

EARLY CONCILIATION REPORT

1. Introduction

In research conducted before tribunal fees were abolished by the Supreme Court ruling in July NatCen Social Research undertook an investigation into why some claimants did not proceed with making employment tribunal (ET) applications.

2. Legal requirement

Since May 2014 it has been a legal requirement for the majority of employment tribunal (ET) claims for a claimant to make an Early Conciliation (EC) notification to ACAS. Once an EC form is received a conciliator approaches the respondent (employer) to attempt to settle the claim without recourse to an ET. The research by NatCen examined what factors influenced those claimants that neither achieved a settlement, nor went on to issue ET proceedings.

3. In-depth interviews

Through 35 in-depth interviews with a broad range of claimants the researchers found that financial barriers, including the fees due at the time of the research, and other legal costs posed a significant barrier to making an ET claim. However, even with fees taken out of the picture, other factors would have acted as barriers to proceeding.

4. More than finance

Decisions about making tribunal claims were found multi-faceted and interrelated and included lack of

employer engagement, the anticipated mental and emotional impact of tribunals and lack of confidence in a positive outcome, as well as the financial worries. Demonstrating the complexity of the research, the paper states: "Most widespread across the sample was the desire to settle and avoid employment tribunal due to a range of financial and other concerns. A second group, however, wanted to go all the way to employment tribunal to gain justice, at least initially."

5. Improving EC

Part of the reason for carrying out the research was to look for ways that the EC service could be improved – and it concludes with three main recommendations detailed below.

6. Information to claimants

Claimants should be provided with information that will help them to understand the service. They should be given clear information about both the conciliation and ET process. The relevant employment law should be explained so that they are better able to decide if their claim is worth pursuing. In addition, online information should be clear and succinct.

7. Claimants' expectations

The report notes that workplace disputes had left some claimants in a delicate emotional state, and looking for support and advocacy. These – unrealistic – expectations led some to

have negative experiences of the EC process where they had expected ACAS to be "... on their side."

8. Delivery of conciliation

The report calls for more consistent and attentive communication from the conciliator, and increased transparency during the whole process. Lack of contact left some claimants feeling that the conciliator was not particularly interested in their case.

9. ACAS response

Feedback about contact with ACAS was generally positive, with its staff being described as helpful, informative and empathetic. As a result of the research ACAS has agreed that it must ensure its customers are clearly informed about the process, kept informed of progress, and that they are enabled to understand its impartial role at the outset in order that they can have realistic expectations of what can be achieved.

10. The research

"ACAS Early Conciliation Decision-making: Exploring the Behaviours of Claimants who Neither Settle nor Proceed to Employment Tribunal" presents the views of the authors, and not necessarily those of ACAS. It is available on the ACAS website at www.acas.org.uk

11. Reps action

Reps who believe a member has a claim to an ET should refer the matter to their full time officer in the first instance. TSSA will only support claims we believe have more than 50% chance of achieving a successful outcome. Where the employment rights adviser does not believe there is that level of success available the individual member will be provided with a written explanation of the legal

tests that will apply, advice about how to make an independent claim, and a right of appeal to the executive committee. Reps should not seek to advise members of the strength of success at an ET but refer the matter to HQ for analysis.

Further Information

More information on this and other legal matters is available from:

- ❑ Val Stansfield, Employment Rights Adviser at stansfieldv@tssa.org.uk or 020 7529 8046
- ❑ the TSSA Helpdesk – 0800 328 2673

The information given here is for general guidance only and should not be regarded as a complete or authoritative statement of the law.