

How Acas can help



Pre-claim conciliation explained

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Acas conciliation

Acas is a publicly funded independent organisation. Our job is to promote good employment relations.

If someone believes they have a claim in connection with their employment rights¹, and either that person or their employer asks for our help, we can work with them to find a solution acceptable to both, so that they can avoid the need for the matter to be heard by a tribunal. This process is known as conciliation.

We don't impose outcomes or make judgements on the rights or wrongs of the matter in dispute; we simply try to help people settle their differences on their own terms.

Conciliation can be provided before a claim has been made to an employment tribunal. This leaflet explains how we can help in those cases.

If you have a disability, please let us know if we need to make any special arrangements for you when dealing with your case.

If you need to use an interpreter, we can arrange for communication through Language Line, which is a completely confidential and impartial service.

This leaflet can also be made available in alternative formats. Please call Acas Publications on 08702 42 90 90 for further details.

¹ Most statutory employment rights apply only to employees who work under a contract of employment; but some rights also apply to certain workers engaged on a contract for services. References to 'employees' in this leaflet should be taken to mean both employees and workers, where appropriate. It may be desirable to seek legal advice if you are in doubt about your employment status, or that of a person who works for you.

Key features of Acas conciliation

Conciliators are **impartial**. This means that they do not:

- represent either the employer or the employee
- take sides
- give an explicit opinion on the merits of a claim or potential claim
- advise on tactics, or how to win at a tribunal
- pressurise people to settle or abandon a case.

Conciliation is **confidential**. This means that:

- nothing you tell us will be passed on to anyone else, including the tribunal, unless you want it to be.

Conciliation is **independent**. This means that:

- it is entirely separate from the employment tribunal and if a settlement is not reached, a claim can still be pursued.

Conciliation is **voluntary**. This means that:

- employers and employees can opt in or out of conciliation at any time
- the conciliator has no power to compel anyone to take any course of action
- there are no restrictions on what can be included in the terms of a settlement agreement (as long as it does not contain anything unlawful).

Conciliation is **free** at the point of use. This means that:

- it is publicly funded: there are no charges to the employer or employee.

What are the options?

If an employee believes they could complain about their employment rights but has not yet made a claim to an employment tribunal, there are several ways to resolve the matter without going any further:

Use workplace procedures – Employers and employees should always try this before considering any other option. It's usually quicker, less stressful and less costly for all concerned²;

Conciliate through Acas - We can conciliate in almost every type of potential claim about individual employment rights. Most are resolved without going any further;

Settle the matter privately – Employers and employees can negotiate directly, or with the assistance of a commercial mediator, and settle a potential claim privately in certain circumstances by way of a Compromise Agreement.

If an agreed solution cannot be found despite trying one or more of the alternatives above, the employee may still choose to lodge a claim with the tribunal. Claims must be made within a specified time of the events they concern. In most cases this is three months.

In limited circumstances tribunals can accept late claims; but taking part in conciliation or any of the other activities described above does not provide grounds for this. It is the employee's responsibility to find out what time limits apply and ensure they do not lose the right to make a claim if the matter cannot be resolved before then. Employers or employees who are in any doubt as to how this might affect a particular case should seek legal advice.

² The 'Acas Code of Practice on disciplinary and grievance procedures' sets out the principles that employers and employees should follow when dealing with most workplace problems that could become the subject of employment tribunal claims. If a claim is subsequently made and the tribunal finds that either the employer or the employee has unreasonably failed to follow the Code of Practice, any award can be varied by up to 25% upwards or downwards.

Why choose conciliation?

- **Saves time and money.** Preparing or responding to a tribunal claim takes a great deal of time, and if there's a tribunal hearing both employer and employee could have representational costs.
- **Minimises stress.** Even just drawing up or replying to a tribunal claim can be stressful. Almost everyone finds the process of pursuing or defending a case difficult, and appearing in tribunal can be a harrowing experience.
- Offers the prospect of a **quick solution.** Many cases can be dealt with in a few telephone calls or a short meeting, with agreed settlements implemented very soon afterwards.
- Produces a **win-win** outcome. In a tribunal, someone always loses; and even the 'winner' will not always get what he or she wants from the process.
- Leaves the employer and employee **in control.** Settlements are reached by agreement. In the tribunal the decision is taken out of the parties' hands.
- Resolves the dispute **to suit the employer and employee**, rather than what the tribunal has the power to award (eg, tribunals can't order references to be given, or say what they should contain).
- **Avoids the formality** of a hearing. Although the tribunal is less 'stuffy' and legalistic than most Courts, it is still a judicial process with which most people are unfamiliar and uncomfortable.
- Increases the chance of **avoiding a permanent breakdown of the employment relationship** – if that is what the employer and employee want to achieve.

What will the conciliator do?

To explore how the potential claim might be resolved, the conciliator will talk through the issues with the employer and the employee. Mostly this will take place over the telephone, but sometimes a meeting, chaired by the conciliator, can be helpful.

Where appropriate, the conciliator will also:

- explain the conciliation process
- explain the way tribunals operate, and what they take into account in deciding claims in similar circumstances
- discuss the options
- ask questions to help clarify the employer's and employee's interests and concerns, positions and intentions
- help each person understand how the other views the case, and
- relay any proposals for a settlement between the employer and the employee.

The conciliator will not:

- make a judgement on the case, or the likely outcome of a hearing
- advise either the employer or the employee whether or not to accept any proposals for settlement
- act as a representative or take sides in any other way.

What about representation?

If you appoint a representative to act for you we will conciliate through them. Your representative may agree a settlement on your behalf. As settlements are legally binding, it is important to ensure that your representative fully understands your requirements, has your express authority to enter into an agreement on your behalf, and regularly keeps in touch with you so that you are aware of any progress in conciliation.

What happens if I settle the complaint through Acas?

If you settle the complaint through Acas, the agreement will be legally binding and no employment tribunal claim can then be made about the matter in question. Agreements do not have to be in writing to be legally binding, but the conciliator will record the terms of the agreement on an Acas form and send this to the employer and employee to sign as proof of the agreement.

What happens if we can't reach agreement?

It will be up to the employee to decide whether or not they wish to submit a claim to the employment tribunal. If they do, Acas will continue to offer conciliation with the aim of resolving the matter without the need for a tribunal hearing.

Where can I get more information or advice?

If you have already spoken to an Acas conciliator, you will find they can help you identify sources of advice and information appropriate to your situation. If not, the following may be helpful:

- The Acas Helpline (08457 47 47 47) can give information and advice about employment rights, but is not able to assist with preparing or presenting a claim to the tribunal.
- You can call the Pay and Work Rights Helpline for free advice and to report abuses about the National Minimum Wage, the Agricultural Minimum Wage, Employment Agencies, Working Time limits, and working for a Gangmaster. The telephone number is 0800 917 2368, or textphone 0800 121 4042 and <http://payandworkingrightscampaign.direct.gov.uk/index.html>
- Equality Direct (08456 00 34 44) can give employers (in England only at present) free advice and information on equality legislation and good practice.
- The Equality Advice and Support Service (EASS) can give free help and advice relating to equal pay and discrimination in employment.

www.equalityadvisoryservice.com

Telephone - 0808 800 0082

Textphone - 0808 800 0084

Email - adviceline@equalityadvisoryservice.com

- Trade Unions and employers' associations may be able to advise and support their members.
- Citizens Advice Bureaux, Solicitors, Law Centres and some specialist consultants can provide advice and representation on all matters concerned with employment rights and potential claims.

- The Employment Tribunals public enquiry line (Phone: 0845 795 9775; Minicom: 0845 757 3722) can explain how the tribunals system works and give information about tribunal publications. They do not give legal advice, such as advising on a claim or response. The Employment Tribunals website www.employmenttribunals.gov.uk also contains useful information for employers and employees.

Printed information

Leaflets explaining tribunal procedures are available from Trade Unions, employer associations, Citizens Advice Bureaux and Law Centres.

Data Protection Act 1998

If you have a complaint about an employment right or are responding to one, Acas will put some of the information you give us on to a computer. This helps us to monitor progress and produce statistics. Information held may be passed to the Department for Business, Innovation and Skills (BIS) to assist research into the use and effectiveness of Acas.

And finally ...

We do our best to provide a high standard of service at all times but if you are not satisfied with the service you have received, you should write to the Director of the Acas office dealing with your case. Addresses of main Acas offices are given on the back of this leaflet.



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Information in this booklet has been revised up to the date of the last reprint – see below.

Acas aims to improve organisations and working life through better employment relations. We provide up-to-date information, independent advice, high quality training and we work with employers and employees to solve problems and improve performance.

We are an independent, publicly-funded organisation and many of our services are free.

April 2013

Acas can help *with your employment relations needs*

Every year Acas helps employers and employees from thousands of workplaces. That means we keep right up to date with today's employment relations issues – such as discipline and grievance handling, preventing discrimination and communicating effectively in workplaces. Make the most of our practical experience for your organisation – find out what we can do for you.

We inform

We answer your questions, give you the facts you need and talk through your options. You can then make informed decisions. Contact us to keep on top of what employment rights legislation means in practice – before it gets on top of you. Call our helpline **08457 47 47 47** or visit our website www.acas.org.uk.

We advise and guide

We give you practical know-how on setting up and keeping good relations in your organisation. Look at our publications on the website or ask our helpline to put you in touch with your local Acas adviser. Our Equality Direct helpline **08456 00 34 44** advises on equality issues, such as discrimination.

We train

From a two-hour session on the key points of new legislation or employing people to courses specially designed for people in your organisation, we offer training to suit you. Of course there may be other providers of such services in addition to Acas. Look on the website – www.acas.org.uk/training for what is coming up in your area and to book a place or talk to your local Acas office about our tailored services.

We work with you

We offer hands-on practical help and support to tackle issues in your business with you. This might be through one of our well-known problem-solving services. Or a programme we have worked out together to put your business firmly on track for effective employment relations. You will meet your Acas adviser and discuss exactly what is needed before giving any go-ahead.

Acas' main offices:

- **National**
London
- **East Midlands**
Nottingham
- **East of England**
Bury St Edmunds, Suffolk
- **London**
- **North East**
Newcastle upon Tyne
- **North West**
Manchester
- **North West**
Liverpool
- **Scotland**
Glasgow
- **South East**
Paddock Wood, Kent
- **South East**
Fleet, Hampshire
- **South West**
Bristol
- **West Midlands**
Birmingham
- **Yorkshire and Humber**
Leeds
- **Wales**
Cardiff

Helpline **08457 47 47 47**

08456 06 16 00
for Minicom users

08702 42 90 90
Acas publications orderline

To view a full list of Acas publications
go to **www.acas.org.uk/publications**

08457 38 37 36
Acas Customer Services Team who
can provide details of services and
training in your area or visit
www.acas.org.uk/training

08456 00 34 44
for questions on managing
equality in the workplace



INVESTOR IN PEOPLE

www.acas.org.uk