



Department
for Business
Innovation & Skills

EARLY CONCILIATION

Final Impact Assessment

FEBRUARY 2014

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Title: Early Conciliation IA No: BIS0392 Lead department or agency: BIS Other departments or agencies: Acas, Ministry of Justice, Her Majesty's Courts and Tribunals Service	Impact Assessment (IA)			
	Date: 28/01/2014			
	Stage: Enactment			
	Source of intervention: Domestic			
	Type of measure: Secondary legislation			
Contact for enquiries: Richard Boyd				

Summary: Intervention and Options	RPC Opinion: RPC Opinion Status
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
£477.67m	£254.79m	-£24.05m	Yes	IN/Zero net cost

What is the problem under consideration? Why is government intervention necessary?

Employment Tribunal claims are costly and stressful for both claimants and employers, whilst the Exchequer cost of administering the Employment Tribunal system is also significant. There are significant benefits to resolving disputes early, and before they reach employment tribunal (as Early Conciliation facilitates). The necessary primary legislation has now completed its passage through Parliament. The Government intervention is about improving the efficiency of our dispute resolution system by reducing the costs to all concerned.

What are the policy objectives and the intended effects?

With the introduction of early conciliation we are looking to: Increase the number of cases where parties reach an agreed settlement; ensure the claimant and respondent benefit from contact with Acas in terms of information and understanding, even where they do end up at Employment Tribunal, improve overall satisfaction with the employment dispute resolution system and implement the delivery of the policy in the most efficient way.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

At earlier stages in the development of this policy, many of the details of how Early Conciliation will operate were set out (some of which will be delivered through the Enterprise and Regulatory Reform Act). A subsequent consultation then sought views on current plans for implementation. These included aspects such as how the Early Conciliation form (to commence the Early Conciliation process) would work, and how first stage contact is made with prospective claimants and employer respondents. It is unlikely that the various implementation options would affect the overall costs and benefits to all parties significantly. However, where there are risks these were highlighted.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 2019					
Does implementation go beyond minimum EU requirements?			Yes/No/N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible SELECT SIGNATORY: James Sillett Date: 12/02/2014

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 477.67

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	1		
High			
Best Estimate		3.5	34.5

Description and scale of key monetised costs by 'main affected groups'

Claimants: costs of entering into early conciliation (forms, time spent conciliating, any legal representation), estimated at £4.05m per year. Employers: costs of entering into early conciliation (forms, staff time spent conciliating, legal representation) estimated at £27.6m per year. Exchequer: costs of running early conciliation, currently estimated at around £2.8m per year, with one off costs to Acas at £3m and HMCTS at £0.5.

Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate			90.4

Description and scale of key monetised benefits by 'main affected groups'

Claimants: benefits from fewer claims going to Employment Tribunal, savings in time and legal representation estimated at £23.2m per year. Employers: benefits from fewer claims going to Employment Tribunal, savings in staff time, legal costs estimated at £64.6m per year. The Exchequer: savings from fewer Employment Tribunal claims, although quite uncertain, it currently appears these could be in the region of £2.6m per annum with the potential to rise once Early Conciliation is fully embedded.

Other key non-monetised benefits by 'main affected groups'

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

The estimates presented are dependent on a number of key factors, including the profile of employment tribunal claims remaining similar, and volumes following historic patterns (in the absence of this intervention). Major changes have come to the ET system in the form of user fees - the impact of this change in Summer 2013 remains highly uncertain and may affect the expected impacts of Early Conciliation.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: £17.9m	Benefits: £42m	Net: £24m	Yes	IN/Zero net cost

IA Evidence Base for Implementation of Early Conciliation

Background

1. Government has taken primary legislation through Parliament, in the Enterprise and Regulatory Reform (ERR) Act, to provide the right conditions for business success and to promote a new economic dynamism by harnessing our economic strengths and removing barriers that inhibit innovation and enterprise.
2. The ERR Act contains a range of measures to support these aims, and encourage long term growth, including providing opportunities for parties to resolve disputes without the need for employment tribunals.
3. The Act will place a duty on Acas to provide early conciliation (i.e. to offer conciliation before applicants reach the employment tribunal). The Government response to the consultation on implementation of Early Conciliation (EC) and impact assessment will set out in more detail how early conciliation will operate.
4. EC was assessed previously within the “Resolving Workplace Disputes” consultation and Government response impact assessments¹. This impact assessment builds on the previous assessments of EC as we move into the implementation phase. It therefore reflects the further thinking we have done on how the process should operate.
5. Currently if employees experience a problem at work there are a number of routes to resolution. These include discussing the matter internally (including using internal discipline & grievance procedures), mediation, external advice (such as from Acas or Citizen’s Advice Bureaux) or, ultimately, taking the matter to an employment tribunal.
6. If an individual decides to make a claim to an employment tribunal (ET) the general process (there are exceptions to this – but the following happens in the majority of cases) is they must complete and submit an ET1 form. This form is sent to the employer – the respondent – who then completes and submits an ET3 form in response. Details of almost all ET claims are passed to Acas who have a statutory duty to offer parties the opportunity to conciliate the matter(s). There are then a number of possible outcomes, including achieving a binding settlement (a COT3 settlement), which ends the ET process, or having the matter determined at an ET hearing.
7. Business representatives have told us that employers are worried about the prospect of employment tribunal claims being brought against them. One of the main worries is the costs involved in preparing for, and attending, an employment tribunal whether they are successful or not. BIS understands from a number of business organisations that this concern about the potential risk of claims against them can adversely affect their decision to take on staff.
8. Employment tribunal claimants also face significant cost and stress in pursuing a claim, whilst the Exchequer cost of administering and running the employment tribunals system, which includes Acas conciliation work, is also significant.
9. In the Resolving Workplace Disputes consultation, which closed on 20 April 2011, Government set out its commitment to ensure businesses feel more confident about employing people and to improve the efficiency of the end-to-end system. The Government Response, published on 23 November 2011 set out a package of measures that would be taken forward to deliver our objectives of:

¹ The Government response Impact Assessment for Resolving Workplace Disputes can be found at <https://www.gov.uk/government/publications/resolving-workplace-disputes-final-assessment>

- Supporting and encouraging parties to resolve disputes earlier, and where possible in the workplace, thereby reducing the number of claims that reach an employment tribunal.
 - Ensuring that where parties do need to go to employment tribunal, cases are dealt with more swiftly and efficiently to reduce the costs borne by all parties.
10. Early Conciliation will require all prospective ET claimants to submit details of their claim to Acas in the first instance was one of the key elements of that package, and the necessary clauses to underpin the introduction of Early Conciliation are included in the ERR Act.
11. The proposed Early Conciliation has evolved from the success of the Acas Pre-Claim Conciliation (PCC) Service, which was rolled out in April 2009. PCC is provided in 'potential' ET claims, aiming to resolve disputes before they enter the Tribunal system. The service is offered to callers (mainly employees) to the Acas Helpline who may become involved in a potential ET claim, although some referrals come directly to Acas, usually from employers. If the caller meets the relevant criteria, and the offer of PCC is accepted by both the claimant and the employer a PCC-trained conciliator works with both parties to help them attempt to resolve the dispute, and so reduce the number of disputes entering the ET system.

Problem under consideration

12. The average costs to employers, claimants and the Exchequer of going through employment tribunals are illustrated in Table 1 and show how costly the process can be for all parties. More details on how these estimates are arrived at can be found in Annex A.

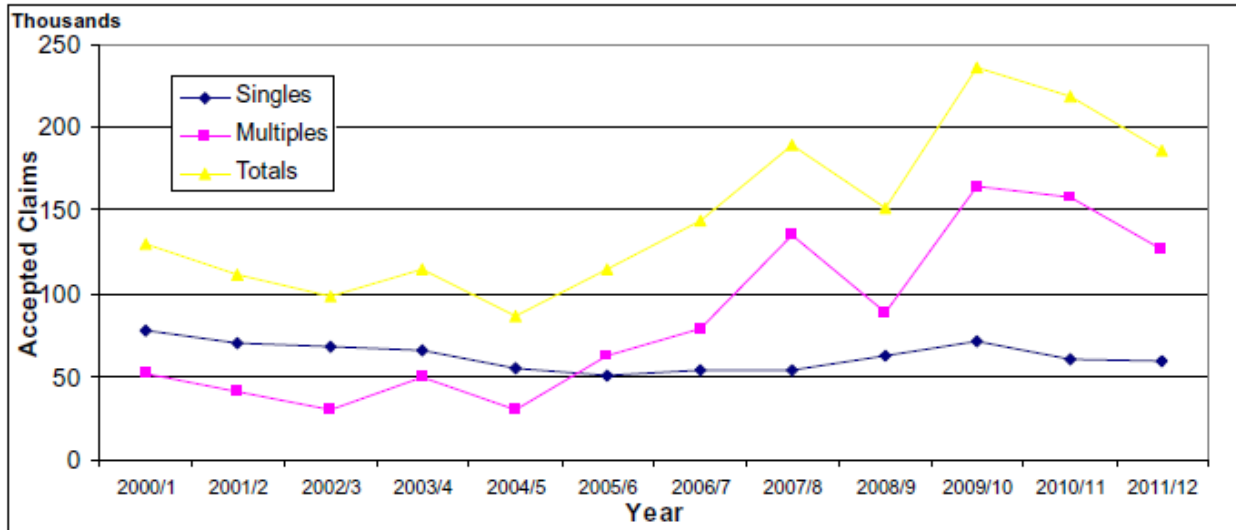
Table 1: Summary of costs incurred throughout employment tribunal process, by outcome

	Employment Tribunal Hearing	Individual Conciliation	Average across ET claim outcome
Employer	£6,200	£3,500	£3,900
Claimant	£1,800	£1,100	£1,400
Exchequer	£3,200	£590	

Source: BIS estimates from Acas, HMCTS, SETA and ASHE data in 2012 prices. Figures are rounded.

13. In the financial year 2011-12 there were a total of 186,300 employment tribunal claims accepted, of which 59,200 were single claims (one claimant) and 127,100 were multiple claims (a number of claims against the same employer). Chart 1 below shows that multiple claims have been higher in recent years, but although there was a peak in single claims in 2009/10, there has not been a dramatic or sustained rise since.

Chart 1: Single and multiple accepted Employment Tribunal Claims, 2000-01 to 2011-12



Note: Figures for 2007-08 are estimated

Source: ET Reports

2

14. There is a body of evidence³ that demonstrates that if disputes are resolved in the workplace this is far less costly to both parties, delivers more positive results in terms of continued employment and business productivity, and saves money for the Government by reducing demand on Her Majesty’s Courts and Tribunals Service (HMCTS).
15. Even where it is not possible to resolve the dispute in the workplace or to preserve the employment relationship, there are still clear benefits to parties of resolving the matter without the need for judicial intervention. Not only can such an approach be less costly, in terms of time and money, but it can also deliver outcomes that are not possible at an employment tribunal – for example, an agreed reference, or an apology. And a reduction in the number of cases that go to tribunal clearly benefits the Exchequer.

Rationale for Intervention

Quicker and Cheaper Resolution

16. Evaluation evidence on how the Acas pre-claim conciliation service (PCC) has operated since its introduction suggests that making it a requirement for all claims to be submitted to Acas in the first instance so that early (pre-claim) conciliation can be offered could significantly reduce the number of claims that go to employment tribunals. Even where settlement is not achieved, there is evidence that there is still a benefit in providing for one or both parties to have contact with an Acas conciliator.

Addressing False Expectations

17. Evidence suggests parties have unrealistic expectations of the tribunal outcome. For example an Institute of Employment Studies literature review for BIS⁴ points out that there

² Annual Tribunal statistics 2011 – 12, Ministry of Justice (<http://www.justice.gov.uk/downloads/statistics/tribs-stats/ts-annual-stats-2011-12.pdf>)

³ For example, Latreille, P “Mediation at Work: Of Success, Failure and Fragility”, Acas Research Paper 2010, found at: <http://www.acas.org.uk/CHttpHandler.ashx?id=2890&p=0>

⁴ Lucy, D and Broughton, A, Understanding the behaviour and decision making of employees in conflicts and disputes at work, February 2011. Found at <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/u/11-918-understanding-behaviour-employees-conflicts-at-work>

seems to be a difference between the perceived chances of success and actual outcomes. There is evidence of “optimistic overconfidence” on the part of claimants.

18. In addition, parties are not always clear as to the length of time the tribunal process may take, or how awards are calculated (and therefore the amount of their potential award or liability). Providing both parties with access to impartial advice and information from an Acas conciliator, a reliable and trusted source, can tackle this information gap and could help parties decide whether pursuing the matter through tribunal is appropriate, or whether the matter can be resolved by other means. The effects of reliable information are to help encourage resolution of disputes and, ultimately, prevent employment tribunal claims which impose large costs on all parties.

Policy objective

19. The intention of this proposal, taken together with the other measures contained in the Resolving Workplace Disputes consultation, is to improve the efficiency of the end-to-end dispute resolution system. In particular, this measure is intended to support and encourage parties to resolve disputes earlier, and where possible in the workplace, thereby reducing the number of claims that reach an employment tribunal and minimising the costs involved for all parties.
20. In particular, with the introduction of EC we are looking to:
 - Increase the number of cases where parties reach an agreed settlement
 - Ensure the claimant and respondent benefit from contact with Acas in terms of information and understanding, even where they do end up at employment tribunal
 - Improve overall satisfaction with the employment dispute resolution system
21. The introduction of a requirement for all prospective claimants to contact Acas in the first instance will provide for a greater use of conciliation, and at an earlier stage. Successful conciliation between the parties will lead to an increase in the number of cases where parties reach an agreed settlement rather than relying on a third party to determine the outcome for them. Where early conciliation is unsuccessful the claimant (and in many cases, the respondent) will still have benefitted from contact with Acas in terms of receiving information about the ET process etc. Better-informed claimants and respondents will have more realistic expectations of the process and likely outcome which could, in turn, lead to improved satisfaction with the system. Recent research shows that satisfaction with ET outcome is higher when pre-claim conciliation has taken place beforehand, even where it has failed to resolve the issue at that stage.⁵
22. Settlement of disputes outside of the tribunal and provision of information to enable informed choices about whether to proceed to ET in the absence of a settlement both offer net savings to the Exchequer. It is important that the EC process operates in the most efficient or cost-effective way possible to maximise those benefits.

⁵ Why Pre-Claim Conciliation Referrals become Employment Tribunal Claims, Acas paper 14/12 2012.
<http://www.acas.co.uk/index.aspx?articleid=2056>

Options

Option 1 - Do nothing

23. Once the relevant provisions of the ERR Act are commenced, Acas will be under a duty to provide EC. However, this duty will not “bite” on claimants until we amend the Employment Tribunal Rules of Procedure to require tribunals to reject claims where they are not accompanied by a certificate confirming that the claimant has met the requirement to submit details of their claim to Acas in the first instance.
24. This is the point at which parties, particularly business, will have the opportunity to realise the savings that settling a dispute through early conciliation offers. While we could elect not to make the necessary rule changes to give effect to the Acas duty, we do not consider “Do Nothing” to be a realistic option.

Option 2 - All prospective ET claims to be submitted to Acas in the first instance and offered early conciliation

25. The consultation on the implementation of EC, which closed on 15 February 2013) sought views on the proposals for implementing EC in general, and two options in particular:
 - How first stage contact is made by Acas to potential claimants (option 2.2a and 2.2b)
 - How a statement of compliance is issued (option 2.4a and 2.4b)

2.1 How the Early Conciliation process is commenced

26. Unless they are exempt from the requirement to contact Acas before they can lodge their claim with the employment tribunal, prospective claimants will need to complete and submit a form to Acas. In accordance with Government’s Digital by Default strategy, they will be encouraged to submit the form on-line in order to allow the data to be automatically up-lifted to the Acas case management system. This has the advantage of keeping data entry costs to a minimum. Alternative access will be made available where claimants are unable to use the on-line route.
27. The form will require very basic information – the name, address and contact details of the claimant and respondent - so as to minimise the burden on the claimant.
28. Prospective claimants who contact the Acas Helpline for advice on lodging a claim will be directed to the relevant website to access the form (or advised how they can access an alternative route). We considered whether it would be appropriate for Acas to take all requests for EC by telephone and input the information directly into their IT system, but this would require a substantial increase in staff, involving on-going costs unlike a predominantly electronic system which involves one-off, set-up costs only.
29. Government intends that, other in very limited circumstances, all prospective claimants will be required to send their potential claim to Acas. We believe that the only exceptions to the requirement should be in relation to those jurisdictions where such a short period exists for lodging a claim that complying with the requirement would not be, or where prospective claimants are specifically exempted, or the requirement has otherwise been complied with.

30. Claimants will remain responsible for ensuring that any claim which they present to an Employment Tribunal is presented within the relevant statutory time limit (i.e. normally 3 months, but depends on the nature of their claim). Acas will have no role in determining, as part of the EC process, whether a claim would be in time or not were it to be presented to an employment tribunal. Instead they merely record receipt of the form to allow the ET to decide whether to accept or reject the claim on these grounds if the matter is not resolved in EC and a claim is subsequently lodged.
31. For EC forms submitted on-line, date of receipt by Acas will be the date on which the claim is received and that date will be recorded automatically. For EC forms submitted by alternative means, the date received will be that on which it is received by Acas.
32. On receipt, the prospective claimant will have satisfied the EC requirement and the running of the limitation period will be suspended (ie the clock will stop) to allow conciliation to take place.
33. On receipt of the on-line form, an automated acknowledgement will be issued, which will contain information for the prospective claimant on the EC process – next steps etc. We considered whether a similar acknowledgement was required for hard copy forms, taking into account the fact that in many cases the first contact from an Acas official could precede receipt of the letter by the prospective claimant. We concluded that, even though this might be the case, there was merit in sending a letter on the grounds that providing information on the EC process might have the effect of persuading the prospective claimant to agree to EC where their initial reaction had been to decline. The cost of issuing letters will be minimal as they would be electronically generated following data entry into the Acas IT system, but the benefits could potentially be significant.

2.2 First Stage Contact

Option 2.2a

34. Once the claim has been received by Acas, we proposed operating a two-stage process where claims are initially passed to an Early Conciliation Support Officer (ECSO) to contact the prospective claimant. The ECSO will check the details supplied by the prospective claimant, obtain basic information such as length of time employed, date of dismissal/incident complained of, best time/method for further contact and whether the respondent is still trading. They will outline the process for conciliation and check whether the claimant requires any adjustments eg interpretation.

Option 2.2b

35. Acas conciliators are more senior, specialised staff. We consider therefore that it is more cost-effective to have an ECSO complete the first stage contact role, rather than to have the conciliator spend time fulfilling the same function. We consulted on these options seeking stakeholder views to identify whether there are any persuasive reasons to justify the higher cost of using a conciliator. Whilst the majority of the respondents supported the use of ESCOs either in whole or partially, it was the findings of an Acas pilot⁶ using the ESCO model as part of their existing PCC process that persuaded us that we should adopt this approach. Acas concluded that the ECSO model added value, through their role of ensuring that “inappropriate” cases were filtered out, enabling the conciliator to have

⁶ <http://www.acas.org.uk/media/pdf/p/t/Evaluation-of-Acas-Pre-Claim-Conciliation-Service-2012.pdf>

shorter, more focussed conversations with the prospective claimant (because the prospective claimant was better prepared).

36. The initial call to a prospective claimant will be made by the close of business on the day following receipt of the form. We anticipate that there will be some prospective claimants who are difficult to contact. In these cases, we considered that the ECSO should make reasonable attempts to contact the claimant, but that these attempts should not continue beyond 5 working days. We sought stakeholder views on whether or not there should be a maximum number of attempts and/or a specified period of time for the ECSO to attempt to contact the prospective claimant. Responses were supportive of the idea that attempts should be limited but varied on what might constitute a “reasonable” number. Around a third of responses suggested that it should be left to the ECSOs discretion. We agree with this and will work with Acas to ensure clear guidance is given to staff to ensure consistency of case management and to take account of the expressed views from consultation respondents.
37. In the event that the prospective claimant cannot be contacted we believe it is reasonable to assume that they are not interested in taking up the offer of EC, especially since in the majority of cases the prospective claimant will have received an electronic acknowledgement their form has been received and advised to expect a call. We therefore propose that the ECSO should close the case by issuing a certificate to the prospective claimant to confirm that they have complied with their obligation to contact Acas.
38. Where, following a conversation with the ECSO at the initial stage, the prospective claimant concludes on the basis of the information provided that they are unlikely to be able to bring a claim to the tribunal (i.e. because they do not have the required service, or they are out of time), and therefore do not wish to participate in EC, we consider that it will still be necessary for Acas to issue a certificate. This is because only the tribunal can ultimately decide whether to accept a claim and, in the event that the prospective claimant changes their mind and wishes to bring a claim, they will require a certificate to confirm that they have complied with their obligation to contact Acas.

2.3 Second Stage Contact

39. For all other prospective claimants, the ECSO will pass the relevant details to a conciliator who will then contact the prospective claimant. This transfer will take place electronically and the conciliator will then contact the prospective claimant, generally within two working days. It will be for the conciliator to formally establish whether the prospective claimant wishes to attempt to settle the dispute. Where the claimant does want to attempt conciliation, regardless of whether or not the conciliator considers that the prospective claimant has a justifiable claim (for example it appears that the limitation period has expired), the conciliator will proceed with conciliation (decisions on justifiability are matters for the tribunal to decide, not Acas).
40. In cases where the prospective claimant has indicated that they wish to attempt EC, the conciliator will contact the prospective respondent to see if they are also willing to engage in discussions. This contact will take place within two working days. The prospective respondent will be able to decline EC and, if they do so, the conciliator will notify the claimant and immediately issue a certificate. As with prospective claimants, we consider that the conciliator should make reasonable attempts to contact the prospective respondent. Where they are unable to make contact, a certificate will be issued to the prospective claimant. We sought stakeholder views on whether it is appropriate to adopt the same approach to contacting prospective respondents as that proposed for prospective claimants.

41. Where both parties agree to participate in EC, the conciliator will have up to one calendar month to facilitate a settlement between the parties. Where, at any point during that period, the conciliator believes that there is no reasonable prospect of achieving a settlement, or if discussions fail, or either party elects to withdraw from the process, the conciliator will end the process and issue a certificate.
42. Where the one month period is due to expire but the conciliator considers that there is a reasonable prospect of achieving a settlement, they may, with the agreement of both parties, extend the conciliation period by up to a further two weeks.
43. We further considered whether it would be appropriate to give the Acas conciliator the discretion to decide whether contact with the prospective respondent might be beneficial in the particular circumstances of a case but concluded that this would be counter-productive.
44. In deciding that there should be no contact with the respondent without the claimant's agreement we are not altering the current position where respondents are generally unaware that there is a claim against them until they receive a copy of the ET1, and the ET3 response form, from the tribunal office.

Option 2.4 Certificate of compliance

45. If EC is successful, a legally binding settlement (a COT3) will be signed by both parties, and no claim would then be brought. There will be no need for the conciliator to issue a certificate. However, if only some of the matters in dispute are settled, a certificate will be required to be issued to enable the claimant to lodge an ET claim for those elements of the claim that remain in dispute.
46. A certificate will be issued either electronically, where the prospective claimant has provided an email address, or by hard copy.
47. Even where EC is refused or is unsuccessful, Acas conciliators will have the opportunity to explain to prospective claimants what the law says in respect of employment rights and to assist them to identify issues relating to their eligibility to claim (e.g. qualifying service, employee status, time limits etc). They will also have the opportunity to explain what powers the tribunal have to make awards (for example, they can order reinstatement or financial remedy, but not an apology), and how awards are calculated, as well as to provide information on the length of time the process may take. As a result of access to this information, some prospective claimants can be expected to decide not to pursue their potential claims once they appreciate how these issues apply to their circumstances, thereby saving their cost, as well as those that would otherwise have been incurred by the respondent and the Exchequer.

2.4. Claims to the Employment Tribunal

48. In the event that EC is unsuccessful in resolving the dispute, the prospective claimant will be able to proceed to present their claim at ET.

Proceedings covered by the Certificate

49. We have considered whether it would be appropriate to require prospective claimants to give a brief indication of the nature of the dispute on the EC form. However, we believe that it may be difficult for certain prospective claimants, particularly those who are

unrepresented, or considered more vulnerable, to understand the breadth and nature of their dispute and to accurately describe the disputes on the EC form. While it may be possible to mitigate against this risk to a certain extent, there remains the risk that many prospective claimants would fail to indicate all their potential claims on the EC form simply because they were unaware they existed.

50. Although it might theoretically be possible for the Acas conciliator to amend the EC form during the course of EC if it became clear that there were additional claims that had not been included by the prospective claimant on the form, we do not consider it would be appropriate to place this additional duty on Acas.
51. We do not therefore consider it necessary to ask prospective claimants to provide any information on the nature of their claim on the EC form. The certificate will not contain any information related to the nature of the issues raised with Acas and the prospective claimant will therefore be able to bring a claim in respect of an issue which they had not previously raised with Acas where that claim is against the same employer. The current procedures allow additional jurisdictions to be added to a claim after it has been lodged, at tribunal, subject to judicial discretion, and this approach is in line with that.
52. We believe that, where a claimant has spoken to a conciliator, it is more likely than not that they will have raised all the issues that they consider are relevant to their claim. This view is supported by the PCC experiences of Acas. For the minority of claimants who realise after the EC period has ended that they have another issue on which to claim, we consider that there is little to be gained by requiring them to go back to Acas with this matter for the purposes of obtaining a second certificate. There is even less benefit of such a requirement for those claimants who declined to speak to the conciliator about their potential claim in the first instance. Such an approach also minimises the risk of time-consuming and costly satellite litigation.
53. As with the other options for implementation, we sought the views of stakeholders on this approach. We considered the arguments by those in favour of asking prospective claimants for claim details but are not persuaded that they outweigh the potential negative consequences i.e. prospective claimants that do not understand the breadth of their potential claim at the outset are subsequently denied the opportunity to bring some element of their claim to a tribunal.
54. Early Conciliation will be free at the point of use to claimants.

Monetised and Non-Monetised Costs and Benefits

55. To calculate the costs and benefits of EC, we are firstly going to look at the savings made by the reduction in the number of cases going onto an Employment Tribunal. This involves estimating the reduction in ET cases brought about by EC and then the reduction in costs associated with the cases avoided.
56. We then go on to explore the additional costs associated with providing EC by Acas and the costs incurred by claimants and employers for taking part in EC.

Baseline for benefits calculation

57. In many respects, the options for implementation do not change the likely costs and benefits of EC to claimants, employers and the Exchequer. Below we present the basic model of early conciliation relative to the counterfactual of Acas currently providing pre-claim conciliation to 20,000 claimants per year.
58. We have established that the options above make no material difference to the calculations in this basic model, although if initial contact is to be made by an Early Conciliation Support Officer (ECSO) as set out in Option 2.2a, then there would be slightly smaller costs to the Exchequer of running the Early Conciliation service (compared to option 2.2b). This would not affect quantifiable impacts on claimants or employers.

Likely reduction in Employment Tribunal Claims Volumes

59. The main benefits to employers, claimants and the Exchequer of EC stem from the expected reduction in claims that enter the employment tribunal system.
60. There is considerable management and evaluation data available on the outcomes of Acas' current PCC service, which is the best guide we have to outcomes of the proposed early conciliation.
61. The main outcome of interest is the employment tribunal rate of those cases going through PCC. In other words, what proportion of these cases will end up at an employment tribunal? By comparing this to the employment tribunal rate of those not subject to PCC we can deduce a likely percentage reduction in employment tribunal claims as a direct result of PCC.
62. Unfortunately there is no data on the employment tribunal rate of those not going through PCC. But we do have data on a proxy which is given by the employment tribunal rate of those that were offered but did not go through PCC. This rate is adjusted up slightly to account for the fact that the employment tribunal claim rate for those who do not come into contact with the Acas helpline or PCC at all (and hence get less information about the Tribunal process) is likely to be higher.
63. Therefore to establish the marginal effect of early conciliation we need to implement the following methodology:
 - Calculate the baseline number of employment tribunal claims.
 - Calculate the rate of claims progressing to employment tribunal when not using PCC (from the information about those offered PCC but not taking it)
 - Calculate the rate of claims going to employment tribunal having used PCC (from information about those using PCC and going on to ET).
 - Calculate the likely percentage reduction by comparing the two rates.
 - Applying the percentage reduction to our baseline to calculate the likely reduction in the volume of claims.

These methodological points are addressed below

Calculating the baseline – number of ET claims

64. The structural drivers of ET claims are not well understood at present. In the absence of reliable longer-term forecasts about the future number of ET claims under the status quo, the first step in defining a suitable base case is to estimate a notional equilibrium – or ‘steady state’ – for the annual number of cases that claimants may bring to the ET.
65. According to data published by HM Courts and Tribunals Service (HMCTS), the average number of claims over the last five years is 196,180, as Table 2 below shows. This five year period does include a period of recession, in which claims for unfair dismissal rose. More recent trends have included a large number of multiple cases. We have been cautious in this impact assessment by taking the five year average. Note that we have not adjusted for the policy effect of PCC reducing ET claims in some of the last five years (as this is offset by taking a recessionary period where ET claims were at above normal levels).
66. In terms of costs incurred, it is necessary to establish the average claims per multiple case and reduce the multiple claims figure to a cases basis.
67. To do this, we estimate a median of 4 claims per case based on HMCTS and Acas management data. However, this is not a stable estimate and is subject to significant change, especially at the current time where there are an increasing number of large multiple claims. For some analyses it is appropriate to use the mean number of claims per case, but for the purposes of this assessment we use the median, as the mean is skewed by a number of very large multiple claims currently in the tribunal system.

Table 2 Employment Tribunal claims accepted by financial year*

Year	Single	Multiple	Total
2007/08	54,500	134,800	189,300
2008/09	62,400	88,700	151,100
2009/10	71,300	164,800	236,100
2010/11	60,600	157,500	218,100
2011/12	59,200	127,100	186,300
Average	61,600	134,580	196,180

Source: Employment Tribunal Service. * Great Britain, not seasonally adjusted. Numbers rounded

68. We assume that the caseload for EC will be equivalent to the five year average of Employment Tribunal claims (adjusting for the size of multiples). This yields 95,245 cases $[61,600 + (134,580/4)]$.
69. This figure needs to be further refined by removing the existing volume of PCC cases (by subtracting a further 20,000 cases that Acas on average currently deals with). This means that the marginal effect of introducing EC in terms of the number of ET claims saved is applied to 95,245 cases, less 20,000 (75,245).

Calculating the ET rate of claims not going through PCC

70. To estimate the marginal impact of early conciliation, it is necessary to understand the proportion of employment tribunal applications that would have occurred in the absence of any early conciliation intervention. To do this we use management data and evaluation information from the current Acas PCC service. We have chosen to use data from 2010/11

as the first year of PCC in 2009/10 is likely to be quite different to subsequent years; with lower take-up, for example. Acas tracks how many ET claims follow on from cases that went through PCC. Acas also record outcomes according to whether a case was unprogressed (PCC was offered but not taken up), resolved or there was an impasse (PCC was taken-up but the problem was not resolved).

71. According to Acas MI data of PCC case outcomes in 2010/11, **28.1 per cent** were 'unprogressed' either because the claimant or employer was unwilling to participate in PCC, the case was inappropriate or was unprogressed for other reasons. We use this group of claimants to form a 'control group' who did not take part in PCC. For this control group, Acas MI data shows that **39.8 per cent** of cases resulted in an ET claim being lodged within three months.
72. However, there are limitations of methodology. The control and treatment groups were not assigned randomly and there may be some self selection issues which potentially bias the results. Most importantly, a high proportion of the control group will in fact have had some "treatment" in the PCC process in the form of initial discussion about their case with a conciliator. As a result of this partial treatment, some of the individuals concerned may decide, for example, to not pursue their claim any further. For this reason the counterfactual figure is increased to **50 per cent** to account for some 'partial treatment' of the control group. This is a conservative adjustment and is subject to sensitivity analysis later in this impact assessment.

Calculating the ET rate of claims going through PCC

73. Acas management information for 2010/11 showed that around **78 per cent** of those offered PCC agreed to take part. However, in our modelling here we consider a lower take-up rate for early conciliation to take account of the fact that it will be offered to all potential claimants, rather than just those who have indicated that they might be interested in conciliation. We do have a proxy estimate of take-up from the evaluation of Acas' post-claim individual conciliation service – which is offered to all ET parties - which shows a take-up rate of **75 per cent**. As a result, 75 per cent is used in this modelling.
74. The management information for 2010/11 also showed that **20.3 per cent** of closed PCC cases for which the offer of PCC was taken up resulted in an employment tribunal claim being lodged under the same employment dispute within three months of the conclusion of PCC.
75. The ET rate for all PCC cases is given by:
 - (Take-up rate of PCC **75%** * ET rate for PCC cases **20.3%**) + ((1-take-up rate of PCC **25%**) * ET rate for control group **50%**)
76. This equates to **27.7 per cent**. The difference between the 'ET rate' for all PCC cases (27.7 per cent) and the ET rate for the control group (50 per cent) provides an estimate of the policy effect of PCC. This suggests that the impact of early conciliation relative to the counterfactual is a (50%-27.7%) **22.3 percentage point** reduction in ET claims.
77. For this impact assessment we assume 100 per cent of the individuals who would have lodged an ET claim will be lodging their claim with Acas to be offered early conciliation. We take the 22.3 percentage point reduction in ET claims derived above and apply that rate to these individuals to estimate the reduction in ET claims. We also assume that early

conciliation can be considered as a very similar type of conciliation that is provided under PCC.

Applying the percentage reduction to our baseline to calculate the likely reduction in the volume of claims

78. Using the 22.3 percentage point reduction (which we round to **22 percentage** points from this point onwards), we next need to apply it to a baseline number of employment tribunal claims to establish the likely reduction in volume of claims.
79. This baseline number has already been calculated (see paragraphs 64-69) and is estimated to be 95,245 cases, less 20,000 cases (75,245).
80. A 22 per cent reduction on this figure (75,245 x 0.22) implies that there will be approximately 16,554 fewer ET claims as a result of having early conciliation. Overall the reduction in ET claims is around **17 per cent** (16,554/95,245).

Benefits to Claimants

81. The average unit cost faced by a claimant as a result of an employment tribunal claim is £1,400 as set out in Table 1. Multiplying this figure by the anticipated reduction in claims (16,554) suggests a benefit to claimants of **£23.2 million** per year.

Benefits to Employers

82. The average unit cost faced by an employer as a result of responding to an employment tribunal claim is £3,900 as set out in Table 1. Multiplying this figure by the anticipated reduction in claims (16,554) suggests a benefit to employers of **£64.6 million** per year.

Benefits to the Exchequer

83. In reducing the number of claims entering the Employment Tribunal system there should be reductions in costs for HMCTS once the system is fully operational. In moving to impact assessing the implementation of early conciliation, the approach to reviewing Exchequer benefits has been looked at again. The simplest way to present the order of magnitude of savings is to apply the percentage of cases that are expected to be saved (17 per cent – see paragraph 80) and apply it to the current HMCTS budget. In 2012/13, the budget was around £86m, so in 2012 prices, the saving could amount to around (£86m x 17%) £14.6m once early conciliation was fully embedded
84. It is important to note (as with all the estimates in this IA) that there is considerable uncertainty surrounding these savings. For example, applying just the percentage workload reductions may not accurately reflect savings due to the complex interactions of single and multiple cases in this jurisdiction. We should also be wary of applying percentage workload reductions to the entire HMCTS budget to gauge potential savings.
85. In the short-run, a proportion of HMCTS's current budget of £86 million is committed to costs that are fixed; such as salaried judges, other permanent staff, estates and other corporate overheads. Thus it may be more appropriate to apply the percentage of cases that are expected to be saved, to parts of the variable budget that are directly affected by caseload volumes. Analysis of internal HMCTS finance and accounts management information has found that around £15m of the total budget could be classified as truly

variable. These variable costs consist of agency staff, fee-paid judges, members, travel & subsistence and office stationary

86. By applying the percentage of cases that are expected to be saved (17 per cent) to the HMCTS variable budget of around £15m, we should be able to accurately reflect the level of savings achieved in the early years of operation given the fixed costs. On this basis savings would amount to **£2.55m** (17 per cent of £15m). In addition, this does not directly represent cashable savings as for example, savings realised could be used to address issues like the current backlog of ET cases.
87. This assessment assumes that the remaining claims in the ET system follow the same distribution across types of claim, and that the routes through the ET system remain similar. It is possible that what remains in the ET system will be cases that are more complicated and more likely to get all the way to hearing. It is impossible to say with certainty what those impacts will be though, as other changes will come into force, in particular, employment tribunal fees, which could also act to change the passage of cases through the ET system.
88. Recent research for Acas⁷ on the passage of cases that went through pre-claim conciliation but continued into the Employment Tribunal system sheds some light on the issue. This research showed that fast track (generally simpler) claims were proportionately more likely to be unprogressed or reach an impasse in pre-claim conciliation than open track claims (for example, discrimination).
89. There are also savings to Acas due to the fact that those cases no longer going into the ET system will not need to be subject to Individual Conciliation. Those cases that still go through the system are also likely to be conciliated with less Acas resource as the cases will have been seen at early conciliation stage. The costs of running early conciliation will outweigh the benefits from savings in Individual conciliation; the net costs are set out in the costs section below.

Costs

90. We now go on to examine the additional costs that will be incurred by the provision of early conciliation for all the participants. The analysis of costs of early conciliation has developed since the Resolving Workplace Disputes Consultation and Government Response impact assessments. In those assessments, unit costs were scaled up by a baseline assumption of employment tribunal claims.
91. The analysis of costs now considers the number of intentions to claim that Acas are likely to receive. Given that pre-claim conciliation has now been in operation for three years, with capacity for 20,000 cases since 2010/11, the assessment now needs to factor in that pre-claim conciliation already leads to the avoidance of some (albeit a small magnitude) Employment Tribunal claims. This is different to the total number of Employment Tribunal claims potentially avoided, which is the key element of the calculations.
92. As a result, below we consider the unit costs to claimants, employers and the Exchequer for engaging in early conciliation. These costs are based on two activities, the costs involved in completing the initial form to register a claim with ACAS and the costs of taking part in conciliation.

1. ⁷ Why Pre-Claim Conciliation referrals become Employment Tribunal claims, ACAS Research Paper 2012

93. Total annual costs are then given by scaling these unit costs up to the number of anticipated intentions to claim made to Acas (less the level currently dealt with – 20,000). Firstly, we have estimated the number of claimants who are likely to complete the intention to claim form to register with ACAS. Secondly, we estimate the number of these claimants who will continue on to undertake conciliation. There will be fewer individuals taking part in conciliation than originally registering since ACAS evidence indicates that a proportion will drop out of the process before reaching conciliation.

Expected number of intentions to claim made to Acas

94. A good guide for the likely number of early conciliation cases is given by the number of employment tribunal claims made.
95. However, Acas now also deal with around 20,000 pre-claim conciliation cases per year, many of which do not reach employment tribunal as a result. These claims need to be factored in.

Table 3: Number of Intentions to Claim Likely to be Received by Acas			
	Annual number	Source	Notes
5-year average ET claims accepted (A)	95,245	HMCTS	Represents single and multiple cases, working on a median of 4 claims per case in multiples.
3-year average pre-claim conciliation cases (B)	15,780	Acas	PCC has not been running for 5 years. So an average is taken over the 3 years that PCC has been in operation for.
3-year average ET claims avoided by pre-claim conciliation (C) (B x 79.7%) = C	12,579	Acas	PCC cases that end up in up in an ET dispute 3 months after conclusion of PCC is 20.3%. (See paragraph 74). We thus have an ET avoidance rate of [100-20.3] of 79.7% . Therefore 79.7 per cent of the PCC cases would not end up as ET cases, but would, under early conciliation, be intentions to claim
% of claims to Employment Tribunal that are rejected (D)	0.69% of 95,245 657	HMCTS	Claims rejected are calculated as 0.69% of total claims. Currently rejected ET claims would still enter Acas under Early Conciliation
Total Intentions to claim received by Acas (E) (A+C+D) = E	108,481	HMCTS, Acas	This is ET claims, plus ET claims avoided due to PCC + rejected claims at ET.
Number of inappropriate cases disposed off (F)	9,930	Acas	Cases disposed due to inappropriateness and/or because they are insolvent cases. (Acas average estimates)
Cases offered Early Conciliation (G) (E-F) = G	98,551	Acas	Worked out by removing inappropriate/insolvent cases from the total intentions to claim figure
Number of Early conciliation cases reaching Conciliators – Actual intentions to claim (H) (G x 75% + 12,330) = H	86,243	Acas	Calculated in two steps. Step one is calculated by multiplying the number of cases offered EC (98,551) by the take up rate of 75% (see paragraph 73). This gives us a value of 73,913 cases. Step two also includes factoring in the estimated number of unprogressed cases that will reach ECSO's. Acas estimates this to be around on average 12,330 cases. Therefore the total number of cases reaching conciliators is 73,978 + 12,330.
Additional Intentions to claim (I)	66,243	Acas	Worked out by removing the number of PCC cases that Acas are currently resourced to

(H- 20,000) = I			handle (20,000). These PCC cases are assumed to be broadly equivalent to early conciliation cases.
<i>Estimated EC cases that actually happen (J)</i> (I – 12,330) = J	53,913	Acas	Around 12,330 cases will end up becoming classified as unprogressed. These are dropped from our additional intentions to claim to give the final number of estimated EC cases that actually happen

96. 108,481 total intentions to claim will not translate to 108,481 additional conciliations. Insolvency situations often mean that participants cannot proceed with conciliation and there are also a small percentage of cases that are not appropriate for conciliation. In these situations, although the intention to claim will have to be dealt with by an ECSO, conciliation itself would not take place. Participants (employers and employees) may also decide for other reasons not to engage in conciliation.
97. Once we factor in Acas's existing PCC capacity (20,000), we estimate that 66,243 additional cases will actually reach conciliators (and once a further 12,330 unprogressed cases are dropped) around 53,913 additional conciliations will actually take place.

Costs to the Claimant

98. The unit cost to a claimant for engaging in early conciliation is best assessed using evaluation evidence from the operation of PCC.⁸ 2010 evaluation of PCC demonstrated that on average, claimants spent 5.7 hours dealing with the claim. This time can be costed by multiplying it by median hourly wages (given by ASHE 2011, but updated to 2012 prices by factoring in subsequent growth in average weekly earnings).
99. In addition, claimants will need to fill in a statement of intent form. As drafted, this is short and simple, and therefore not time consuming to fill in. It is assumed this takes three quarters of an hour, although further development of the form will allow refinement of this assumption. At this stage, this assumption looks conservative given the intention that the form be very simple.
100. The calculations used to establish the anticipated unit cost to claimants is illustrated below in Table 4:

⁸ <http://www.acas.org.uk/CHttpHandler.ashx?id=1079&p=0>

Table 4: Unit costs of early conciliation for claimants		
Time spent completing intention to claim form	0.75 hours	Unknown as this is not currently part of the process, so this is a conservative assumption.
Median hourly wage	£11.15 £11.35	ASHE 2011 Uprate using AWE growth between Apr 2011 and Apr 2012 of 1.8%
Cost of completing intention to claim	£8.50	Time * median hourly wage uprated
Time spent in conciliation and preparation	5.7 hours	Acas evaluation of Pre-claim conciliation ⁹
Cost of conciliation	£64.70	
Total unit cost	£73	£8.50+£64.70 = £73.20 (Number rounded down to nearest pound)
Note: figures may not sum due to rounding.		

101. The total costs to claimants are therefore given by the cost of intentions to claim (estimated above at £8.50), multiplied by the additional intentions to claim (66,243), as well as the costs of engaging in conciliation (£64.70) multiplied by the additional conciliations that happen (53,913).
102. This leads to total estimated costs of around £560,000 for the statement of intent form, and £3.49m for the conciliation – a total cost of **£4.05 million** per year.

Costs to the Employer

103. The unit cost to an employer for engaging in EC is best assessed using evaluation evidence from the operation of PCC.
104. 2010 evaluation of PCC demonstrated that on average employers spent eight hours of time dealing with the case, and spent on average £266.67 in advice and representation costs¹⁰.
105. To establish an average unit cost, we therefore calculate the time cost by multiplying 8 hours by median hourly wage of an HR professional, with non-wage labour costs added, and the figure uprated to 2012 by looking at the growth in average weekly earnings since ASHE 2011 was assessed.
106. The total cost to employers is given by multiplying this anticipated unit cost (£512) by the expected additional number of conciliations (53,913). This amounts to **£27.6 million** per year.

⁹ Evaluation of the First Year of Acas' Pre-Claim Conciliation Service, 2010, found at <http://www.acas.org.uk/CHttpHandler.ashx?id=2928&p=0>

Table 5: Unit costs of early conciliation to Employers		
		Notes
Time spent	8 hours	Acas evaluation of pre-claim conciliation
Hourly labour cost	£27.24 £27.73	ASHE 2011 median hourly wage of HR professional, plus non-wage labour costs Upated to 2012 prices by factoring in 1.8% increase in Average Weekly Earnings between Apr 2011 and Apr 2012
Total labour cost	£222	(8 hours x 27.73) = £221.84 (rounded up to nearest pound)
Advice and Representation	£267 (2010 prices) £290	Upating this for inflation between April 2010 and April 2012 gives £290
Total Unit Cost	£512	(£222+290)
Note: figures may not sum due to rounding.		

Costs to the Exchequer

107. The costs of EC fall to Acas in setting up and delivering the service.
108. The set up costs consist of making changes to IT systems to accept intention to claim forms, as well as recruiting and training additional conciliators. These are anticipated to be **£3m** in 2013/14
109. On the basis of the additional intentions to claim detailed, plus the savings that would be made from EC, Acas have calculated that this would require 75 additional staff, at a cost of **£2.8m** per year. The estimated breakdown of this 75 FTE staff is as follows:
- 30 grade 10 ECSO, Helpline and for Centralised roles. (Average wage of £30,969)
 - 40 grade 9 Conciliators (Average wage of £40,760)
 - 5 grade 8 managers (Average wage of £51,616)
110. Their calculations take into account that fewer resources would be required to run their post-claim conciliation (individual conciliation) work. This is both due to a fall in employment tribunal claims (that convert to individual conciliation cases) and due to the fact that where cases still come to individual conciliation, the details around the case will have been established already, and it is very likely that conducting the individual conciliation will be less resource intensive.

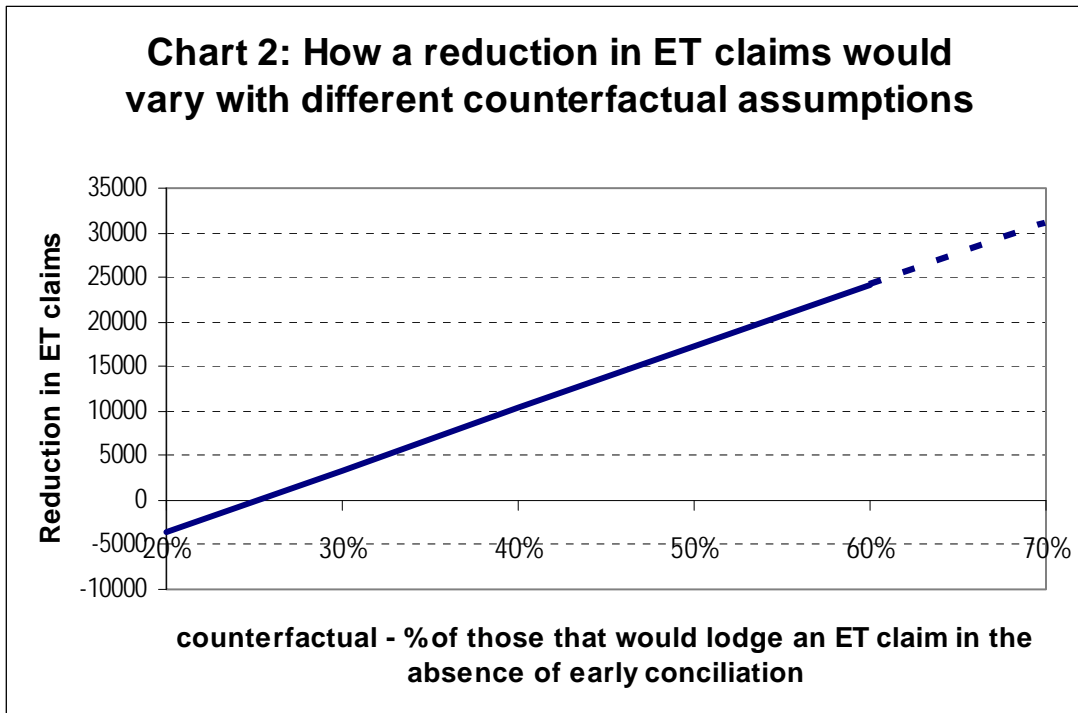
111. Acas have also established that on an ongoing basis this will not increase accommodation costs. As part of a recent efficiency drive exercise, around half of Acas offices have either moved or downsized their accommodation. During this efficiency drive Acas has taken into account the demands of EC in the moves. As a result of all this, the additional Early Conciliation staff will be spread around all of the 12 Acas offices around the country, with each taking only a relatively small number.
112. There are also potentially some one-off costs to HMCTS in changing systems to allow for the new process
113. Impact on the tribunals operating model is relatively slight, but some ICT change is necessary; and there will be a need to revise internal and external guidance material, plus cascade awareness training across relevant tribunal offices. The estimated costs are assessed as **£500,000**. This will cover.
- establishing a secure link between HMCTS IT systems and Acas IT systems to enable tribunal staff to access the Acas-hosted database holding details of Early Conciliation certificates (necessary as part of the post-acceptance consideration and management of new claims);
 - amending the existing online claim form submission portal to reflect the changes necessary to the prescribed form, in particular allowing the Early Conciliation number to be provided;
 - reviewing and amending HMCTS staff and user guidance material to reflect the changes flowing from Early Conciliation;
 - And cascading light-touch training to staff across the jurisdiction, so as to facilitate go-live.

Sensitivity Analysis

114. The above analysis is sensitive to a number of assumptions. Below we briefly discuss how changes to key variables would alter the results:

Counterfactual Assumption

115. As discussed in the counterfactual section, there is great uncertainty around the counterfactual (currently taken as an employment tribunal rate of 50 per cent for those claims that currently do not go through PCC).
116. This sensitivity analysis shows that if the true employment tribunal rate of those not going through PCC were to fall to less than 25 per cent, employment tribunal claims would in fact increase in response to the introduction of EC (this is a tipping point). Given that the employment tribunal rate for those that go through the current PCC service is 20.3 per cent (source: Acas), a 25 per cent employment tribunal rate for all is highly unlikely so we can be quite confident that this is not a likely outcome and the process *will* lead to reduced claims, all other things being equal.



Number of intentions to claim made

117. If intentions to claim are higher or lower than the estimates presented here, the costs for claimants, employers and the Exchequer will differ proportionately with the additional (or reduced) numbers.

Number of multiple claims to every case

118. The existing analysis is based on the assumption that there are 4 claims attached to every multiple case. This is the current median. There are some cases with a very high number of claims attached to them so the mean is much higher. Indeed, HMCTS now publish information on the number of multiple claims and the number of multiple cases, they show that in 2011/12 there were 127,100 multiple cases received, which corresponded to 5,200 “actions”, in other words the mean number of claims to every case was 24.4.

119. A different baseline number for claims would be calculated if we assumed a mean of 24.4 to calculate the number of multiple cases as opposed to using the median of 4. Applying the mean to the average number of 5 year multiples found in table 2 would result in (134,580/22.4) approximately 6000 multiple cases. Adding this to the 5 year single average would result in a much lower baseline of ET claims (61,600+6,000) 67,600

120. Using a different assumption here means working with a lower baseline number of claims than has been done through the central estimates (67,600 as a baseline for claims affected instead of 95,245). The percentage reduction in ET claims that might result is very similar to our central case, however it would mean a reduction of nearly 10,470 ET claims rather than the 16,554 used in our central case. The magnitude of benefits is therefore quite sensitive to the assumption used – employer and claimant benefits would fall by about 37 per cent. Nevertheless this would still represent a clear net benefit to all parties.

Risks, Assumptions and Wider Impacts

121. The analysis in this impact assessment assumes that the effectiveness of the current PCC service in reducing the number of claims lodged remains largely unchanged if EC is implemented. There is also uncertainty around measuring the current policy effect of PCC¹¹.
122. HMCTS introduced fee charging for employment tribunals from 29 July 2013. The level of fees charged could have an impact on the number of employment tribunal claims made. In addition, as the fees are charged at two stages – for issue, and for hearing – the introduction of fees could change patterns for what happens with claims once they enter the employment tribunal system.
123. It is impossible to predict exactly how fee charging may affect claims and journeys through the ET system. In addition, as there will not be a fee charged at the point where Acas offers early conciliation this may not translate to a reduction in expected cases considered for EC. On the other hand, the availability of an accessible service like this could encourage more claims than current levels of employment tribunal claims.
124. The behaviour of parties in EC may also change as a result of employment tribunal fees. Claimants may be more likely to engage in EC and make more efforts to resolve the situation given that they may be liable for fees (though they may have a full or partial remission from fees depending on their individual circumstances). This could lead take-up of EC to rise above current expectations.
125. However, the respondent (employer) may be less likely to engage in EC if they do not believe the claimant will pay the ET fee. It is not possible to predict how this would change the overall take-up rate of EC and we believe at this point in time a take-up rate assumption based on the current take-up of post-claim conciliation (IC) is the best approach to take (this is 75 per cent).
126. An equality impact assessment is included at Annex B.

Small and Micro Business Assessment

127. Any enterprise with employees could potentially have a dispute with one of its employees and end up at an employment tribunal. Early Conciliation should benefit employers by encouraging parties to resolve their disputes outside of a costly and expensive employment tribunal.
128. The SETA (2008) employers' survey notes that 36 per cent of cases related to organisations with less than 50 employees. BIS SME statistics show that across the whole economy, 37 per cent of employment is in enterprises with less than 50 employees. However, the costs and implications to the business of having to respond to an employment tribunal case are harder to bear for smaller businesses. SMEs have told BIS in responses to consultations that they often lack a dedicated HR team or access to legal representation to help them defend an employment tribunal claim.
129. Early Conciliation's requirement that a prospective claim has to go through Acas so that they may offer their free advice on the matter and attempt to help parties reach a mutually agreed solution should therefore disproportionately benefit small businesses as they are

¹¹ Our estimates of ET claim reductions could be an overestimate if we have overestimated the ET claims reduction that is a result of PCC. However, we may have underestimated the reduction in ET claims if behaviours change and Acas conciliation becomes the new social norm to resolve disputes compared to going to Employment Tribunal. These two effects go in opposite directions and we have provided our best estimate of ET claim reductions in this impact assessment.

less likely to have to respond to an employment tribunal claim. Micro-businesses will benefit even more, given how damaging an employment tribunal claim would be to them.

One-in-two out Implications

130. This measure represents a “zero-in” for one-in-two-out purposes, as it requires new legislation, but is net beneficial to business.

Summary of Costs and Benefits

	Costs £m	Benefits £m	Net Benefits £m
Claimants	4.05	23.2	19.15
Employers	27.6	64.6 Of which the business impact is 80%. See paragraph 129	37
Exchequer	2.8* (There are one-off costs to Acas and HMCTS, which have not been included in the calculation of total annual costs. These are estimated to be £3.5m)	2.55* Once early conciliation has been operating for some time it may be possible to achieve this magnitude of savings. In the short to medium term savings are more likely in the region of £10m. For the purpose of calculating net present values we take £10m.	-0.25
Total	34.5	90.4	55.9
Note: figures may not sum due to rounding.			

131. These annual figures are also presented as net-present value (NPV) figures in this impact assessment’s summary sheets.

132. According to the Survey of Employment Tribunal Applicants (2008), 80 per cent of claims relate to employers in the private or not-for-profit sector. This means that the business impact of these changes is 80 per cent of the employer impact set out above.

133. It is clear that there are significant financial benefits for all parties flowing from the introduction of EC. But conciliation is not only less costly for parties, in terms of time and money, it can also deliver outcomes for individuals that are not possible at an employment tribunal – for example, an agreed reference, or an apology. Taken together, these benefits present a strong case for the work we are doing.

Annex A

Approach to estimating costs of employment tribunal cases

Cost of Running the ET

1. The total cost of administering the ET was £87 million in 2012/13 prices during 2010/11. The table below shows that the largest single component of 48% was the combined judicial cost – mostly related to judges’ salaries, fees and expenses (including £10 million on lay members).

Table A1 Cost of administering the Employment Tribunal Service (2010/11 figures updated to 2012/13 prices)

Category	2012/13 £m	Share of total
Staff admin	15.4	18%
Other admin	2.7	3%
Estates	14.2	16%
Overheads	11.3	13%
Judicial salaries	24.2	28%
Judicial fees	15.9	18%
Judicial expenses	1.8	2%
Court costs	1.1	1%
TOTAL	86.7	100%

2. Historically, the ET and EAT have not produced management information-based estimates of costs per case by stage. The cost estimates have therefore been produced using a new cost model that was developed specifically to support the development and analysis of the proposed fee-charging regime. The cost model is underpinned with a case model using ET statistics and case sampling. This model provides our current best estimate of the costs per case at each main stage, which means that the figures may contain inaccuracies. To improve the cost modelling and support the response to consultation the cost model has been reviewed and updated earlier this year including using 2010-11 data and supported with further case sampling data. In the future the cost model will continue to be updated and refined - e.g., to provide representative costs of administering single claims and multiple claims, instead of the weighted averages of all claims that are set out in the preceding table.
3. Based on 2010/11 figures as the most recent year for which outturn data have been made available in the cost model, the following table sets out the estimated cost per case (updated to 2012/13 prices using the UK GDP deflators published on HM Treasury’s website and rounded to the nearest £10) of processes by ET track. The core stages in the ET process are “receipt & allocation” and “hearing”, whereas the other elements are optional in that there is no obligation, for instance, to undergo mediation or to obtain written reasons.

Table A2 Estimated unit cost per case of ET procedures (at 2012/13 prices)

	Receipt & allocation	Interlocutory	Final Hearing	Pre-hearing review	Dismissal after settlement	Written reasons	Review
Average unit cost	£400	£900	£1,900	£900	£200	£900	£1,300

variable	44%	62%	90%	86%	50%	86%	90%
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4. The table also shows the approximate proportions of the estimated average total cost per case by ET stage that is variable – i.e., the element of cost that will vary as the number of cases varies. For example, the cost of mediation (which only takes place in the open track) is a pure variable cost because it solely involves judicial time. Overall, it is currently estimated that variable costs accounted for 69% of the total ET cost in 2010/11.

Estimated costs to claimant when making an ET claim

5. Claimant costs incurred from completing an employment tribunal application form onwards consist of:
- Communication costs (for example telephone calls, correspondence)
 - Travel (to hearings or to meet with advisers)
 - Loss of earnings
 - Advice and representation
6. The 2008 Survey of Tribunal Applications (SETA) asked employment tribunal claimants whether they had incurred these costs.¹² Table 3 shows the proportion of respondents that incurred these costs, with Table 4 reporting this for legal advice and representation costs.

Table A3. Proportions of people that incur travel and communication costs and suffer a loss of earnings

Communication costs	37%
Loss of earnings	31%
Travel costs	26%

Source: BIS estimates based on SETA 2008 Table 10.1

Table A4. Claimants' and Employers' survey: Free advice and representation

	Claimant	Employer	All
Whether paid for advice			
Paid for all	26%	69%	49%
Paid for some	7%	8%	8%
Paid (paid for all + paid for some)	33%	77%	57%
All free	66%	21%	42%
Don't know	1%	3%	2%
Didn't pay (all free + don't know)	67%	23%	44%

Source: BIS estimates based on SETA 2008 Table 5.20

7. For those that do pay, SETA yields estimates for the amount paid which are summarised within SETA Table 10.2. In constructing unit cost estimates, these amounts are adjusted to

¹² The data from SETA 2008 was published in *Findings from the Survey of Employment Tribunal Applications 2008*, March 2010, <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/10-756-findings-from-seta-2008>

account for those that do not pay, and hence to provide a figure averaged across all claimants. Furthermore, the costs for advice and representation, and travel and communications are adjusted to account for RPI inflation between the survey (2008) and 2012.

Table A5: Summary of Costs to a claimant from an employment tribunal

	Case went to Tribunal hearing	Acas settled	total
Time spent on case	£714	£568	£636
Costs for advice and representation post ET1	£1,017	£558	£763
Costs incurred for travel, communication	£23	£20	£21
Total cost	£1,754	£1,146	£1,419
Total cost rounded to nearest £100	£1,800	£1,100	£1,400
Source: BIS calculations based on SETA 2008, ASHE 2011, expressed in 2012 prices			

8. Time spent is multiplied by the median wage for all employees. Table 6 below sets out the relevant wages. For later consideration, employer non-wage labour costs (which are based on figures that were correct when EC was first introduced into parliament) are added at 24 per cent so these are demonstrated here but not incorporated into claimant costs. The wage costs are adjusted to account for the increase in average wages (excluding bonuses and arrears) between April 2011 and April 2012.

Table A6. Hourly pay (excluding overtime) in the UK, 2011

	SOC Code	Median	Median, including non- wage labour costs at 24%
All employees		£11.15	£13.83
Personnel, training and industrial relations managers	1135	£21.97	£27.24
Corporate managers and senior officials	111	£40.70	£50.47

Source: ASHE 2011 Table 14.6a

Estimated costs to an employer when responding to an ET claim

9. Employers face costs in terms of time spent by a variety of staff in an organisation on a case. They also face advice and representation costs. Table 4 illustrates using SETA findings the proportion of employers who paid advice and representation costs in responding to an employment tribunal claim.
10. SETA (2008) also establishes the median amounts spent on advice and representation (SETA table 5.24) and the median time spent by different staff members (SETA tables 10.5

and 10.6)¹³. The estimates below multiply time spent (this is given in days, but SETA assumes 8 working hours in the day) by the wage rate of the relevant staff (given in Table 6). In constructing unit cost estimates, these amounts are adjusted to account for those that do not pay for advice and representation, and hence to provide a figure averaged across all employers. The figures for costs for advice and representation are adjusted to account for RPI inflation between the survey (2008) and 2012, with the wage figures adjusted as described in paragraph 48 above.

Table A7 Summary of Costs to an employer from an employment tribunal application

	Case went to Tribunal hearing	Acas settled	total
Time spent on case Directors and senior staff	£2,286	£1,234	£1,234
Time spent on case (other staff)	£444	£444	£444
Costs for advice and representation post ET1	£3,488	£1,780	£2,225
Total cost	£6,218	£3,458	£3,903
Total cost rounded to nearest £100	£6,200	£3,500	£3,900
Source: BIS calculations based on SETA 2008, ASHE 2011			

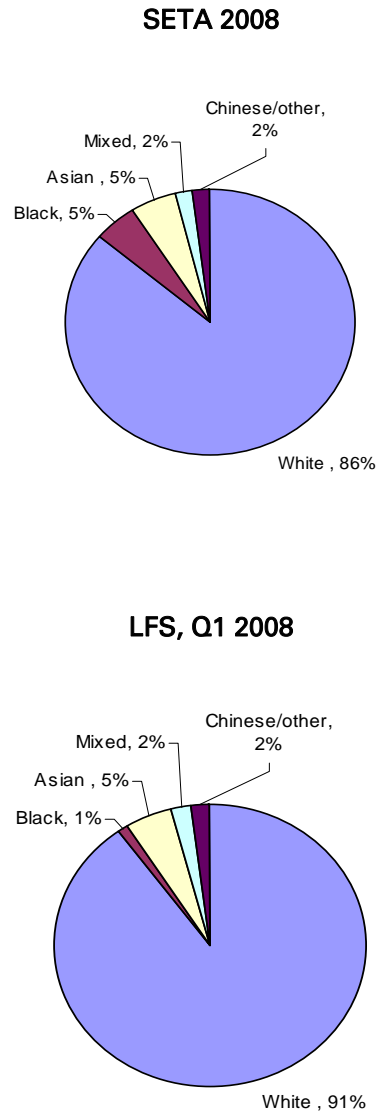
¹³ The data from SETA 2008 was published in *Findings from the Survey of Employment Tribunal Applications 2008*, March 2010, <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/10-756-findings-from-seta-2008>

Annex B: Equality impact assessment

1. The Department for Business, Innovation and Skills (BIS) is subject to the public sector duties set out in the Equality Act 2010. Equality Impact Assessments are an important mechanism for ensuring that we gather data to enable us to identify the likely positive and negative impacts that policy proposals may have on certain groups and to estimate whether such impacts disproportionately affect such groups.
2. This assessment considers the implementation of early conciliation (EC) by Acas. EC builds on the existing pre-claim conciliation (PCC) service that Acas currently provide, and which has the capacity to deal with up to 20,000 cases per year. However unlike PCC, which is voluntary, under Early Conciliation (EC) it will be mandatory for all prospective claimants to first send details of their claim to Acas. This will allow Acas to offer the opportunity to conciliate the dispute between the parties without the need for a claim to be made to the employment tribunal. It is important to note that the decision to accept the offer of conciliation will be entirely voluntary (for both parties), and a decision not to conciliate – or a failed conciliation – will have no bearing on any subsequent tribunal claim.
3. Where EC is successful, individuals will avoid the cost and stress of the tribunal process. Where prospective claimants do not want to conciliate, or where conciliation has been unsuccessful, they will at least have had the opportunity to speak to an Acas officer and receive information on the law as it relates to their case, as well as the tribunal process and what it entails.

Background

Chart A1.1. Ethnicity of claimants, compared with employees in GB



Source: SETA 2008 and LFS, Q1 2008

4. The 2008 Survey of Employment Tribunal Applications (SETA) collects information on the personal characteristics of claimants. Results from SETA can be compared against the Labour Force Survey (LFS) for employees to see how the characteristics of claimants differ to the general population of employees. However, we cannot know the characteristics of those with workplace disputes that are resolved in different ways (i.e. do not enter the employment tribunal system).

Gender

5. BIS has published SETA in 2003 and more recently in 2008. In 2008 three-fifths (60 per cent) of claimants were men. This is similar to the proportion found in 2003 (61 per cent) and somewhat higher than the proportion of the employed workforce as a whole (51 per

cent), as given in the LFS. Men brought the majority of employment claims across most jurisdictions; however, 82 per cent of sex discrimination cases were brought by women. This pattern closely resembles that found in 2003, where men also brought the majority of employment claims across most jurisdictions. However in 2003, an even higher proportion of sex discrimination cases were brought by women (91 per cent).

Ethnicity

6. According to SETA 2008 86 per cent of claimants were white, a slightly lower proportion than in 2003 (90 per cent) and lower than the workforce in general (91 per cent). However, the proportion was much lower in race discrimination cases, where only 8 out of the 57 claimants (15 per cent) were white, with 20 black (34 per cent) and 20 Asian (34 per cent). This is a similar pattern to that found in 2003.

Disability

7. In SETA 2008 22 per cent of claimants had a long-standing illness, disability or infirmity at the time of their employment claim, which is the same as the proportion among employees in general (22 per cent) and is a slightly higher proportion than in 2003 (18 per cent). 15 per cent had a long-standing illness, disability or infirmity that limited their activities in some way, a higher proportion compared with the workforce as a whole (10 per cent) and in 2003 (10 per cent).
8. As in 2003, the proportion of claimants who had a long-term disability or limiting long-term disability was, as would be expected, considerably higher in Disability Discrimination Act (DDA) cases (84 per cent and 74 per cent respectively). Looking at primary jurisdictions the proportion of claimants who had a long-term disability was highest in discrimination cases (45 per cent) and lowest in Wages Act cases (10 per cent) and redundancy payment cases (8 per cent).

Age

9. 47% of respondents on the SETA (2008) claimant survey were 45+, compared to 38% of respondents to the Labour Force Survey. This varied by jurisdiction. The highest proportion of people of 45 and over was in Breach of Contract cases (74%) and the lowest was wages act jurisdiction claimants (35%).

Religion/belief

10. SETA 2008 results showed that 46 per cent of claimants regarded themselves as belonging to a religion which is in line with the findings from 2003. 40 per cent of all claimants regarded themselves as Christian. 6 per cent of all claimants regarded themselves as belonging to a religion other than Christianity (Muslim 2.4%, Hindu 1.2%, Sikh, Jewish, Buddhist and other answers were all under 1%). This figure was higher among those involved in discrimination cases generally (12%), and higher still (39%, although note that this is from a small sample size of just 57) among those involved in race discrimination cases. Comparisons with LFS cannot be made because of the difference in phrasing of the questions about religion/religious beliefs between the two surveys.
11. It is not possible to look at employment tribunal claimant characteristics in terms of gender reassignment, marriage and civil partnership, pregnancy and maternity, and sexual orientation.

12. Currently, Acas provide PCC for up to 20,000 cases per year. This proposal would extend that so that all employment tribunal claims would first go to Acas to be offered EC. This should encourage early dispute resolution, but also ensure that those entering the employment tribunal system are more aware of what is entailed. EC will be offered to all, regardless of characteristics.
13. Acas conducted a survey of PCC users to cover its first year of operation from April 2009. The research included a main quantitative fieldwork stage consisting of 1,187 interviews lasting 20 minutes on average with a random sample of PCC service users.
14. The service users describe employee demographics as:
- mostly white (91 per cent), 3 per cent were Black, 2 per cent Asian, and 1 per cent Mixed ethnic group. The profile is similar to the UK workforce as a whole (LFS), but a higher proportion of service users were white than in employment tribunal applications (86 per cent as reported in SETA 2008);
 - Thirteen per cent had a long-standing illness, disability or infirmity at the time of Acas assistance, which is lower than the proportion recorded in SETA or LFS (both 22 per cent);
 - Mostly male (59 per cent), therefore, 41 per cent were female. This is similar to the profile of employment tribunal applications (60 per cent male; 40 per cent female reported in SETA) and somewhat higher than the proportion of the whole UK workforce given in the LFS (51 per cent male; 49 per cent female).
15. This is the most recent data, but in fact the characteristics of future EC users would be expected to be in line with the SETA users as discussed earlier in this assessment.
16. The main issue raised during policy development and consultation is whether the provision of early conciliation by telephone disadvantages any particular groups. Acas have existing guidance in place (common for both ET1 and PCC cases) for conciliators dealing with parties and/or their representatives who have disabilities (including hearing disabilities, which could be a barrier to a telephone-only service). In their initial contact with parties they include the message "if you have a disability, please let us know if we need to make any special arrangements for you when dealing with your case".
17. In respect to hearing disabilities, if this may be a factor in the delivery of their existing PCC service, they would communicate with the individual concerned to establish (and seek to agree) what form communications between the conciliator and the individual should take. Acas staff are currently guided to offer face-to-face meetings as a reasonable adjustment if parties require it in PCC. The same will be true under early conciliation.
18. There could potentially be a mix of methods including:-
- e mail
 - written communication
 - Type Talk
 - BSL signer - and Acas would pay for this provision should that be a reasonable adjustment

19. Acas recently undertook an Equalities Impact Assessment (covering all protected characteristics) of their individual conciliation service. This led to action including reviewing the wording of introductory letters to parties, ensuring booklets are available in different formats, providing further guidance to Conciliators on the Equality duty and promoting the use of face to face meetings as a reasonable adjustment. This learning is being transferred in the development of early conciliation.

20. More information can be found on the Acas website¹⁴.

¹⁴ <http://www.acas.org.uk/index.aspx?articleid=3502>

Post Implementation Review

As discussed throughout the impact assessment, there is considerable uncertainty about the impacts of early conciliation, especially given that there are other changes taking place in the employment tribunal system. The most significant of these changes is the introduction of fees for lodging an employment tribunal claim.

Basis of the review: Post implementation review
Review objective To establish if the objectives of encouraging parties to resolve disputes earlier, and where possible in the workplace, thereby reducing Employment Tribunal claims have been met. To establish whether EC is as effective in promoting earlier dispute resolution and thereby avoiding employment tribunal claims as anticipated.
Review approach and rationale The review will collect a range of admin data (from the operation of EC), as well as seeking stakeholder views. It will draw heavily on HMCTS administrative data and the Survey of Employment Tribunal Applicants (SETA).
Baseline Baseline employment tribunal claims will be given by 2011/12 employment tribunals claims data. SETA 2008 data allows us to estimate unit costs of going through the Employment Tribunal for claimants and respondents. BIS is currently undertaking an update to SETA, the survey will be in the field in the first half of 2013. This will give the most accurate baseline picture.
Success criteria EC will have been a success if it can be shown that, at least in part, it has caused a reduction in employment tribunal claims and/or earlier resolution of workplace disputes and/or resolution of workplace disputes that lead to better satisfaction with dispute resolution services.
Monitoring information arrangements There is a range of existing data on employment tribunal claims published by HMCTS. Annual statistics will be monitored closely to look at the overall number of ET claims and whether changes to patterns within the system are being seen. Acas also publish a range of management information and have a forward evaluation programme which will allow a look at success measures for early conciliation. The next Survey of Employment Tribunal Applicants will be in the field in the first half of 2013, and running a subsequent survey will be an important source of data.

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