

TYNE AND WEAR FIRE AND RESCUE AUTHORITY

Item No. 5

HUMAN RESOURCES COMMITTEE: 14 JULY 2014

**SUBJECT: MANDATORY ACAS CONCILIATION AND EMPLOYMENT TRIBUNAL
CLAIMS – EARLY CONCILIATION**

**JOINT REPORT OF THE CHIEF FIRE OFFICER, THE CLERK TO THE
AUTHORITY, THE FINANCE OFFICER AND THE PERSONNEL ADVISOR TO THE
AUTHORITY**

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to advise Members on the new rules aimed at reducing the number of Employment Tribunals that have now come into force.

2 BACKGROUND

- 2.1 The Government set out its commitment to delivering a flexible, effective and fair labour market which encourages the earlier resolution of disputes as part of the Resolving Workplace Disputes consultation. Early Conciliation forms part of this. It aims to provide parties with the opportunity to resolve their disputes without the cost and stress of going through an Employment Tribunal, with the support of ACAS conciliators. It is an approach that has been welcomed by all quarters. Employees who would like to bring a case of unfair dismissal or discrimination are now required to first notify the conciliation service, ACAS, to see if the dispute can be resolved. ACAS will then offer early conciliation to the parties for a period of one month, although this can be extended by up to 14 days by agreement. The time limit for bringing the claim will be put on hold while early conciliation is attempted.
- 2.2 If either party refuses conciliation or such conciliation fails to reach a settlement, the claimant will be able to issue the claim in the Employment Tribunal. Early conciliation has been available on a voluntary basis as of 6 April, but any claims issued on or after 6 May 2014 will have to go through ACAS first.
- 2.3 The rules of procedure relating to early conciliation are set out in sch.1 to the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014 (SI 2014/254) and the Employment Tribunals (Early

Conciliation: Exemptions and Rules of Procedure) (Amendment) Regulations 2014 (SI 2014/847).

3 OUTLINE OF EARLY CONCILIATION

- 3.1 An employee will start the early conciliation process by completing an online or paper form or telephoning ACAS.
- 3.2 The minimum amount of information that the employee has to provide is their name and address.
- 3.3 Once it has received this notification, ACAS will attempt to contact the employee to ask whether or not they agree to ACAS contacting the employer.
- 3.4 If both the employee and employer are willing to participate in early conciliation, ACAS has up to one calendar month from the date on which to act. This time period can be extended by ACAS by a maximum of 14 days.

4 LEGAL AND ADMINISTRATIVE COSTS

- 4.1 Settling a claim in early conciliation is likely to lead to a considerable saving for the employer in legal costs and management time when compared with defending an employment tribunal claim.

5 IF EARLY CONCILIATION SUCCEEDS

- 5.1 If early conciliation does result in a settlement, the terms of settlement will need to be documented. It is possible that any such settlement may cover only part, rather than the whole, of the employee's potential claim. In such a case, ACAS will go on to issue an early conciliation certificate so that the employee is free to take the remainder of the claim to an employment tribunal.

6 IF EARLY CONCILIATION FAILS

- 6.1 An employment tribunal claim submitted without a conciliation certificate will be rejected by the tribunal. ACAS must issue an early conciliation certificate to the employee (and to the employer where:
 - ACAS cannot contact the employee or employer, having made reasonable attempts to do so;
 - either the employee or the employer does not want to participate in early conciliation or withdraws from the process;
 - the conciliation officer decides that settlement is not possible; or

- the time allowed for conciliation (including any extension of time) expires.

7 EXCEPTIONS TO THE EARLY CONCILIATION PROCEDURE

- 7.1 There are some exceptional employment tribunal claims where early conciliation is not required (as set out in reg.3 of the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014). These include claims brought by groups of employees, where one of the employees has already been through the early conciliation process; claims by an employee for reinstatement pending the full hearing of a tribunal claim; and claims against the National Insurance Fund where an employer is insolvent.

8 LEGISLATIVE IMPLICATIONS

- 8.1 The legislative implications associated with this report are contained in section 2.

9 RISK MANAGEMENT

- 9.1 A risk assessment has been undertaken to ensure that the risk to the Authority has been minimised as far as practicable. The assessment has considered an appropriate balance between risk and control; the realisation of efficiencies; the most appropriate use of limited resources; and a comprehensive evaluation of the benefits. The risk to the Authority has been assessed as low utilising the standard risk matrix based on control measures being in place. The complete risk assessment is available on request from the Chief Fire Officer.

10 FINANCIAL IMPLICATIONS

- 10.1 There are no financial implications at this time.

11 STRATEGIC PLAN LINK

- 11.1 Goal Four: To deliver a modern effective service ensuring value for money with staff who reflect the communities we serve.

12 EQUALITY AND FAIRNESS IMPLICATIONS

- 12.1 There are no equality and fairness implications in respect of this report.

13 HEALTH AND SAFETY IMPLICATIONS

- 13.1 There are no health and safety implications in respect of this report.

14 CONSULTATION UNDERTAKEN

- 14.1 Sunderland City Council (Legal) has been consulted upon by the Service.

15 RECOMMENDATIONS

15.1 Members are recommended to:

- a) Consider the content of the report.
- b) Receive further reports as appropriate.

BACKGROUND PAPERS

The under mentioned Background Papers refer to the subject matter of the above report:

The Enterprise and Regulatory Reform Act 2013.

Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014 (SI 2014/254) and the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) (Amendment) Regulations 2014 (SI 2014/847).