC through a solicitor, trade union representative or friends and family who had gone through EC themselves.

Individuals with little to **no awareness of Acas or EC** had no previous experience of workplace disputes. These claimants said that they had no understanding of how tribunals worked.

“My friend works for one of these law firms, he explained to me what Acas is and, and that's when I went through that route. I hadn't heard of [Acas], because I've never been in a situation like this before, so I wouldn't have had a clue about Acas”

(ID34, Open track, No respondent engagement, Other)

These claimants had visited the Acas website or called its helpline following an online search into ETs or employment law relating to their dispute, or on the advice of one or more of the following information sources:

- Friends and family
- Employment lawyers
- Trade unions
- Citizens Advice
- Jobcentre Plus.

2.1.4 Motivations for submitting an EC notification

Decisions to make EC notifications did not tend to be planned ahead unless claimants were already aware of Acas and familiar with the EC process from prior experience. This was the case among claimants who had been involved in union activity, worked in HR or management or who had spoken to Acas about their dispute before via the helpline.

More commonly across the sample, claimants had little prior knowledge of Acas or EC. They first heard about Acas or the need to notify Acas when seeking information on employment law and rights through support networks, legal advisers, union representatives or online resources (including the Acas website). Alternatively they were signposted to the EC notification process when contacting the Acas helpline for advice on what to do about their dispute.

There were a number of triggers to claimants making EC notifications. The way in which employers were perceived to have handled disputes was a key driver behind notifying Acas. This included moving claimants between departments over prolonged periods, ignoring complaints, not taking them seriously or rejecting claimants' demands, e.g. refusing to grant fairer pay awards and to reinstate jobs

after unfair dismissal or redundancy. In these cases claimants had notified Acas to prompt employers into action or to take their complaints seriously.

A subset of these claimants was prompted to notify Acas by ET deadlines (see case illustration). These claimants were approaching the end of the three month time window to initiate a tribunal claim having awaited a response from their employers. In some cases claimants suspected that their employers were delaying a response on a tactical basis, to cause claimants to run out of time.

While these claims showed good awareness of the time limits for lodging an ET claim, awareness of deadlines at the notification stage was generally mixed. Even those who were aware that there were time limits involved in the EC and ET process were often unclear of exactly what the time limits were, and whether they applied to EC notification, the EC process, or applying for the ET.

Case illustration 2.1: EC notification prompted by ET deadlines (ID31, Fast Track, No respondent engagement, Tribunal fees were off-putting)

An employee of a family-run business had raised a dispute over withheld pay after testifying against his employer in a court case. He worked without a contract and was paid cash in hand. His employers denied he was owed any money and would not pay his wages. Once the legal case was complete and he had still not been paid he was advised to contact Acas by a family member. He was also aware of coming up to the end of the three month period in which he could apply for EC. He was concerned about issuing the notification in case the ET fees and wider costs exceeded the relatively small sum of his unpaid wages.

EC notifications were also triggered by the recommendation of friends, family, legal advisors and trade unions, often after claimants became frustrated with their employers' response.

"It was through my brother who employs people who said, 'Do it through Acas.' And that's the only reason I went down that route was a recommendation from my brother. Purely because he said, 'What have you got to lose? Acas will act independently.' And that was why I went with Acas, thinking that they would act as an independent intermediary."

(ID35, Open Track, No respondent engagement, Lack of support from Acas)

There were also examples of claimants who used Acas as a way to achieve a resolution instead of lawyers or trade unions because they could not afford legal support or because they had been turned down by trade unions on the basis that they were unlikely to win. Here, Acas offered a less costly and more amicable alternative.

Finally a sense of injustice drove claimants to issue their EC notifications. Claimants were angered by the behaviour of their employers and were determined to take a stand, particularly if they were also dissatisfied with their employer's response to the situation, as described above.

2.1.5 Barriers to submitting an EC notification

Though all of the claimants interviewed went through with the notification, four main barriers or concerns were reported at this stage:

- **Wanting to avoid the issue escalating**, to avoid bad feeling or to avoid confrontation, particularly if claimants were still working with their employer. In these cases claimants described feeling forced to notify Acas because their employers were unwilling to resolve the dispute informally
- **Costs**, concerns were raised about ET fees, legal costs and non-financial costs such as the stress and hassle of going through a tribunals process. This concern was exacerbated by other financial pressures such as being unemployed and needing to provide for children. While ET fees were a worry for some, awareness of fees was not widespread at this stage. Those with awareness of fees had been involved in tribunals previously; had received legal advice, or had researched the process before notifying Acas
- **Future employment prospects**, claimants worried about their career prospects as they would waive their right to a reference having gone through a tribunal. They were also concerned about the stereotyping of people who take their employers to tribunal as 'troublemakers' and thought this could risk future employment opportunities
- **Doubts over strengths of the case**, claimants who lacked confidence in the strength of their case stated this as a barrier to their EC notification. This stemmed from the assumption that they could not fight a powerful and wealthy organisation, due to having limited evidence to support their case or because they had been informed that their employer had acted within the law.

2.2 Desired outcomes at the notification stage

Claimants' desired outcomes and intentions towards making an ET claim at the notification stage are grouped into four categories below ranging from those who had already ruled out an ET claim to those who actively intended to go to ET (at this stage).

It should be noted that there were no discernible patterns in the characteristics of claimants falling into each category; each included claimants with different tracks and reasons for ultimately not making an ET claim. Claimants in the first three groups included a mix of those who were still employed at the time of their dispute, and those who were not; having been dismissed, made redundant or resigned. The final group however consisted of people with unfair dismissal cases or people who had experienced discrimination.

2.2.1 Decided against ET

There were four main reasons why this group of claimants ruled out going to ET at the notification stage, even if they did not achieve the desired settlement through conciliation.

The first was **expecting to be unsuccessful at ET**. These claimants were uncertain about the strength of their case, due for example to being self-employed or because they lacked certainty about their own interpretation of the legalities surrounding their case.

The **hassle** involved in ETs was a second reason for ruling out an ET at this stage. Tribunals were seen as lengthy processes involving a lot of time and effort.

"Nobody wants to go to a tribunal and, and go through all that process. It's, you know it's a lot of work and, you know so you know, I would have preferred to have reached some kind of settlement in some way or another with my employer."

(ID29, Open Track, No respondent engagement, Tribunal fees were off-putting)

As mentioned, while awareness of fees was not widespread, **financial factors** were a third reason for deciding to avoid ET at the notification stage. Some claimants said they simply couldn't afford to pay the ET fees despite wanting to go to ET. Others considered the trade-off between tribunal costs and the small financial gains of their case.

"I'd have to pay the - like the court fees and things like this and it's kind of it was almost more hassle than it was worth because it was over quite a small amount of money."

(ID31, Fast Track, No respondent engagement, Tribunal fees were off-putting)

Finally, some participants had decided against going to ET due to the anticipated **stress** of going through a tribunal.

2.2.2 Strong preference for a settlement

A second group of claimants wanted to settle and avoid a tribunal but had not completely ruled an ET out if they did not achieve a settlement. In these cases ETs were a last resort due to concerns about the legal fees and the stress, particularly amongst those who had existing concerns about their health.

"At the time I was really, really hoping that that wouldn't be the case because I know, I know and I was also advised by the Acas person that it's extremely stressful process and it really is a last resort kind of thing. So I'd always hoped that we'd manage to sort it out without getting to that situation."

(ID7, Open Track, EC occurred no settlement, Tribunal fees were off-putting)

2.2.3 Open-minded about ET if settlement not reached

A third group of claimants were more open-minded. They preferred to settle due to concerns about not getting a reference, losing their job, negative impacts on their health or due to doubts over the strength of their case. These claimants were nonetheless willing – *at this initial stage* – to go all the way to a tribunal if they did not reach a satisfactory resolution during the EC stage.

"I was hoping that they would agree, my employers would agree to sit round the table with me and agree some sort of compromise. [...] emotionally I have to say, I was really, really shocked and very, very upset, erm, a lot more than I ever thought I would be, so if they, if they hadn't of reached an agreement or, or if they - if I hadn't of got the currently - pulled that financial situation, I absolutely would have gone to tribunal. I would have followed it through, I think."

(ID33, Standard track, No respondent engagement, Consequences for future employment)

2.2.4 Set on going to ET

A final group of claimants actively wanted to take their employers to tribunal, at this point. These claimants described being prepared to do whatever it took to get justice.

"And usually I wouldn't do anything, I'd just leave it like that, but I thought I can't let anyone get away with that type of thing."
(ID34, Open track, No respondent engagement, Other)

Interestingly, this group consisted of people with cases of unfair dismissal and discrimination who were spurred on by being wronged by their employer. Some of these claimants appeared to be motivated by anger and lacked any awareness of what an employment tribunal was and what it would involve.

The circumstances that led these individuals to ultimately decide not to proceed to submit ET applications – despite their stated desire to do so at the point of notification – are considered in the chapters that follow, as well as those for claimants with more speculative intentions at the notification stage towards making an ET claim.

3 EARLY CONCILIATION

Once a claimant submits an Early Conciliation (EC) notification they are contacted by an Early Conciliation Support Officer (ECSO), who gathers more detail on the claim, explains the EC process and then passes the case onto a conciliator. EC involves a conciliator discussing the issue with both the claimant and respondent (the employer) – or both parties' respective representatives – with a view to reaching a settlement. Although the EC notification is mandatory, the EC service itself is a voluntary process and claimants can decide not to engage. Employers are only asked to participate if the claimant agrees and can themselves decline⁵.

This chapter explores claimants' experiences of EC and its effects on their mind-sets and decisions about making an Employment Tribunal (ET) claim. It first outlines experiences and views of first contact by Acas after an EC notification had been submitted. It then goes on to describe claimants' understanding of conciliation at this stage. Finally, the chapter sets out the variety of conciliation experiences, and how they compare with initial perceptions of the process.

Key findings:

- Positive experiences of initial contact from Acas were characterised by detailed discussion of the dispute, clear and comprehensive information about EC and advice on how to proceed with conciliation (section 3.1.1)
- A partial or misunderstanding of EC, particularly around the power and impartiality of the conciliator raised claimants' expectations of EC. In some cases this later contributed to claimants' decisions not to proceed to ET (section 3.1.3)
- Claimants' main motivations around engaging with EC at this stage were to achieve a settlement. While some were open to taking the case to tribunal if conciliation failed, others preferred to avoid ET due to financial costs and impacts on their health and wellbeing (section 3.2.2)
- Where EC occurred without a settlement claimants were disappointed that their dispute was not resolved and this feeling was compounded amongst those who did not think conciliation was carried out effectively. In some cases this left claimants feeling demotivated by their experience and affected decision-making around ET claims (section 1.2.5)
- Claimants who did not engage in EC either wanted a private resolution or wanted to proceed straight to ET. There were examples where conciliators, solicitors or trade union representatives advised against engaging with EC due to concerns that engaging in it might undermine internal grievance procedures or negotiations about private settlements (section 3.3.2)
- A lack of employer engagement in EC influenced claimants' mind-sets. It either caused claimants' positive outlook to become negative or reinforced claimants' negative views about the likely success of settling their dispute at EC and ET. There were also examples where it spurred claimants on to continue to ET (section 3.4.2).

⁵ The research sample encompasses a balance of the three types of EC engagement; where EC occurred, where claimants declined and where respondents declined. In each case, interviews were undertaken with unrepresented claimants only.

3.1 Experiences of first contact with Acas after notification

3.1.1 Views of first contact

Claimants were first contacted shortly after notification by ECSOs via email or phone in order for basic details to be collected about the dispute and explain the process of EC. Conciliators followed this initial contact up either by another phone call or an email seeking to arrange a call. Claimants were not always able to distinguish which of these two groups they were talking to when discussing their experiences of EC.

Not all claimants were able to recall what was discussed during their first contact with the conciliator. Where recall was poor, this was because claimants were having multiple conversations about their case with solicitors or their trade union at the time and found it difficult to differentiate.

While the content of these initial discussions varied somewhat across the sample, they generally consisted of an overview of the conciliation process; further details of the dispute; discussion of the desired outcome; and next steps i.e. whether claimants wanted to engage in EC.

Among claimants who could recall their initial conversation with the ECSO or conciliator this first contact shaped their views and experiences of EC, as well as their decision-making throughout the conciliation process.

Positive initial contact with their conciliator left claimants feeling optimistic that they would achieve their desired outcome. For those who decided against engaging with EC, a positive initial conversation enabled them to make an informed decision about their next steps. Positive experiences of initial contact with the conciliator were underpinned by the ability to:

- Discuss their case in detail
- Receive a comprehensive overview of the conciliation process i.e. role of the conciliator; fees; timeframes
- Receive advice on how to proceed with conciliation.

In contrast, negative initial experiences left claimants feeling that conciliation may not be successful. In these circumstances claimants were less prepared for conciliation because they were unsure what to expect and what the parameters of the process were. Negative experiences were underpinned by:

- Being asked for limited information about their case
- Lack of information about the process (e.g. timeframe for submitting their ET1 form) and role of Acas (i.e. that they played an impartial role)
- A lack of clarity about the conciliation process, for example a claimant explained that the conciliator used too much jargon.

3.1.2 Understanding of EC at this point

Claimants' understanding of the EC process appeared to be informed both by the explanation from the conciliator and by claimants' own interpretation of the information they were given, for example the meaning of 'impartial'.

There were three key points on which claimants' understanding of conciliation at this point was particularly unclear. Firstly, claimants believed the conciliator

would either play a mediation role or that even though they were 'impartial' they were still in favour of the claimant. Second, there was mixed awareness of the timeframe for presenting an ET claim, with some claimants being completely unaware of both the month's limitation period and the fact that conciliation remains available until a tribunal has determined the matter(s), irrespective of the limitation period. Finally some claimants were unaware that EC was voluntary, having confused it with the mandatory notification.

Partial understanding or misinterpretation of the conciliation process, particularly around the role of the conciliator and timeframes could have a negative effect on claimant's views and experiences of EC and influenced their decision-making about making an ET claim. This is discussed in more detail below.

3.2 Experiences of those who took up EC

3.2.1 Decision-making around participating in conciliation

The key reasons why claimants decided to engage in conciliation were the belief that Acas' involvement would encourage employers to take the case seriously; the perception that conciliation offers a more amicable way of reaching a resolution than an ET; and the misconception that EC was a mandatory process, as described above.

Claimants thought that using Acas as an intermediary would encourage employers to take the case seriously and improve their chances of reaching a settlement. For example, a claimant tried to resolve their case internally, but said their employer did not engage fully with their complaint. After 12 weeks of waiting they decided to submit an EC notification because they thought their employer would be more likely to respond.

It was particularly important for claimants who were still working for the employer with whom they had experienced the dispute to use a more amicable way of reaching a resolution than ET. In these situations claimants did not want to create tension in the workplace and wanted to resolve the issue quickly without going to ET.

3.2.2 Desired outcome at EC stage

Claimants who engaged in EC generally wanted to settle with their employer before proceeding to ET. The type of settlement claimants wanted fell into one of three categories:

- **Financial compensation:** These settlements related either to a claimant's loss of earnings or seeking reimbursement for personal funds used when in the role. Claimants in this category were no longer working for the employer they had raised the dispute with
- **Reinstatement of terms and conditions:** claimants raised their dispute because of changes to the terms and conditions of their role (e.g. a decrease in holidays or a cut in pay or working hours)
- **Addressing discrimination or harassment:** claimants with discrimination or harassment cases wanted employees who had been responsible for the discrimination or harassment reprimanded. These claimants were still working for the employer.

Claimants were divided on their openness to take their dispute to ET at this stage. One group of claimants intended to continue to ET if conciliation was unsuccessful. This was the strategy of a range of claimants in different circumstances, including those who were still working for their employer and those who were not.

Others had no desire to go to ET and were hopeful that conciliation would resolve the dispute. The emotional state of claimants and their expectations of the additional stress an ET would cause was a major influence on this.

"I was hoping that it would have ended before it got to that stage. At the time, I, I wasn't in a position to be able to go through a tribunal. I just didn't think I would, I would have personally been able to do something like that."

(ID5, Open track, EC occurred, It was too stressful to continue)

The costs of ET fees were a further reason for wanting to avoid an ET claim and why settling through conciliation was preferred. Decision-making around making an ET claim is discussed further in Chapter 4.

3.2.3 Experiences of EC

EC took place via phone and email. The extent of communication and negotiation between the parties varied on a case-by-case basis, but ultimately resulted in the conciliator issuing an EC Certificate to the claimant because the case was not settled by Acas (i.e. by means of a COT3 agreement), thus allowing them to proceed to making an ET claim.

While claimants were not always aware of the number of conversations that the conciliator and employer had or what had been discussed their feedback indicates that the time taken to conciliate varied greatly. One case for instance, involved numerous conversations and lasted two weeks, while another lasted 12 minutes and involved one conversation. The time taken to conciliate was presumed by claimants to depend on employers' willingness to engage in negotiations and conciliators' persistence in communicating with employers.

Experiences of EC were wide-ranging and included both positive and negative accounts, which are discussed further in Chapter 5. It should be noted that participants for this research were chosen because they had not resolved their issue through EC, and had not gone on to make an ET claim. The research did not include those who *had* resolved their issue through EC, or who went on to make an ET claim. As experiences of the service can be shaped by satisfaction with outcomes this research does not necessarily present a rounded view of claimant satisfaction with the Acas EC service.

Dissatisfaction with conciliation played a role in ET claim decisions but was not always the dominant factor. The following issues were particularly influential in shaping experiences:

- **Communication:** Claimants were satisfied with conciliation when they were kept informed of progress by their conciliator and were less satisfied when the conciliator took long periods of time to respond to queries and did not provide progress updates

- **Pace and effort:** Claimants felt dissatisfied with conciliation when they felt rushed through the process or because they assumed (not being privy to these conversations) that conciliators were not putting enough effort into their case or discussing issues with their employer in detail. This presumed lack of effort was connected to the amount of time claimants believed their conciliator spent engaging with their employer, or the impression that the claimant was left to negotiate with their employer themselves
- **Knowledge and advice provision:** Claimants valued conciliators' knowledge of employment law and advice on the likelihood of reaching the desired settlement. At the same time, they were discouraged when conciliators did not advise about the strength of their case and about making an ET claim. It is worth noting that offering this kind of advice is outside the remit of the conciliator. Conciliators cannot take a view on the merits of a case or advise whether an ET claim should be made
- **Acas' power or authority:** A common view among claimants who had both positive and negative experiences of conciliation was that Acas had limited power and ultimately it would have been difficult to achieve a settlement without stronger support
- **Role of the conciliator:** A widespread misconception was that the conciliator would favour the employee, even among claimants who were aware that Acas provided an impartial service. This implies confusion over the meaning of the term 'impartial.' Due to this misconception claimants were dissatisfied with a perceived lack of support or advocacy from conciliators.

3.2.4 Reasons for not settling via Acas

Claimants did not settle via Acas during conciliation due to one of the following reasons:

- Both parties were unable to agree on a resolution
- The employer refuted the claimants allegations and so would not meaningfully participate
- The conciliator closed the case
- A private settlement or resolution was reached
- The conciliation period ended.

Where a resolution was not reached claimants were frustrated that their initial positive expectation that EC would resolve their dispute had not been met. In these situations claimants were disappointed with their employers' attitudes or felt frustrated with conciliators because they lacked the power to compel their employer to settle or felt they could have made more effort to help them reach their desired outcome.

3.2.5 Influences on mind-set and decision making

As outlined above, claimants who began conciliation with a positive outlook were disappointed that their dispute was not resolved. Negative experiences of conciliation (e.g. perceived lack of effort by the conciliator and a misconception that the conciliator would provide support to claimants) caused frustration and compounded their disappointment. Claimants were also disappointed by their employer's response to the situation where they had been uncooperative.

At this stage there was an identifiable cohort of claimants who felt demotivated by their EC experience. In these circumstances, while this was not always the

main reason that caused these claimants not to proceed to ET, it was often a contributing factor. The reasons claimants did not make an ET claim are discussed fully in the next chapter.

3.3 Experiences of those who did not take up EC ('no claimant engagement')

3.3.1 Factors considered during decision-making

'No claimant engagement' occurred if Acas could not establish contact with claimants or if claimants declined the offer of conciliation. There were three interrelating factors that influenced claimants' decisions not to engage with conciliation.

Concern about undermining internal discussions or relationships with employers

Claimants in this situation had submitted their EC notification at the same time as trying to reach a private resolution or settlement with their employers or whilst awaiting the outcome of an internal grievance procedure. In these cases, claimants had notified Acas to keep the option of ET open if internal negotiations were unsuccessful; thus serving as a contingency plan if a resolution was not reached. These claimants believed, or were advised by their unions or solicitors, that engaging in conciliation may antagonise their employer by alerting them of their intention to take them to ET if necessary or disrupt the discussions that were being had privately.

"Well, let's leave it for a couple of weeks because we don't want to antagonise a situation which might get better, and then and certainly seemed no point in contacting the [employer]. And then within that two weeks, I received a call to say 'Are you willing to settle?'"

(ID15, Open track, No claimant engagement, Issue Resolved)

Being advised against engaging with EC

Claimants' decisions not to engage in EC were influenced directly by advice received from Acas, their solicitor or a trade union representative. The reason this advice was given varied. In some cases it was based on exhausting less formal approaches first or through ongoing internal procedures. In other cases it was due to the belief that the claimant did not have a strong enough case.

"I was kind of told that because we were self-employed that we'd probably lose... I didn't want to spend a load of my time and energy on something that we were probably going to lose."

(ID11, Standard track, No claimant engagement, Did not think would win case)

Using EC as a means to ET

There was a case where a claimant explicitly stated that they had no intention of engaging with conciliation and wanted to take their case to ET. The claimant had been to ET before and the case was dismissed on the grounds of limited evidence. In this case the claimant wanted as much time as possible before the ET to gather evidence about their case, and felt conciliation may detract from the time available to build a case.

3.3.2 *Mind-set and desired outcome at this stage*

Claimants who did not engage with conciliation either wanted to settle privately rather than take their case to ET, and in some cases were making progress with this, or wanted to go straight to ET.

Where a settlement was desired, in some cases Acas was notified about the dispute as an insurance policy in case a private resolution was unsuccessful. In other cases claimants had initially intended to engage in EC but were subsequently advised by the conciliator, a solicitor or trade union that they would not be successful with their case, or that involving Acas may undermine internal discussions as part of grievance procedures, or negotiations to reach private settlements.

3.4 Experiences of those whose employers did not engage with EC ('no respondent engagement')

3.4.1 *Reasons / assumptions about respondent non-engagement*

'No respondent engagement' occurred if Acas could not establish contact with the employer, or if the employer was unwilling to or could not take part in EC. Claimants were not always aware of why their employers had declined to engage with EC and some did not feel able to speculate. Those who did, made the following assumptions:

- They did not want to acknowledge or be held to account about issues in the organisation, for example bullying or harassment
- They did not think the claimant would take the case to ET, in part due to fees
- They were deliberately trying to prevent the claimant from going to ET e.g. delaying agreement to engage to cause the ET claim deadline to be missed
- They may have been working towards resolving the issue internally and did not want to engage with conciliation until this had finished. For example, an employer was thought to be undertaking a salary review in response to a grievance about unfair pay.

3.4.2 *Influences on mind-set and decision making*

There were three ways in which a lack of employer engagement influenced claimants' decision-making about their case and whether or not to proceed to ET:

- **Positive to negative outlook:** A lack of employer engagement demotivated claimants and contributed to their negative mind-set about the likelihood of being successful at ET. Claimants expressed frustration that EC was voluntary and that employers could not be mandated to engage in conciliation. They were also frustrated that there was a lack of advice and support from the conciliator, which made it difficult to make a judgement call about whether or not to proceed to ET. Both frustrations fed into claimants' decision-making around proceeding to ET. Among this group were claimants from across the fast, standard and open tracks. From the outset the primary motivation for notifying Acas was to reach a settlement before it reached ET
- **Maintained positive outlook:** Where claimants expected their employer to decline the invitation to engage in EC, the lack of employer engagement spurred them on to pursue their case and take it to ET. For example, a claimant who worked for a small employer who had been known for being

difficult to engage in employment disputes previously assumed their employer would not engage in conciliation, but wanted to test their employer with the option of conciliation

- **Maintained a negative outlook:** There were also instances where claimants' negative mind-sets stayed the same. Claimants in this situation had hoped for a settlement, but thought it unlikely because they had assumed that their employer would not engage. Claimants in this situation were nonetheless frustrated by a perceived lack of effort from the conciliator to engage their employer.

While a lack of employer engagement appeared to influence claimants' decisions not to proceed to making an ET claim in some way, the findings suggest that it was not the key reason. Similarly, a cohort of claimants who did engage with EC felt demotivated by their EC experience but this was a contributing rather than driving factor. The reasons that led to claimants not making an ET claim will be discussed in the next chapter.

4 EMPLOYMENT TRIBUNAL CLAIM DECISION-MAKING

After the Early Conciliation (EC) stage, if an Acas-brokered resolution is not reached, Acas will issue an EC Certificate. This Certificate can be used by the claimant to proceed to an Employment Tribunal (ET). To do this claimants must complete the lodgement claim form (an ET1) within the limitation period for their case. This will be at least one calendar month after the issue of the Certificate⁶.

This chapter explores the views and motivations that led claimants not to make an ET claim, despite receiving an EC Certificate. It will consider when decisions are made and what factors play a key role in claimants' decisions. It also discusses the range of influences on decisions not to make an ET claim, and the outcomes claimants experienced as a result of not taking their case forward.

Key findings:

- Decisions about making ET claims were often complex, multi-faceted and evolved as claimants progressed through their EC 'journey' (section 4.1)
- Claimants had a range of intentions towards making a tribunal claim. Some never intended to apply for an ET, while others who did were open to doing so but changed their minds during or after EC (section 4.1)
- While ET fees have now been abolished, financial factors, including tribunal fees, played a strong role in claimants' decision-making (see section 4.2.1).
- Not thinking they would have a positive outcome at ET (section 4.2.2), and the emotional state of claimants (4.2.3) were also prominent factors, particularly when combined with other reasons
- Decisions were also influenced by Acas conciliators, friends and family, trade unions and legal advice (section 4.3.2)
- Claimants felt varying degrees of satisfaction with the outcome of their decision. These were based on what their intended outcome had been and whether their decision was driven by positive alternatives to ET or negative consequences of ET (section 4.4).

4.1 When decisions were made

Decisions about whether or not to proceed to ET were made throughout the EC process. This included before and shortly after notification; during conciliation; after conciliation; and after the deadline to submit an ET1 form.

The timing of decisions was linked to how claimants' intentions toward making an ET claim evolved as they progressed through the EC process.

- One group had already decided against making an ET claim even before notifying Acas and did not change their minds
- Another group did not set out to go to ET, but became open to the idea during the EC process, and subsequently decided against it

⁶ Different limitation periods apply depending on the type of claim, but limitation periods are usually between three and six months from the time of the dispute. During EC the clock is paused on this time limit, and extra time is sometimes added at the end of EC so that all claimants have at least one month to lodge an ET1. However, claimants who were late applying for EC will still be late when applying for the ET, time will not be added so they have one month to apply to ET. Acas (2015) Acas: Conciliation Explained, p.7.

- A further group were prepared to make an ET claim if necessary but were hoping to resolve their dispute in other ways. These claimants either resolved their issue or decided not to proceed during or after the EC stage
- A final group intended to go to ET from the outset but changed their minds either at the EC stage or after the EC stage.

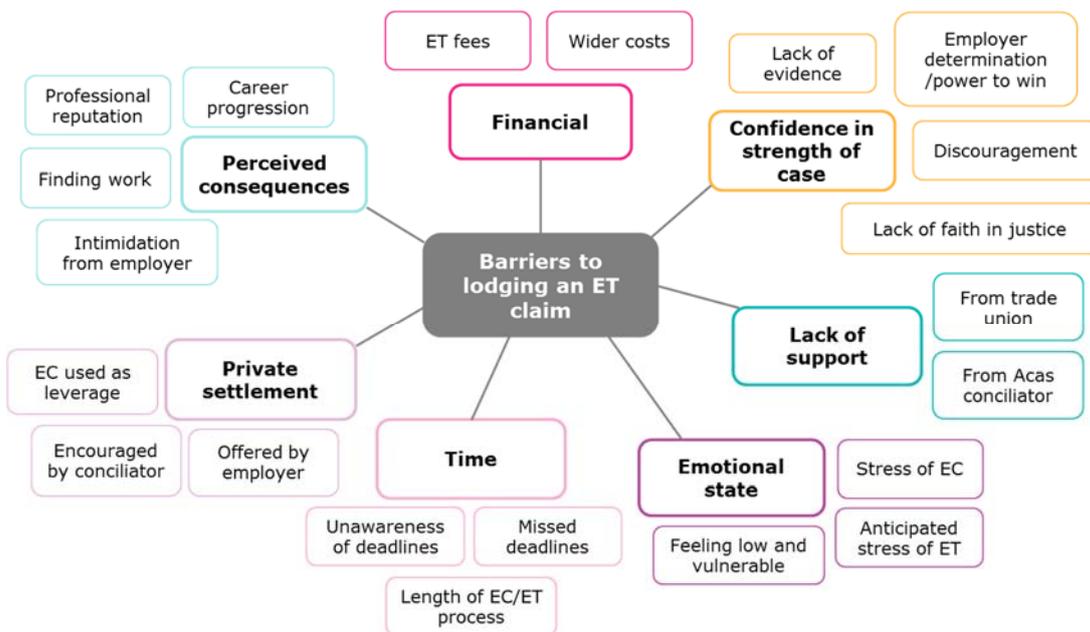
The timing of claimants' decisions was also affected by when they received important details (such as information about the cost of the tribunal fees), and the interaction between different barriers. For instance claimants who knew about fees at the beginning of the EC process only considered them to be prohibitive when combined with a belief that they would not win at ET.

4.2 Key factors that informed decisions

As illustrated in Figure 4.1, a wide range of factors informed claimants' decisions not to progress to making an ET claim, from the cost of tribunal fees, to the emotional state claimants were in at the time of the decision. As mentioned above, these reasons evolved over time and were often complex, multi-faceted and interlinked.

The factors informing decisions are described below in order of how widespread they were across the sample. The most widespread factors are discussed first, and the least widespread, last. This ordering takes into account the main factors behind decisions, as well as secondary and additional factors.

Figure 4.1 Barriers to lodging an ET claim



4.2.1 Financial factors

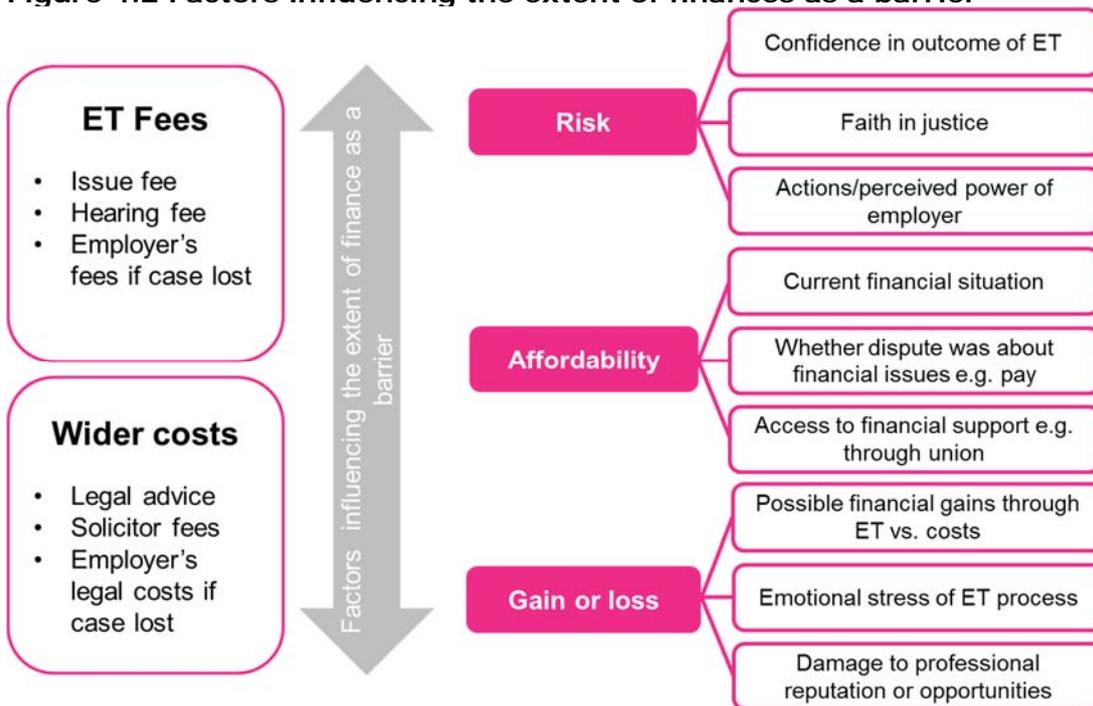
Financial reasons for not proceeding to ET included:

- **Tribunal Fees.** Before they were abolished, tribunal fees included an issue fee when a claimant lodged a claim and a hearing fee. Charges ranged from £160 to £1,200⁷
- **Wider costs.** This includes the costs of legal advice or representation; and the cost of reimbursing employers' ET fees or legal fees if claimants lose at ET.

These financial factors were cited by claimants irrespective of jurisdictional track; whether they engaged in EC; or their demographic characteristics. This finding is consistent with the 2015 Evaluation of Acas EC, which found those who reported that the Tribunal Fees were off-putting did not vary by income or demographic profile⁸.

As discussed below and illustrated in Figure 4.2, perceptions of risk, affordability and gain exerted an influence over the strength of these financial factors as barriers for claimants. Financial barriers were also compounded by non-financial reasons not to proceed to EC.

Figure 4.2 Factors influencing the extent of finances as a barrier



⁷ ET fees were introduced in 2013, and included an 'issue fee' when an ET claim is lodged and a 'hearing fee' for the claimant's first substantive hearing. The fees differed based on the type of case brought forward. Type A claims are expected to be simpler, and therefore cost less. For instance the Issue fee and Hearing Fee for a Type A claim costed £390. Type B claims are generally considered to be more complex. The Issue fee and Hearing fee for a Type B claim costed £1,200. Claimants can apply for a reduction or waiver of fees if they had limited means to pay the fees. Pyper et al (2015) Employment Tribunal Fees. (House of Commons Library, Briefing Paper 7081) pp.7-9.

⁸ Downer et al., (2016) Evaluation of Acas conciliation in Employment Tribunal applications 2016. London: Acas, p.97.

Affordability

The interviews for this research were conducted before the July 2017 Supreme Court judgement which ruled that ET fees must be removed as they prevent access to justice. Therefore claimants in this research were subject to ET fees, and were unaware that the fees would be removed in the near future.

Claimants who felt they could not afford to pay tribunal fees felt unable to make an ET claim, even if they had wanted to. This view was expressed by claimants irrespective of their income group.

"...you're kind of put in a catch-22 situation of there's no resolution here because I've got no money, I can't afford to pay for the court. So you end up having to walk away..."

(ID24, Fast track, No respondent engagement, Issue resolved)

Under the fee system claimants on a low income or in receipt of certain types of benefits could apply for a fee remission to waive or reduce ET fees.⁹ However, awareness of fee remissions was low across the sample. Claimants who discussed the possibility of grants or reductions in ET fees thought they would not be eligible for them or considered the process of applying stressful.

The costs of wider expenses such as lawyers or legal advice were also considered unaffordable, particularly for those who felt tribunal fees were a barrier. Claimants who mentioned the cost of legal advice or representation did not seem to consider going to ET without it.

For some claimants, for instance, those who were not currently in work, or whose dispute was about losing money, the cost of the fees and any wider costs were considered unaffordable given the current situation they were in. These factors made it difficult to justify paying the fees.

"...you're out of a job, you've lost your month's wages for the work that you've just done so essentially you're already a month behind. To then have to put more money out front, I think you've got to be really positive that you've got a very strong case and that you will actually win..."

(ID22, Fast track, No respondent engagement, Tribunal fees were off-putting)

If fees were lower, or did not exist, some claimants suggested they would have been more likely to make an ET claim. This is particularly the case for claimants who thought the amount they might win at ET would outweigh the cost of ET fees or who were experiencing financial pressures.

Risk

Claimants explained that the risk of losing their case at ET increased their concern about tribunal fees and wider costs. If they won their claim at ET it was likely that they would have their fees refunded. However claimants were under the impression (though the source is unclear), that if they lost they may be asked to pay their employer's tribunal fees and legal costs, as well as their own. Financial

⁹ Downer et al., (2016) Evaluation of Acas conciliation in Employment Tribunal applications 2016. London: Acas, p.96.

concerns were therefore intensified when a claimant did not believe they were likely to win at ET.

"If the solicitor had said you've got, you know, more than a 51% chance of winning then potentially I might have taken the risk, but ... I couldn't face having huge, huge fees."

(ID26, Standard track, No respondent engagement, Tribunal fees were off-putting)

Financial gain

Whether a claimant stood to gain financially overall was a key factor in decisions. Claimants were less willing to go to ET if they felt the amount they were likely to be awarded was not enough in comparison to the fees they had to pay, or a potential private settlement.

"...when... the amount you would spend on court fees, well, would probably be equal to the amount you get back in increase in salary, it didn't really seem worth it, especially for all the stress and sort of hassle of having to go through it."

(ID27, Open track, No respondent engagement, Wider costs)

This concern over possible financial gain was intensified when claimants felt their employer might withhold money awarded at ET. Such concern was connected to the behaviour and attitude of claimants' employers, for instance employers who had avoided paying their debts in the past, or clearly stated they would not give the claimant any money.

Claimants who already knew about the fees at the beginning of the process were aware of them due to previous experiences with ETs or their own research. Those who knew about the fees before initiating EC approached the process in one of two ways. One strategy was to achieve a settlement through the EC process, rather than using EC as a route to ET, thus avoiding ET fees. Others decided to go through the EC process in spite of concerns about fees. For this group other barriers experienced during and after the EC process magnified the importance of the fees, and led to them deciding not to make an ET claim. These other barriers included the consequences of taking a claim to ET, and not believing they would have a successful outcome.

Where claimants who ultimately cited fees as a barrier had *not* already known about the fees at the point of starting EC, fees became a significant barrier at the point claimants found out about them. These claimants learnt about the fees through a number of sources including their Acas conciliator, legal advice, friends and family, or their own research.

4.2.2 Lack of confidence in a positive outcome at ET

A lack of confidence in their case was a key factor for claimants, and as mentioned above, intensified the impact of other barriers on claimants' decision making. For instance, if claimants felt they were unlikely to win, they were more concerned about financial risks; and were also less willing to face the impacts on their health and wellbeing, such as stress.

Concerns among claimants about whether their case would be successful developed for a number of reasons:

- **Discouragement:** in the form of unfavourable legal advice, withdrawal of trade union support (see section 4.2.4 Lack of support for more detail); or not feeling sufficiently encouraged by the Acas conciliator
- **Lack of evidence:** believing they did not have sufficient evidence to prove their case, either because no evidence existed, or because they did not have access to it. For instance, they had not had a chance to gather evidence from the dispute whilst still in the workplace
- **The actions or perceived power of their employer:** claimants were concerned that their employer had more resources; knew how to manipulate the system; or was determined to win at ET
- **Faith in justice:** claimants' beliefs about the nature of ETs made them doubt they could win. For instance, assuming tribunals normally sided with employers; or believing the outcome was a gamble on a judge's opinion. This opinion had been formed on the basis of advice from legal advisers that the law is subjective.

Some of these concerns came to light or intensified during the EC stage. For instance claimants could not find the evidence needed to retort the arguments their employer used during conciliation, or felt their employer's determination not to compromise during conciliation meant they were unlikely to win at tribunal.

Case illustration 4.1: Assumed a negative outcome at ET (ID2, Standard track, EC occurred, Did not think would win case)

One claimant submitted an EC notification after realising he was not being paid the same wage as others who were doing the same job. He wanted a settlement if possible, but was willing to go to ET if necessary. However, during the EC process his employer stated that he was being paid the same wage as an employee at another site. As he had no way to disprove this, he felt he did not have the evidence he needed to take the claim to ET.

4.2.3 Emotional state

As described below, the emotional state claimants were in, or the way they predicted the tribunal would make them feel, contributed significantly to their decisions.

Claimants who were already feeling stressed due to the behaviour of their employer before and during the EC process felt this stress would continue at ET.

"...I was in a really bad place at the time and the letter they [the employer] sent to me was enough to tip me over the edge again. And the last thing I wanted to do was to, you know, stand up in court and say, 'Well, this has, this happened, that happened and then they said this.' I, I, I just couldn't do all of that."

(ID5, Open track, EC occurred, It was too stressful to continue)

Concerns were also raised that the process of ET itself would be stressful, for instance the anxiety of going through a court process, and the pressure of completing paperwork and finding funding. The stress associated with tribunals was also linked to the length of time claimants felt the process would take.

Claimants had already gone through the process of trying to resolve their dispute through EC or otherwise, and did not want to add the stress of going through ET.

"I think also by that stage you were so mentally exhausted with the whole process, ... that whole month of waiting and trying to get some conciliation, kind of drags the whole thing out ...I think if it had been a lot snappier, sharper, kind of sooner, maybe there would have been more fight left in me if you know what I mean ..."

(ID22, Fast track, No respondent engagement, Tribunal fees were off-putting)

The relevance of stress as a barrier was linked to the type of case claimants had. Claimants who cited stress as their main reason not to proceed to ET had claims on the more complex 'open' and 'standard' jurisdictional tracks. In contrast where stress was a secondary factor, claimants were on a range of jurisdictional tracks.

Feeling low and vulnerable also discouraged claimants from proceeding. For some, the workplace dispute had come as a shock and diminished the confidence needed to take their case forward. For claimants who reported a lack of support from Acas, this appeared to contribute to the feeling of being too vulnerable to continue.

"...I did feel very low about it ... I really thought these people [Acas] would have helped me, um, and also given me lots of information of what to do next and how to proceed and, and all that kind of stuff and that really never happened for me."

(ID10, Standard track, EC occurred, Tribunal fees were off-putting)

As with those who felt too stressed to continue, those who felt too low or vulnerable to continue were also on the more complex 'open' and 'standard' jurisdictional tracks.

Finally, claimants decided not to proceed because they wanted to move on from this experience and close this chapter of their life. This was particularly the case for those who had found a new job or were in the process of looking for one.

4.2.4 Lack of support

As mentioned in previous sections, claimants who did not feel they had sufficient support, either from Acas, or from their trade unions, gave this as a reason for not proceeding to ET.

Perceived lack of support from Acas

Of those who did not feel supported by their Acas conciliator two themes emerged:

- Claimants felt their conciliator had discouraged them from taking their case forward. This was either by saying they thought their employer was in the right and that the case was unlikely to succeed at ET, or by informing them that they had to make the decision alone, and not encouraging them to move towards ET
- Claimants felt deflated or negative after EC. These claimants felt there was not sufficient communication between themselves and their conciliator, or that their conciliator was not committed to helping them resolve their dispute. Their expectations of the service had not been met so they were less

confident about moving on to ET. Here, it should be noted that some claimants' expectations may have been based on a misconception of the conciliator's role.

With better support and information from Acas these claimants felt they would have been more likely to take their case to ET. In particular, claimants wanted more guidance about whether they had a valid claim. It is worth noting here that Acas conciliators are not allowed to take a view on the merits of a claim or advise individuals whether a claim should be made. Claimants would also have valued more information about ET and how the process worked and a better understanding of their employer's stance.

Another area where claimants felt they could have been better supported by their conciliator was in the emotional support they provided. Workplace disputes left claimants feeling vulnerable and in shock and claimants explained that having a sympathetic conciliator may have given them the support needed to move forward. When claimants did have a sympathetic conciliator this was considered to be a positive aspect of the EC service.

Perceived lack of support from trade unions

Despite not being represented during the EC stage, the sample included claimants who were members of a trade union. These claimants tended to work for larger employers.

Not having the support of their trade union was another factor in individual's decisions. After the EC process some claimants' trade unions decided not to support them at ET, often due to doubts over the merits of the case. When a claimant's trade union decided not to support them through the ET process this made them doubt if they would have a positive outcome at ET and made it harder for them to afford a claim. It was also reported to create the feeling that they had to face the process alone.

"I just thought you know what's the point of taking this forward if, if they're, if my union isn't going to support me I haven't got the emotional strength and the time to take it by my-, to take the case up by myself."
(ID19, Open track, No claimant Engagement, Tribunal fees were off-putting)

4.2.5 Consequences of making an ET claim

A range of non-financial negative consequences of taking a claim to ET worked as barriers for claimants with 'standard track' and 'fast track' disputes.

A key concern was the risk that taking a claim to ET might damage a claimant's professional reputation or in some way limit their ability to find future employment. Claimants either viewed those who went to ET as troublemakers, or were worried employers did.

Claimants also referred to what they perceived as being the negative consequences brought about by their having engaged in EC – such as being given fewer hours.

"... I was getting less hours, because they were saying that there's no work, and there was clearly work available... so I wasn't sure if, if me

going through Acas kind of upset them in a way, so they wanted me out of there, and hence why they were cutting my hours."

(ID2, Standard track, EC occurred, Did not think would win case)

Claimants also described the antagonistic behaviour of their employer as a reason they did not make an ET claim. For example, the perception that their employers were determined not to compromise – reaffirmed by their behaviour at EC – discouraged claimants from going to ET because they felt their employer could influence or avoid the outcome; or might use distressing tactics to win.

"... [T]he company itself... had a bad reputation and I didn't know what kind of length they'd go to in court to either try and disprove what I was saying or make me out to be a liar ... I didn't want them doing that to me in court."

(ID5, Open track, EC occurred, It was too stressful to continue)

Claimants also described feeling intimidated by their employer, either because of the size and perceived power of their employer or due to their employer's behaviour. This behaviour, according to claimants, included purposively obstructing the EC process for example by withholding evidence; knowingly and publically lying about the workplace dispute; and making upsetting or threatening communication with the claimant. As a result, claimants did not want to face their employer at an ET; or were concerned their employer would threaten them outside of the ET environment. This was particularly a concern for claimants living in close proximity to their employer.

"...my gut feel, at the time, was my old employer would get nasty and I, you know, I live in [name of town], they're in [name of town], I might see them when I'm going out and ... I, I just didn't want to go through the, the pain and the agro that, that would probably bring..."

(ID16, Standard track, No claimant engagement, Too stressful to continue)

4.2.6 Timescales

Deadlines for submitting a claim, and the length of time an ET claim was expected to take also acted as barriers.

Of those who ran out of time to make an ET claim, some were simply not aware there were time limits for submitting an ET1 form, or how long they had to use the EC certificate. Others were still trying to achieve a resolution with their employer after the EC stage. When this didn't work they attempted to make an ET claim but found they had missed the deadline.

"... I went back to Acas and said, 'Look, I, I've had enough is enough, I want to go to tribunal', and obviously it was too late..."

(ID9, Fast track, EC occurred, Ran out of time)

Claimants also ran out of time while attempting to persuade their trade union to support them at the ET stage.

The length of time an ET claim would take was a factor in claimants' decisions. This was because claimants felt they did not have the time to engage in the

process. Reasons for this included starting a new job, study, and childcare responsibilities.

4.2.7 Achieving a private resolution

Claimants who resolved their dispute privately with their employers gave this as the main reason they did not proceed to ET. These private agreements were either financial or related to the working conditions of the claimant, for instance holiday entitlements. The type of resolution reached ranged from informal arrangements between the claimant and the employer leading to the end of the dispute, such as paying owed wages; to legally binding settlements with set terms, including preclusion of an ET claim.

These claimants did not negotiate a settlement through EC for a number of reasons:

- They were using EC as leverage and thought they could achieve a better resolution by themselves
- The Acas conciliator was not available or suggested the claimant attempt to resolve the matter directly with their employer
- The settlement was reached after the end of EC but before the deadline for making an ET claim
- Their employer offered a private settlement.

4.3 Influences on decision-making

Claimants described a number of different influences on their decisions not to progress to ET including the Acas conciliator, friends and family, legal advice trade unions and advice giving organisations such as Citizens Advice.

4.3.1 The Acas conciliator

The 2015 Evaluation of Acas EC¹⁰ found that the majority of claimants who decided *not* to submit an ET claim felt that Acas was a factor in helping them to reach this conclusion. In order to explore Acas' role in more depth, the sample of participants for this research included claimants who described their Acas conciliator as having been an influence on their decision *not* to make an ET claim.

The findings here suggest that this influence was not necessarily viewed positively. Claimants who did view it positively said Acas provided them with the information about the ET process necessary to make an informed decision about going to the ET (see case illustration 4.2).

In contrast claimants who viewed the influence of Acas negatively described not having the encouragement, support or information that would have allowed them to move forward. This negative influence was largely described by claimants who had been expecting to make an ET claim, or were prepared to if other options failed. Three scenarios were described here:

- The conciliator did not instil claimants with confidence that they would win their case as they did not actively encourage them to take their case forward. It is worth noting here that the conciliator cannot advise a claimant on whether an ET claim should be made

¹⁰ Downer et al., (2016) Evaluation of Acas conciliation in Employment Tribunal applications 2016. London: Acas, p.98

- Claimants did not have a positive relationship with conciliators, feeling they were not empathetic enough, or were dismissive. This discouraged continued interaction with Acas, or made claimants feel deflated about their case
- Claimants suggested that the conciliator did not offer the information needed to make a well-informed decision. This included information about what ETs are, how much they cost and the support Acas can provide during the process.

Case illustration 4.2: Positive influence of Acas (ID33, Standard track, No respondent engagement, Consequences for future employment)

This claimant initially went to Acas because she felt she had been unfairly dismissed by her employers. She described Acas as a positive influence on her decision not to proceed to ET because her conciliator provided her with useful information that allowed her to weigh up the benefits of making a claim. For instance, her conciliator told her the maximum she might be awarded if she won her case. This award was outweighed by the financial employee benefits she stood to lose if she took her case to ET. This led her to decide it was not worth making an ET claim.

Case illustration 4.3: Negative influence of Acas (ID10, Standard track, EC occurred, Tribunal fees were off-putting)

This claimant believed he had been unfairly dismissed from his role, and so submitted an EC notification. After EC finished without a resolution the claimant felt disheartened and decided not to proceed due to the cost of the fees and the risk that he would not win the case. He felt a lack of information on the tribunal process and lack of encouragement from Acas influenced him not to take the case forward. He would have liked further information about what would have been involved in going to ET to make the decisions required to go forward.

4.3.2 Other influences

Claimants described seeking support and advice from family and friends whilst making their decision. This ranged from simply talking over their decisions with family and friends, to seeking out particular friends and family members who had knowledge or experience that was relevant to their case. For instance, those who had experience of HR, or had taken their employers to the small claims court.

The influence friends and family had on claimants' decision making was mixed. They ranged from a small to a large influence, and included encouraging claimants to proceed and discouraging them from it. There do not appear to have been any key factors which influenced how much impact friends and family had.

Legal advice was another influence on decision making. This advice had a number of effects for claimants, including making them concerned about the stress involved in going to ET, and reducing their confidence in the strength of their case. When claimants were less confident in their case after receiving legal advice this contributed to their decision not to go to ET. In other instances it was simply a part of a claimant's information gathering process, and was not described as having a significant impact on their decision.

The advice and opinion of claimants' trade unions and Citizens Advice also influenced claimants not to take their cases forward. The impact of a trade union's opinion was particularly strong. This is perhaps because the influence of

the trade union not believing a claimant's case was strong enough was combined with its withdrawal of financial and emotional support.

Claimants also made use of websites to research around their claim and decide if they would proceed to the ET. Websites used included the Acas website and legal websites.

4.4 Outcomes experienced

All the claimants included in this research were chosen because they did *not* progress to ET, in order to explore their motivations. Claimants discussed a range of outcomes connected to their decision not to proceed with their claim, and felt varying degrees of satisfaction with the final outcome achieved.

4.4.1 Issue resolved

Claimants decided not to go to tribunal if they had resolved their dispute either by agreeing a private resolution with their employer, or by deciding to go through county court. In these instances claimants either felt satisfied with the outcome they had achieved, or accepted that it was the best they were likely to get without putting themselves through a long and stressful tribunal process.

"...better to take an acceptable settlement now than damage the rest of my life for the hope of a larger settlement later..."

(ID15, Open track, No claimant engagement, Issue resolved)

4.4.2 Issue not resolved

For all claimants who did not reach a settlement and did not decide to open a civil case, their workplace dispute was not resolved. Claimants who never intended to go to ET were satisfied with not progressing to ET. Their initial intended outcome was to resolve the issue during the EC process. Despite not achieving this outcome they never considered going to ET to rectify this. For these claimants EC itself was a significant step that they were wary of taking.

Claimants who were prepared to make an application for ET at some point during their EC experience were generally less satisfied with their outcome. Those who felt that they had no choice other than dropping their case were least satisfied with the outcome. These claimants did not consider it a choice, but instead the only path open to them given the circumstances they were in. Key reasons that these claimants cited for not going forward to ET included that they couldn't afford it; that they lacked support; they had run out of time; and that they lacked confidence in their case or their knowledge of the system.

"My hands were tied; there was nothing I could do. I absolutely wanted to submit it to tribunal but financially I, I couldn't do it."

(ID26, Standard track, No respondent engagement, Tribunal fees were off-putting)

Conversely, claimants who had made a strategic calculation about the risks and benefits of pursuing their case at ET had mixed views. As described in case illustration 4.4, those whose decision allowed them to gain benefits by not going to ET saw this in a positive light. These benefits included avoiding stress; not paying tribunal fees and wider costs, and benefiting from financial resources that might have been withdrawn if they had gone to ET, such as share options.

Case illustration 4.4: Positive strategic calculation (ID27, Open Track, No Respondent Engagement, Wider Costs)

This claimant made an EC claim after finding out she was being paid significantly less than her male colleagues. At the point when this claimant was making her decision about ET she had been given a small pay rise, and her employer had committed to an internal salary review which might include a further pay rise. In this context the claimant felt the tribunal fees and costs of a lawyer were too high in comparison to what she might gain through a salary increase especially considering the stress and hassle involved in an EC claim.

In contrast, those who had wanted to move forward but felt unable to risk the negative consequences of this choice viewed the decision less positively. These included financial consequences; consequences in their current employment; and consequences for gaining future employment.

"...I had to take my health into account. ... am I really, you know, mentally and physically fit to go through with this,...I would have loved to have ... taken them on but I had to take all of that into account. And I had to take into account I'm still working in the [name of organisation] ... Do I really wanna take them to an industrial tribunal and then continue working in another department in the [name of organisation]..."

(ID25, Standard track, No respondent engagement, It was too stressful to continue)

As demonstrated in this chapter, claimants' decisions not to make an ET claim were informed by a wide range of factors as well as the influence of trusted sources of advice. Satisfaction with the outcomes experienced also varied and may have shaped claimants' overall experiences of the EC service. These experiences are discussed in the next chapter.

5 REFLECTIONS ON THE SERVICE PROVIDED BY ACAS

Acas' Early Conciliation (EC) service is a staged process, starting with a mandatory online notification. This is followed by phone or email contact to collect basic information and to make a referral to a conciliator. Conciliation is then offered. If both the claimant and respondent agree to take part, this involves contact between the conciliator and the two parties with the aim of impartially brokering a settlement, and thus avoiding an Employment Tribunal (ET) claim.

If a settlement is not reached within a month, an EC Certificate is issued, allowing an ET claim to be made. Conciliators can offer advice and guidance about next steps and conciliation remains an option, even at this stage, up until the date of an ET hearing. Acas also offers support through its helpline as well as written information through its website and published literature.

This chapter explores claimants' views on what worked well and less well about each stage of the EC service offered by Acas as well as suggestions for improving the service.

Key findings:

- Feedback about initial contact with Acas following notification was generally positive. Staff were described as polite, sympathetic, reassuring, encouraging and informative (section 5.1.1)
- Claimants wanted the online information they consulted at the notification stage and subsequently offered by staff to be clearer and more succinct, with visual depictions of the EC/ ET process (section 5.1.2 and 5.2.2)
- Claimants' understanding and expectations of Acas affected experiences of the service. Negative experiences were shaped by the perception that Acas had more clout and would act on their behalf (section 5.2.2)
- Greater communication about EC negotiations was wanted to keep claimants informed of progress. Timely and clear information, about details such as fees and timescales were also considered to be important (section 5.2.2)
- Claimants wanted more information about their options if conciliation failed and proactive contact from the conciliator after the Certificate was issued (section 5.3).

5.1 EC notification

As part of the EC process claimants are required to complete the EC notification through an online form. As discussed in Chapter 2, claimants found out about Acas and EC notification in a variety of ways, including the Acas helpline and website, and as such there is a diversity of experience of this initial contact with the service. This is discussed below.

5.1.1 Acas helpline

Claimants rang the Acas helpline to get advice about their dispute or for queries about the EC service. Claimants who reported positive interactions when calling the Acas helpline described helpline staff as polite, sympathetic, reassuring and encouraging about their case. They also valued the information and guidance given on what would happen next if they chose to engage with EC and appreciated being able to speak to someone for advice.

"I think that kind of reassured me, that initial phone call, and she was able to kind of point me in the right direction."

(ID31, Fast Track, No respondent engagement, Tribunal fees were off-putting)

In less positive accounts, helpline staff were described as robotic, showing a lack of initiative or flexibility when dealing with claimants over the phone. In one example the claimant reported being 'in shock' due to his dispute and being met with what seemed like scripted advice. Alternatively, claimants said helpline staff did not provide them with the information they wanted, for instance what their contractual rights were.

5.1.2 Acas website and online EC notification form

Claimants received information on EC through the Acas website and the online notification form, which they often came across when doing online research into addressing workplace disputes or through signposting from the Acas helpline.

It should be noted that claimants could not always recall the online notification form, or differentiate it from other forms they had completed or other information about EC on the Acas website. The feedback provided was therefore limited and conflated different information sources.

Among those who did recall the notification form, the feedback about it was mixed. One group of claimants found it straightforward and easy to use, and commented on the helpfulness of the information offered on timescales and the legal status of conciliation. Others found the information provided online, through the notification page or website in general, unclear and too detailed.

These claimants wanted information about conciliation and tribunals to be presented in a simpler and more succinct way to make it easier to digest, with visual depictions in the form of flow charts, decision trees and diagrams to illustrate the different steps¹¹:

"I think you need things in sort of a short amount of information, you know like just sort of keep it as brief as possible and just give you what you need to - you know the information that you need."

(ID12, Open Track, No claimant engagement, Did not think would win case)

"I do understand text representation but I also find graphical representations, flowcharts and so on, decision trees, quite useful and I'm sure lots of other people too."

(ID15, Open Track, No claimant engagement, Issue resolved)

With information presented in this way, claimants wanted a better sense of 'what they were getting into' at this stage, based on pertinent information such as the costs and commitments required. This would support more informed decision-making about committing to the EC process and to what extent.

¹¹ These sorts of materials do exist and are available on the Acas website but claimants did not seem to be aware of them: <http://www.acas.org.uk/media/pdf/c/h/Early-Conciliation-flowchart.pdf> <http://www.acas.org.uk/media/image/4/2/Early-Conciliation-Infographic.jpg>

"I think at the very beginning that would be nice and say, 'Look, so this bit is free but your employment tribunal does cost this much roughly"
(ID31, Fast Track, No respondent engagement, Tribunal fees were off-putting)

5.2 Early Conciliation

5.2.1 Initial conversations with Acas ECSOs and conciliators

After the EC notification claimants are contacted by an Early Conciliation Support Officer (ECSO) before being assigned a conciliator. Though claimants were unaware of the ECSO role by title, and sometimes confused the ECSO with the conciliator, they did recall being contacted by someone to inform them that a conciliator would be in touch. This was usually within a few days of submitting the notification.

Experiences of communicating with Acas following notification were mixed. Claimants who reported positive experiences valued the ability to interact with a real-life person, whether the ECSO or conciliator. Echoing feedback about helpline operators, these initial conversations were considered to be positive and staff were described as polite, approachable and sympathetic.

"They appeared more human than I thought they would be. Some legal teams can appear quite soul-less and quite mechanical, it's more black or white, whereas Acas were empathetic, not just yes or no but they actually listened to you."

(ID20 Open Track, No claimant engagement, Ran out of time)

While the service provided by Acas is intended to be impartial, some claimants interpreted the supportive and empathetic approach of ECSOs and/or conciliators at this stage as having someone 'on their side' who would advocate for them, and highlighted the significance of this during a difficult time. This had implications for their expectations of the service and of how conciliation would go, which is discussed further in Section 5.2.2.

"It was very positive at the beginning because once you take the decision that you're going to take it to the reconciliation, you, you feel a bit relieved - well I felt a bit relieved that, that somebody was on my side, somebody was going to fight for me, where, where I couldn't fight."

(ID10, Standard Track, EC occurred no settlement, Tribunal fees were off-putting)

In addition, some claimants noted a change in tone between helpline staff, who were understanding and sympathetic, and conciliators who were described as less friendly and not necessarily on the side of claimants, or acting on their behalf. Whether this was viewed positively varied. Some claimants felt EC was a waste of time as their conciliator was not advocating for them, others felt this change in tone meant the conciliator would deal more effectively with their employer.

The Acas conciliators' specialised knowledge on employment rights and legal processes was also important to claimants and increased their confidence about the process.

In contrast claimants who reported a negative experience of these initial conversations said their conciliator did not take the time to listen to them, on the presumption that they were preoccupied by high workloads or because they lacked availability for example due to annual leave. In some cases claimants were told their conciliator was on leave without recalling being told about that another conciliator could provide cover. In other cases 'duty cover' was provided but claimants found duty staff to be unhelpful because they did not know the facts of the case or because they were advised by the duty conciliator to contact the original conciliator when they were back from leave.

"The woman like said, 'I'm going away', and I said to her, 'Well, I'd rather deal with you because like I've told you all about it', but she give me someone else's number, and I tried to ring them and they said, 'Ring back and speak to the girl', kind of thing. And then I could never get hold of her."

(ID30 Standard Track, No respondent engagement, Ran out of time)

A further issue was that claimants found the information given by conciliators at the initial stage unclear or jargonistic.

"I do remember thinking uh, I'm not really sure, you know what, what, what she's talking about or what she means, you know. Sometimes they use jargon that you're not familiar with so that was quite difficult, you know I had to keep stopping I think and saying, well, 'What's that? I don't know what you're talking about' so ..."

(ID29, Open Track, No respondent engagement, Tribunal fees were off-putting)

Face-to-face contact was something that claimants suggested might improve communication with their conciliator, particularly at the beginning of the process, as this would increase their understanding and help them to convey the full details of their case.

"Because it comes to a point when you, when you can't read out every bit of evidence you've got and there's stuff that you miss out. If you're sitting face-to-face with someone with all the paperwork that's kind of less likely to happen, but I know that's possibly not a possibility 'cause of cost, but it would be useful."

(ID7, Open Track, EC occurred no settlement, Tribunal fees were off-putting)

5.2.2 Experiences of conciliation

While experiences of conciliation were varied, three broad factors underpinned positive and negative experiences of this stage; communication, the approach of the conciliator and information provision.

It should be noted that claimants' experiences of conciliation continued to be shaped by their interactions with the conciliator as well as their understanding of Acas' role and remit. Claimants who expressed dissatisfaction with the service provided by Acas were often under the impression that Acas had more power or authority than is actually the case, and that conciliators would advocate on claimants' behalf, which in reality they cannot and do not.

Readers should also bear in mind that the research focused on claimants who did not achieve a resolution through EC. This means that the research does not (and was not intended to) present a rounded picture of claimant satisfaction with the service.

Communication

Quality of communication featured heavily in claimants' feedback on the conciliation process. Positive feedback was characterised by good availability, responsiveness and regular updates on progress. Claimants also valued clear signposting about timescales in order to help navigate their way through the process.

"I thought ... he was very good he was, and clear, like I say he kept me up-to-date, he made sure I knew what was happening and so, you know, everything like that, yeah, he was polite and everything."

(ID1, Fast Track, EC occurred, Did not think would win case)

"They were chasing it up and sending me emails, and then when I call them they were discussing things. At no stage I felt like ... I'm falling short of information or any communication is missing."

(ID21, Fast Track, No claimant engagement, Other)

Despite these positive accounts, a more common experience across the sample was that communication was poor. After the initial conversation with the conciliator claimants felt 'out of the loop' about discussions with employers and felt forced to chase their conciliator up for updates. In some cases conciliators were difficult to get hold of and claimants only heard from them again when they were issued with their Certificate (which happens as a matter of course if employers cannot be contacted or else refuse to engage with conciliation).

Claimants suggested more communication throughout the process would be useful. This would include both keeping claimants up to date about interactions with the employer, feeding back details on negotiations and providing information on next steps and deadlines.

It was also proposed that the details of contact attempts and discussions with both parties should be recorded in writing and provided to claimants, to evidence the process and to reassure claimants that conciliators were making sufficient effort to contact employers and broker a settlement.

"Perhaps something in writing to say, you know, on the 5th November, you know, I attempted three calls, on the, you know, 10th I got through. These were the issues discussed. I challenged on this. I challenged on that. I challenged on that."

(ID8, Fast Track, EC occurred, Pursued a civil claim)

Claimants whose employers did not participate in EC also suggested that an ongoing dialogue about contact attempts would reassure them that everything possible was being done to engage with employers and that the service provided by conciliators was truly impartial.

In contrast, some claimants, particularly those who were feeling vulnerable or overwhelmed by the dispute, wanted discussions between all parties to be less

formal. They reported finding the process officious and bureaucratic and wanted the option of face-to-face meetings with conciliators if possible.

Approach of the conciliator

The positive approach of the conciliator in relation to their handling of claimants was commented on. In particular, the calm nature of conciliators, and their ability to diffuse claimants' emotional response by remaining empathetic but neutral, was valued highly. There were also comments on conciliator's competence in communicating with employers and their tailored, honest and thoughtful advice (see case illustration 5.1).

Case illustration 5.1: Tailored conciliator advice (ID13, Fast Track, No Claimant Engagement, Issue Resolved)

A claimant who had been dismissed on the spot and had not heard from her employer again explained that her conciliator had encouraged her to attempt contact with her employer again to exhaust all informal options before instigating formal EC proceedings. The conciliator alerted her to the possible risks that jumping straight to conciliation carried in view of the fact that she lived and worked in a small community; trying a formal approach in the first instance may impact on her reputation and prospects of getting another job locally. She valued this advice because it took account of her situation rather than offering a 'one size fits all' approach.

As mentioned earlier, claimants' understanding and expectations of Acas conciliators affected their experiences of the service. Negative accounts of conciliators highlight a discrepancy between claimants' expectations and the nature of the service offered by Acas in relation to three main issues: impartiality, clout and advice/ guidance. The findings, set out in turn below, suggest a greater need for managing claimants' expectations around these themes and increasing awareness and understanding of Acas' role and remit.

Impartiality

Claimants did not always seem aware of Acas' role as an impartial intermediary and this could cause disappointment with the service.

"she was very understanding but at the same time noncommittal, which I found a bit strange 'cause I genuinely, as I said earlier, believed that she would have been on my side because, because I felt that she should have been representing me."

(ID10, Standard Track, EC occurred no settlement, Tribunal fees were off-putting)

Even claimants who acknowledged Acas' impartiality did not appear to fully understand its meaning and were critical that conciliators didn't seem to push cases firmly enough with employers or didn't take on board information they were given by claimants to 'fight' the case in the most effective way.

"This impartiality to me felt like, um it didn't feel very supportive."

(ID19, Open Track, No claimant engagement, Tribunal fees were off-putting)

This led some claimants to feel that they could have done better by themselves or to feel that they were no further forward having used a conciliator. The perceived lack of effort also led some claimants to believe the conciliator was actually on the side of the employer.

"They didn't act independently and professionally, I should say.... I don't feel that they, I don't feel that they took on board what I was saying. I just feel that they, they were weighted towards the employer."

(ID35, Open Track, No respondent engagement, Lack of support from Acas)

Clout

Linked to issues of impartiality were questions about the authority of Acas. Claimants who raised this commented on the lack of power of the conciliator to persuade and influence employers to engage in EC negotiations and to broker a settlement (whereas, in reality, employer participation is wholly voluntary). These claimants perceived the need for more clout:

"It just seemed a bit, that the process in, in retrospect at the end, it kind of felt a bit of a waste of time because they didn't really have much clout if you see what I mean. [...] They might of said, 'Well, we don't really haven't any powers to, to do much, but we can give it a go' or something- I think it would of been good to know, you know, how much clout they have with employers I guess."

(ID7, Open Track, EC occurred, Tribunal fees off putting)

Advice and guidance

Claimants valued the specialist advice conciliators offered around employment law because it helped them to understand the strength of their case. For example, a claimant chose to close their case based on information about agency workers' rights given by the conciliator. While the claimant was disappointed not to reach a settlement, they were happy that the conciliator had taken the time to explain their rights and the likelihood of reaching a settlement.

As mentioned in Chapter 4, claimants wanted conciliators to give more of an indication about the likely success of the case, and the elements needed to make the case legally viable. It was argued that this would improve their confidence and motivate them to proceed with conciliation and to ET. Conciliators cannot however take a view on the merits of a claim, nor can they take sides or predict the outcome of a tribunal hearing would be if it went ahead¹².

"I know it's difficult because they are supposed to be a neutral party. I suppose it's very difficult for them to give feedback on individual cases. But it just would have, I, I suppose, given peace of mind to say, for them to say, 'You've got a good chance,' or, 'Based on our experience of previous tribunals you've got a good chance.'"

(ID23, Standard Track, No respondent engagement, Tribunal fees were off-putting)

¹² Acas (2015) Acas: Conciliation Explained, p.6.

Information Provision

Contrasting feedback from claimants suggest there may be variation in the level and clarity of information being provided to claimants by individual conciliators.

Echoing views outlined in Section 5.2.1 about initial information provision, there were reports of the information given during conciliation being difficult to understand, even among claimants with specialist knowledge in employment law. It was also thought that conciliators assumed a level of basic knowledge of conciliation that claimants did not possess.

"I think a lot of these organisations they know what they're doing. They expect that you do and why would I? Really seriously why would I know all about that if I've never had to go through anything like that before why would I know what their processes are?"

(ID12, Open Track, No claimant engagement, Did not think would win case)

While timescales were explained to claimants, there was mixed feedback on the clarity and timeliness of the information. Claimants recommended that conciliators reiterate timelines at relevant points during the EC stage to keep them informed of deadlines.

5.3 Post-EC experiences

Claimants reported that they would have liked information and signposting about 'next steps' when conciliation did not succeed. They reported feeling like the conciliation process had come to an abrupt end when they were issued with the EC Certificate and were not clear about their options. The conciliators' lack of direction was perceived by some as being discouraging and contributed to ET decision-making.

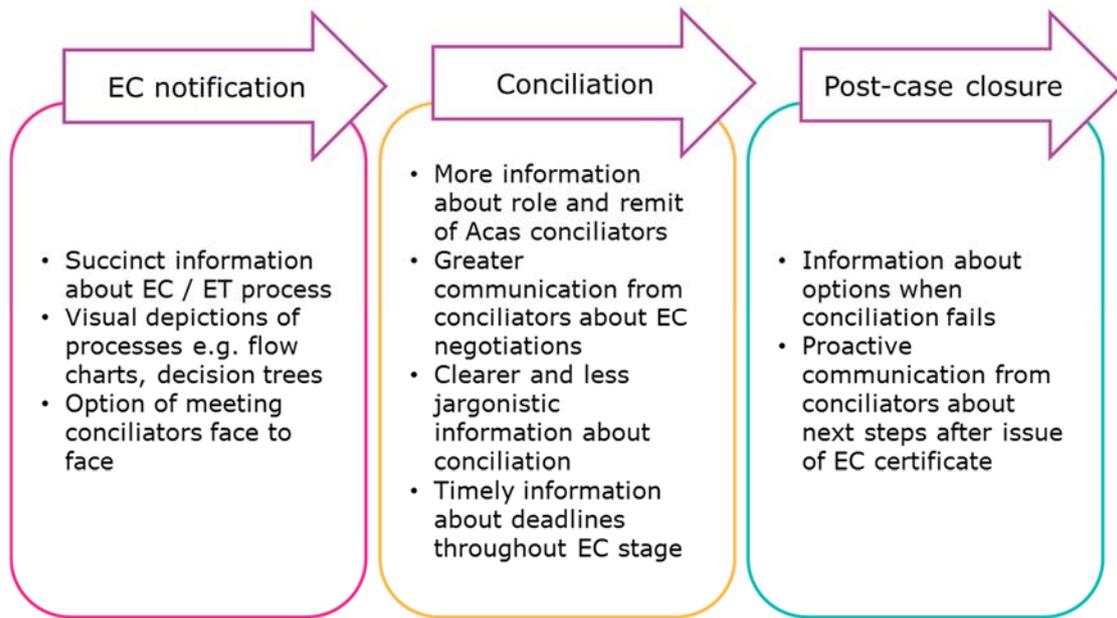
For some claimants, once the certificate had been issued they were not aware they were still able to contact their conciliator and would have appreciated a conversation after the Certificate had been issued to discuss options:

"I would have liked to have known that once that certificate had been issued that I had the right to take alternative courses of action... Once I'd started that process, I believed that once a decision has been made, that decision was final. It would be helpful to know what your other courses of action and remedies are."

(ID35, Open Track, No respondent engagement, Lack of support from Acas)

Figure 5.1 below summarises suggestions for improving the EC service discussed in this chapter.

Figure 5.1 Suggestions for improving the EC service



Recommendations for adapting the EC service based on the findings of this research are discussed further in the next and final chapter of the report. The final chapter draws conclusions both from the experiences of the EC service discussed in this chapter, as well as findings on claimants' ET decision-making explored in earlier chapters.

6 CONCLUSIONS

Acas' Early Conciliation (EC) service attempts to resolve workplace disputes prior to them being escalated to Employment Tribunal (ET). Since the service's introduction in 2014 it has been mandatory for individuals ('claimants') intending to lodge an ET claim to contact Acas first, to notify them of their intentions. Of the claimants who initiate EC, a substantial proportion neither achieve a settlement through EC nor go on to submit an ET claim.

Using 35 in-depth qualitative interviews, this research aimed to:

- Develop greater insights into claimants who do not proceed to submit an application for ET after notification through the EC process despite not settling at EC i.e. they neither settle nor proceed
- Gather evidence to help Acas improve the delivery of the EC service.

This concluding chapter of the report summarises the key findings emerging from the research and discusses their implications.

6.1 What insights have been generated about this group of claimants?

6.1.1 *What are the reasons for not making an ET application?*

The research identified a broad range of reasons why claimants did not make ET applications. These reasons were often complex, multi-faceted and interlinked. While tribunal fees will not be a factor in decision making in the immediate future, given the Supreme Court ruling to abolish tribunal fees in July 2017, it is not possible to discuss the full reasoning of claimants in this research without acknowledging the impact of tribunal fees. This is because financial barriers, including tribunal fees and legal costs, posed a significant barrier to making an ET claim for participating claimants. They were stated to be not only the main driving factor behind some claimant's decisions but also compounded other barriers experienced.

Other factors in claimant's decisions were wide-ranging and would act as barriers to proceeding even without the presence of ET fees. These factors include a lack of confidence in a positive outcome at ET; the emotional and mental health and wellbeing of claimants at the point of conciliation, and their foreseen health and wellbeing as a result of going through a tribunal; and a perceived lack of support from Acas or a claimant's trade union. These factors became more of a barrier for claimants when combined with other reasons not to proceed.

6.1.2 *How do mind-sets evolve through the dispute resolution journey?*

The findings indicate that while, for some claimants, intentions towards applying for ET change as they progress through the lifespan of their journey, others maintain their stance about avoiding ET. This latter group of claimants instead use EC for the purpose of achieving a settlement, without being prepared to progress further if they are unsuccessful. This may be because they expect the stress, hassle or financial costs of ET to be too great, or they do not anticipate a positive outcome.

The research highlights a number of scenarios in which claimants start out either intending to pursue or having ruled out an ET claim; or are more open-minded; preferring to settle but prepared to make an ET claim if the situation requires. From this starting point, claimants either continue with the same decision or

change their minds. For those who continue, this is for similar reasons as those stated above i.e. stress, hassle, financial costs.

For those who do change their minds subsequently, the timing of decisions is connected to when they receive important pieces of information, such as the cost of ET fees, and the interaction between different barriers. For instance those who knew about fees from the beginning may only have considered them to be a significant barrier when they subsequently lost confidence in their case during conciliation.

Some barriers may only occur or come to light after notification, causing those who initially intended to take their case to tribunal and those who were open-minded to change their minds. For example, non-engagement or antagonistic behaviour of employers, discouragement or lack of support from legal advisers or trade unions, weaknesses in a case e.g. lack of evidence, or running out of time to lodge a claim.

6.1.3 What outcomes are experienced from the decision?

While it is understood that this group of claimants neither settle using Acas nor go on to make ET claims, there is little evidence about the latent outcomes for this group. Among participants of this research, disputes were either resolved through private settlements or county court claims; or remained unresolved.

Private settlements and informal resolutions included financial settlements or the reinstatement of employment benefits and favourable work conditions. Settling privately as opposed to through Acas was not necessarily the preferred or chosen option for claimants, particularly if it happened after the EC period, or was offered through a direct approach by employers. However, in other instances, claimants decided on a private resolution because their conciliator was absent during the conciliation period; or because claimants thought they were better placed than Acas to achieve a quick agreement.

Claimants whose dispute was not resolved either accepted the situation and stayed in the same job; moved jobs within the same organisation; left their job (including those who were dismissed) and found new employment or were unemployed at the time of interview; or went on long-term sick leave.

Claimants felt varying levels of satisfaction with their decision. Those who had never wanted to go to ET were largely happy with the outcome. Those who had been prepared to go to tribunal at some point during the EC process had mixed experiences. These were based on whether their ultimate decision was driven by positive alternatives to ET e.g. sources of income they could maintain if they did not take their employer to tribunal; or negative consequences of taking a claim to ET such as fees, or risks for their career. Claimants who felt that they had no choice but to give up their claim were least happy with the outcome.

6.1.4 What are the influences on claimants' decisions?

The key influences on claimants' decisions included Acas, legal advisers, trade unions, friends and family, and online resources. The findings suggest that Acas' influence was viewed either positively or negatively by claimants. Positive views of Acas' influence were underpinned by the provision of information necessary to make informed decisions about progressing to ET, such as what compensation they might receive if they won and the legalities of their case.

In contrast, Acas' influence was described in negative terms by people who reported being told not to proceed with their claim by their conciliator but without being provided with the information necessary to make an informed decision or who had a bad experience of the EC process. This involved poor communication and information provision during the EC process, a lack of advocacy, power and authority from the conciliator, or the conciliator not instilling confidence in the success of the case.

While these negative experiences in part stem from claimants' misunderstanding of the conciliators' role (which is not to advocate on claimants' behalf, mandate employers to do anything, or comment on the likely success of the case), the findings suggest that the EC service could unintentionally be demotivating some claimants with valid cases. It may be that emphasising the role and remit of the conciliator, reiterating deadlines, strengthening communication during EC and improving information on issues such as employment law may help avoid discouraging claimants who otherwise could or should proceed.

6.1.5 Who is more likely to settle or to make an ET claim?

This research did not include claimants who had settled through EC, or who went on to make an ET claim. It did however include those who had settled privately, who wanted to settle, or who wanted to make an ET claim (despite not ultimately doing so). The enablers and barriers in these situations may be illuminating.

Those who settled privately were facilitated by factors such as the willingness of their employer to compromise; already being in negotiations with their employer; and continuing to work for the employer they had a dispute against.

Barriers to making an ET claim which were insurmountable for claimants were the withdrawal of support from a claimant's union or legal adviser, which led claimants to believe they would not have a successful outcome at ET. Therefore those who have the support of their union or positive legal advice may be more likely to go on to make an ET claim.

6.2 How could the delivery of the EC service be improved?

The findings indicate that there are three main areas where Acas could improve the provision of the EC service.

6.2.1 Helping claimants to understand the service

There appears to be a need for better information about the conciliation process. This includes:

- Clear information about the EC and ET processes, including timescales, reiterated at timely points e.g. when approaching deadlines
- Relevant employment law to equip claimants to decide if their claim is worth pursuing
- More information about the options available if conciliation failed and proactive contact from the conciliator after the Certificate was issued.

Online information could be clearer and more succinct. In some cases claimants' suggestions around this, such as creating visual depictions of the EC process already exist. This suggests better signposting to raise awareness of existing resources.

6.2.2 Managing claimants' expectations

Claimants' understanding and expectations of the EC service and of Acas affected experiences of the service. In particular, negative experiences were shaped by the perception that Acas would have more clout during EC or that the conciliator would be on the claimants' side. Workplace disputes had left some claimants in a delicate emotional state, and looking for support and advocacy. Managing their expectations around Acas' remit and signposting to appropriate alternative services may help address this issue.

In some instances claimants appear to have misunderstood the nature of the service despite being given the correct information. Words such as 'impartial' in particular appear to be misinterpreted by claimants. Simplified ways of communicating Acas' role may mitigate the issue.

Though claimants were not always clear about who their first contact with Acas was with, there is evidence to suggest that their initial conversations unrealistically raised expectations of the EC service. This is evident in that some claimants described being reassured that their case would be resolved, and had the impression that they would receive support or advocacy. While this may reflect claimants' needs after experiencing difficult disputes, these expectations led to negative experiences of the EC process and highlight the importance of clear communication about Acas' role and remit in EC.

6.2.3 Improving the delivery of conciliation

Overall experiences of conciliation could be improved by providing more consistent and attentive communication from the conciliator, and increased transparency during the conciliation process.

After the initial contact with their conciliator, claimants reported often feeling 'out of the loop' regarding discussions with their employers, and some conciliators were said to be difficult to get hold of. This led to a lack of clarity about what the conciliator was doing to engage employers, and a feeling among some claimants that the conciliator was not particularly interested in their case.

Ensuring more regular and open communication about EC and how a claimant's case is progressing throughout the EC process could improve experiences.

APPENDIX 1: Technical details

This technical summary describes the research methods used in this research study.

The research had two key aims:

- Develop greater insight into claimants who do not proceed to submit an application for Employment Tribunal (ET) after notification through the Early Conciliation (EC) process despite not settling at EC i.e. they neither settle nor proceed.
- Gather evidence to help Acas improve the delivery of the EC service

Sampling and recruitment

A purposive sampling strategy was used to ensure appropriate depth and diversity of the interview sample. The overall sample of 35 participants was intended to comprise claimants who did not achieve an Acas brokered settlement at the EC stage and did not progress to making an ET claim.

The primary selection criteria is set out in the table below:

Sampling criteria	Characteristic
Jurisdictional track	<p>ET cases are categorised in three ways:</p> <ul style="list-style-type: none"> • 'Fast track' involves straightforward and quickly resolved cases such as non-payment of wages • 'Standard track' involves more difficult issues such as unfair dismissal, requiring a greater degree of case management • 'Open track' involves the most legally complex issues such as discrimination, and require the highest level of resource to resolve
Engagement with EC	<p>Participation in Early Conciliation followed one of three scenarios:</p> <ul style="list-style-type: none"> • EC occurred: where both employee and employer participated in Early Conciliation without reaching an Acas brokered settlement • No claimant engagement: where the employee decided against using Acas assistance or could not be reached by Acas • No respondent engagement: where the employer decided against using Acas assistance or could not be reached by Acas
Reason for not proceeding to ET1	<p>The main reason behind the decision not to make an ET1 claim, in the following categories:</p> <ul style="list-style-type: none"> • Did not think would win case / waste of time • Issue resolved • It was too stressful to continue • Wider costs • Tribunal fees were off-putting • Ran out of time • Other

Whether Acas was factor in decision-making	Participants were recruited to the sample with minimum quotas for Acas being a factor in decision-making (to varying extents) and not being a factor at all.
Whether a private resolution was reached	A small number of employees were included who had resolved the issue with their employer, including settling privately but without formally settling using Acas and without attributing the resolution to support from Acas, even if Acas was involved.

Acas provided a sample file of people who submitted an EC notification. A total of 350 letters were sent to people who were given the option to opt-out in the following ways:

- Freephone
- Opt-out slip (to be posted back to us)
- Email
- During the follow up phone call

After a two week opt-out period follow-up phone calls were made to explain the study and recruit participants to the sample. These recruitment calls included a screening exercise to ascertain whether claimants were eligible for the research.

A breakdown of the achieved sample is given in the table below.

Sampling criteria	Characteristic	Achieved
Track	Fast	9
	Standard	13
	Open	13
Engagement with EC	EC occurred - no settlement	10
	No claimant engagement	11
	No respondent engagement	14
Reason	Did not think would win case / waste of time	6
	Issue resolved	6
	It was too stressful to continue	3
	Wider costs	3
	Tribunal fees were off-putting	6
	Ran out of time	3
	Other	7
Acas factor	Acas was a factor in my decision	20
	Acas was not a factor in my decision	15
Private settlement	Yes	10
	No	25

Data collection

The research involved 35 in-depth interviews to understand participant characteristics and explore motivations and experiences at each stage of the conciliation process. The interviews also helped to examine reasons for people not proceeding to a tribunal claim and tracking changes in intentions as claimants progressed through the process. Interviews were conducted over the phone and recorded so that they could be later transcribed.

Data analysis

All interviews were audio-recorded with the participants' permission. Interview recordings were then transcribed and analysed directly, using Framework analysis. Framework analysis involves the organising of qualitative data into a series of thematic matrices or charts. Each chart occupies a column heading in the matrix, and represents a key research theme, consisting of several sub-themes. Each row relates to individual participants. Data from each participant is then reviewed and summarised into the relevant cell. Contextual information, direct quotations, and researcher comments are included within each cell and linked to the transcript.

Framework analysis enables a comprehensive and empirically faithful summary of the data to be produced, one which organises the data according to the purposes of the research whilst retaining the circumstances and experiences of participants. Once completed, a number of key sample characteristics (such as track. This thematic framework provides a detailed overview of all the data, allowing researchers to compare across and within cases and identify insightful patterns relevant to the research questions.

APPENDIX 2: Topic guide

1 Contextual information

Section aim: to 'warm up' participant and gather contextual information

- Current day to day activities
- Details of job in which the dispute was raised (keep brief),
 - Type of work they did / do
 - Length of time in job
 - Length of contract i.e. permanent, short term etc
 - Whether unionised
- Knowledge and awareness of the following before notifying Acas
 - Acas Early Conciliation process / service
 - Employment tribunals

2 Initiating Early Conciliation

Section aim: to explore the reasons EC was initiated by the claimant and their mind-set at this stage

The workplace dispute

- When dispute took place
- What it was about (keep brief)
- Steps taken / process followed to address the issue
 - If unionised, reason for not being represented
- Outcome of this

EC notification

- What led to submission of the EC notification, ask for a step by step account of the circumstances that led to the notification and probe the range of influences and participant mind-set
 - How and when learnt about EC notification
 - Extent to which they had planned to notify Acas as opposed to coming across it by chance or calling the Acas helpline
 - Specific triggers / prompts to notifying Acas
 - Motivations for notifying Acas
 - Barriers or discouragement experienced at this point, ask openly and then probe specifically about fees
- Intentions / desired outcomes at this stage, if any, probe the extent to which participants actively thought through and knew what they wanted
 - Extent wanted to engage with the EC process and attitudes towards this step
 - Extent wanted a settlement without submitting ET1, probe on
 - What kind of settlement e.g. financial, reinstating a job, an apology...
 - Whether or not intended to use an Acas conciliator to achieve a settlement
 - Whether had any alternative options in mind if settlement was not obtainable

- Extent wanted to progress to ET
- Using Acas conciliation or without
- Other
- Understanding of the process
 - Early Conciliation
 - Awareness that Acas are impartial (i.e. that they pass messages between the parties and do not act as the claimant's advocate or representative)
 - Awareness of EC being voluntary
 - Awareness of EC being a legal process
 - Awareness of time limitations, and that the clock pauses during EC
 - Employment Tribunal
 - ET fees, probe knowledge of 'issue fee' and 'hearing fee' and amounts
 - Fee remission, trade union financing of ET costs if applicable
- Views about having to go through EC notification first
- Preconceptions about what would happen next

3 Experience of the Early Conciliation stage

Section aim: to get an overview of the EC journey for claimants and understand their mind-set and views throughout the different points in the journey

Ask participant to explain what happened after submitting the EC notification, step by step. Use prompts below to ensure necessary details are covered.

- First contact with Acas
 - When first contacted, how soon after notification
 - How contact was made, e.g. phone call, SMS, email, letter
 - What was said if contact made
 - Views on information given at this point e.g. helpfulness, clarity
- Decision to engage with EC at this point and factors considered,
 - Reasons for deciding to engage
 - Enablers
 - Barriers
 - Explore views on what they wanted to happen, and if differed from prior intentions
 - Employer response
- If claimant did not engage in EC
 - At what stage did they decide not to engage
 - Reasons for not engaging
 - Feelings and intentions regarding the claim at this stage, and if differed from prior intentions
 - Effect on motivations to continue with claim
 - Whether subsequently changed their mind, at what stage was this
 - What would have led them to engage, whether there is anything Acas could have done

- If employer did not engage in EC
 - Views on why
 - Whether claimant expected employer not to engage
 - Views on what would have led the employer to engage
 - Feelings and intentions regarding the claim at this stage
 - Effect of employer not engaging on motivations to continue with claim
 - If employer had engaged, views on what might have happened

- If conciliation took place, overview of Early Conciliation process
 - Format (e.g. phone, email, face-to-face)
 - Length and frequency of discussion/s with the conciliator
 - Content of discussion/s (e.g. costs)
 - How effective conciliator was, probe on impartiality
 - Who took the decision to close the case
 - Views on why there was no Acas-brokered resolution
 - Employer engagement with process
 - Views of settlement options
 - Intention to take case to Employment Tribunal
 - Other
 - Views of what else could have been done to reach a settlement
 - Feelings and intentions regarding proceeding with the claim at this stage
 - Effect on motivations to continue with claim
 - Whether views on EC process changed
 - Whether willingness to process to ET changed

- Overall experience of the EC process
 - Positive
 - Negative
 - View on role of Acas conciliator
 - Extent helpful / worthwhile even if settlement not reached
 - Suggested improvements
 - How experiences matched with expectations

4 Deciding not to proceed with ET1

Section aim: to understand the reasons and circumstances under which claimants decided not to proceed to Employment Tribunal and what their mind-set was at this stage

Ask participant to describe the circumstances after the EC stage by asking openly what happened after the EC stage

- What happened in the intervening period between certificate being issued and limitation period ending / deciding not to proceed to ET1
 - Whether any continued contact with conciliator
 - Nature
 - Purpose

- Outcome
 - Other actions taken
 - For those who did not continue contact with conciliator, did they realise that they could
- Why did they take no further action, ask openly before using the prompts below, probe fully on the nature and range of reasons and whether and how Acas played a role
 - Financial
 - Affordability of fees (establish which types of fees e.g. tribunal fees, wider fees such as paying employer costs)
 - Willingness to cover fees
 - When and how they became aware of fees
 - Issue was resolved
 - Unlikely to have positive outcome
 - Did not intend to submit an ET1 (probe fully reasons for this)
 - Private settlement agreed (probe fully on settlement reached)
 - It was too stressful to continue
 - Ran out of time
 - Lacked time
 - Other (important to probe other reasons, the prompts above are not exhaustive)
- If combination of reasons, what were the most important
- When did they decide to take no further action, any specific triggers for this
- Views on whether if anything happened differently they might have proceeded to ET1
- Extent to which it was an active decision
- What influenced them to take no further action and in what way
 - Family/friends
 - Colleagues
 - Advice from another party, probe who
 - Employer
 - Conciliator (if contact sustained)
 - Any other additional information source e.g. advice websites, incl. Acas
 - Wider circumstances
- Extent to which Acas / EC / conciliator influenced them to take no further action and in what way (e.g. said case closed, signalled limitation period ending, informed about fees)
- Views on anything that would have changed decision
 - Lower fees
 - Engagement of employer at EC (ask only if employer didn't engage)
 - More time
 - Other

5 Overview of views on Acas service

Section aim: understand what worked well or less well about the EC service and gather feedback to help inform future service delivery

- Overall reasons for not submitting an ET1
- Overall experience of Early Conciliation process, what worked well/less well
- Anything they would have liked to have known at initial EC stages that would have affected their actions
- Feelings about the situation overall, anything they would have done differently
- If in a similar situation in future would they
 - Do anything differently
 - Seek Acas conciliation
- How can the current EC service be improved

APPENDIX 3: References

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