

APPENDIX 1

Mandatory ACAS Conciliation Detail

STEPS TO TAKE WHEN CONTACTED BY ACAS

- Under the early conciliation regime, the first an employer hears of a potential employment tribunal claim may be through an informal approach from ACAS, rather than receipt of a formal employment tribunal claim form or correspondence from an employee or his or her representative.
- ACAS will contact the employer using the details given by the employee on the early conciliation form. Where the employer has multiple sites, the employee is likely to give details of his or her local place of work, rather than SHQ. Local managers should refer any initial approach by ACAS directly to the Chief Fire Officer.
- The employer does not have to decide immediately on being contacted whether or not it is going to participate in early conciliation. It can ask ACAS for time to consider whether or not to participate, but ACAS will be working to time limits and will expect a response from the employer within a few days.

WHAT TO CONSIDER WHEN DECIDING WHETHER OR NOT TO PARTICIPATE IN EARLY CONCILIATION

- An employer is under no obligation to participate in early conciliation. Employers can refuse to participate or, having started early conciliation, refuse to continue at any time.
- Whether or not it is to an employer's advantage to participate in early conciliation is likely to depend on the individual facts of each case. Some points for the employer to consider are set out below.

THE LIKELY STRENGTH AND VALUE OF THE CLAIM

- The employer must attempt to assess the strength of the employee's potential employment tribunal claim, and how much an employment tribunal might award the employee if he or she were to succeed with the claim.
- If it seems that the employee has a good claim, but might be willing to settle at this early stage for much less than an employment tribunal would award, that

would be a good reason for the employer to participate in early conciliation. Sometimes an employee may be well aware of the strength of his or her case, but be under financial pressures that mean that they may be willing to settle the claim at an early stage at a considerable discount to its full value. It is also possible that, at this early stage, an employee may not fully appreciate the potential value of the claim.

- The difficulty for an employer is that it must assess the likely strength and value of a claim without having the full information that would emerge during the formal employment tribunal process.

WILL THE EMPLOYEE ACTUALLY GO AHEAD WITH A CLAIM?

- The employer must consider whether or not it thinks the employee is willing and able to bring an employment tribunal claim, particularly bearing in mind that they will have to pay a fee, or go through the fee remission process, to do so. If the employer does not think that the employee will actually bring an employment tribunal claim, there will usually be little point in it participating in early conciliation.

ISSUES OTHER THAN MONEY INVOLVED

- The Government has cited one of the advantages of early conciliation as giving the parties flexibility to agree options that an employment tribunal would not have power to order. For instance, the employee might want to receive an agreed reference, or the employer might want the employee to accept stricter confidentiality obligations than those in his or her contract of employment. If either party wanted such terms to be included in a settlement, this could be a factor in favour of early conciliation.

CONFIDENTIALITY

- The circumstances and details of a settlement can be kept confidential by writing confidentiality terms into the settlement agreement. An employment tribunal hearing is usually open to the public and employment tribunal claims can attract adverse publicity for the employer. Settling during early conciliation under terms of confidentiality ought to mean that the dispute and any settlement do not attract publicity.

THE CONCILIATION PROCESS

- Where both the employee and employer are willing to participate in early conciliation it is expected that the ACAS conciliator will attempt to help the employer and employee to reach a settlement using the same approach and techniques that ACAS would use if conciliation were proceeding after an

employment tribunal claim had started. This means that the ACAS conciliator will act as a go-between, relaying settlement proposals and counter-proposals between the parties, and encouraging them to find points of agreement.

- The ACAS conciliator will not express a view on the rights and wrongs of the dispute. Sometimes, the ACAS conciliator will encourage the parties to speak directly to each other, particularly if there are points of detail to work out. Anything said by either party to the ACAS conciliator during early conciliation cannot be used as evidence in a later employment tribunal hearing (s.18(7) of the Employment Tribunals Act 1996), without the relevant party's consent. This is intended to allow the parties to speak frankly to ACAS during the conciliation process.
- Where the employer thinks that the employee is likely to bring an employment tribunal claim, the early conciliation process is the employer's opportunity to try to settle the case at a lower overall cost (including legal costs and management time) than would be involved in the employment tribunal claim.
- By the time the employer is contacted by ACAS, ACAS is likely to have some basic idea of what it is that the employee is complaining about, and what it is that the employee wants from the employer. If there are obvious errors in what the employee is saying, for instance he or she has misunderstood the law, or has unrealistic expectations of the likely compensation an employment tribunal will award, the employer can point out those issues to the employee (via ACAS) during the early conciliation process. The employer can also use early conciliation to draw the employee's attention to weaknesses in the case, although it is unlikely to be helpful for the employer to get drawn into detailed argument about the rights and wrongs of the potential claim. ACAS will not give legal advice, but can sometimes point out basic legal principles to an employee or employer, such as the need for a qualifying period of employment before claiming unfair dismissal. This can help to reduce the areas of dispute.
- As well as these legal matters, the conciliation process will usually involve negotiation, with concessions being made on both sides, on monetary compensation and other relevant issues such as an agreed reference or confidentiality terms.

- By narrowing down the legal issues, trying to correct unrealistic expectations, and adopting a process of negotiation, the employer may find that it can settle the claim on terms that are better for the organization than having to defend an employment tribunal claim.

TIME LIMITS

- There are complex provisions (under sch.2 to the Enterprise and Regulatory Reform Act 2013) extending the normal time limits for submitting an employment tribunal claim, to take account of delays that have been caused by the early conciliation process. The period starting the day after the employee first contacted ACAS and ending with receipt of the early conciliation certificate will not count when calculating the time within which a claim has to be submitted. If the time limit would have expired during the time between the employee first contacting ACAS and one month after receipt of the early conciliation certificate, it will be extended to expire one month after receipt of the early conciliation certificate.
- For instance, if the employee's dismissal took effect on 1 January, he or she would usually have to submit an unfair dismissal claim by 31 March at the latest. However:
 - if the employee contacted ACAS to start early conciliation on 31 January and received an early conciliation certificate on 14 February, the time for submission of a claim is extended until 14 April (the two weeks of early conciliation do not count for the time limit); or
 - if he or she contacted ACAS to start early conciliation on 14 March and received an early conciliation certificate on 7 April, the time for submission of the claim is extended until 7 May (one month after receipt of the early conciliation certificate).
- The fact that early conciliation has failed does not prevent ACAS from offering its standard conciliation service once an employment tribunal claim has been submitted.

EARLY CONCILIATION INITIATED BY THE EMPLOYER

- The early conciliation process can be started by the employer, rather than the employee. Early conciliation initiated by the employer does not affect the

normal time limits within which an employment tribunal claim has to be brought. If early conciliation initiated by the employer has failed, the employee can still ask for early conciliation, but does not have to. The fact that the early conciliation initiated by the employer has failed will be sufficient for ACAS to issue the early conciliation certificate needed to bring an employment tribunal claim.

- In most cases early conciliation will be initiated by the employee, rather than the employer, but employers should consider using the service if they think ACAS might be able to help them reach agreement with the employee. This might happen if, for instance, the employer felt that it was close to reaching agreement with the employee on a compensation payment, but wanted help from ACAS on documenting the agreement or in resolving points of detail.

