

Good Work: The Taylor Review of Modern Working Practices:

Consultation on Enforcement of Employment Rights Recommendations

Acas Council Response

1. Acas welcomes the opportunity to respond to the Government's consultation on enforcement of employment rights recommendations.
2. Acas is a statutory, non-departmental public body with a duty to improve employment relations in Great Britain. Acas has considerable practical experience of the dynamics of the workplace and of the issues experienced by both individuals and employers in the wide range of working arrangements in the modern labour market. In 2016/17, Acas handled almost 900,000 calls from individuals and employers to its national helpline and dealt with over 500,000 queries online. It provided conciliation in 744 collective disputes, received 92,000 notifications to its early conciliation service, and its network of locally-based advisers trained nearly 37,000 individuals on a wide range of workplace-related topics.
3. This response draws on insights from Acas' practical experience and policy research. In particular, it draws on evidence and analysis previously set out in Acas' submission to the Taylor Review ('Taylor').¹
4. Acas does not seek to offer an opinion on those issues beyond its practical experience and research, therefore not all themes and questions within the scope of the consultation are addressed in this response.

Section A: State-led enforcement

Issues and barriers in respect of holiday leave/pay and sick leave/pay (Questions 1 & 3)

5. Acas' telephone and online information and guidance services receive a high volume and a wide range of queries, from both workers and employers, in relation to holiday leave/pay and sick leave/pay.
6. In 2017, the Acas telephone helpline service recorded over 60,000 calls regarding 'holiday entitlement'; almost 6,000 calls regarding 'refusal of holiday entitlement'; and over 26,000 calls regarding sick pay.² Acas' 'Helpline online' service additionally saw over 26,000 individual users viewing our 'Frequently Asked Questions' on these areas. Around 24,000 individuals each year also select the option for Acas' pre-recorded 'Holiday information' on the telephone helpline.
7. There are many reasons why workers and employers contact Acas with queries in these areas. For example:

¹ <http://www.acas.org.uk/media/pdf/h/s/Acas-submission-to-the-Taylor-Review.pdf>

² Acas aims to capture details for all calls to the Acas Helpline using its Data Capture System (DCS), however it is not always possible to do so for a variety of reasons including technical issues. During 2017, over 95% of calls were captured into the Data Capture System as records.

- Helpline calls on 'holiday entitlement' will often involve simple requests for guidance on entitlement to these rights, not always complaints about entitlement or non-payment.
 - Calls on 'refusal of holiday entitlement' may relate to concerns about potential situations that may occur in the future, as well as perceived detriments which have already occurred, such as being refused permission to book holidays and non-payment or incorrect payment for holidays.
 - Similarly, calls on 'sick pay' include queries regarding entitlement and how to calculate sick pay in a particular worker's circumstances, as well as issues of non-payment of statutory sick pay or contractual sick pay.
 - Acas' online service of 'Frequently Asked Questions' includes queries on eligibility and entitlement, calculation, as well as resolving issues of non-payment, deductions or refusal of entitlement.
8. Evidence from these queries therefore does not provide a direct indication of whether or not workers are 'typically receiving pay' during periods of annual leave or when they are off sick. However, the wide-ranging nature of these queries does provide useful insights into the types of issues that both workers and employers can face in respect of holiday leave/pay and sick leave/pay. A range of typical queries received by Acas in these areas is set out at **Annex A**.
9. The nature of these queries also indicate a range of barriers to ensuring that these payments are paid and calculated correctly. These include:
- **Low basic awareness and/or understanding among some employers** of the statutory right to paid holidays for all workers, of the basic rules around entitlement to SSP, and more broadly of their obligations to those with 'worker' status who are not employees;
 - **Confusion about the relevance of specific contractual or personal circumstances** of individual workers, whether or not these affect entitlement to holiday/sick pay, and their impact on how to calculate pay correctly;
 - **Low awareness and confusion around developing case law in recent years** with regard to holiday entitlement and calculation, including its interaction with sick leave.
10. In Acas' view, improving awareness and understanding of holiday and sick pay entitlements among both employers and individuals has an important role to play in helping to address many of these issues. Acas welcomes the government's commitment in its response to the Taylor Review to immediately take steps in this regard, including investigating how to best communicate entitlements to all workers and exploring publicity campaign options. Acas currently provides guidance in these areas across a range of online, telephone and face-to-face channels, and will continue to review and develop its guidance, and how best to communicate it, in response to emerging user needs, policy developments and any relevant government initiatives.

Issues and barriers for particular groups of workers (Questions 2 & 3)

11. In addition to the general issues and barriers outlined above, Acas' experience suggests that a range of further difficulties can be faced in relation to holiday leave/pay and sick leave/pay, by those engaged in non-standard contractual arrangements. This group includes workers on zero hours contracts, agency workers, and those who are classed by their employer as 'self-employed' but whose arrangement may in fact be that of a worker or employee.

Low awareness of rights in non-standard contracts

12. As previously outlined in Acas' submission to the Taylor Review, evidence from the Acas helpline indicates a significant lack of awareness and confusion among individuals and employers about applicable rights and responsibilities in non-standard contracts. This includes low understanding regarding entitlement to holiday leave/pay and sick leave/pay, and/or how to calculate the relevant details on pay or time off.

13. One particularly common misunderstanding appears to be that zero hours workers are not entitled to paid holidays. Other areas of confusion around zero hours workers include:

- How other rules around 'working time' impact on holiday entitlement and pay, for instance whether 'standby time' or 'travel time' count as working time for zero hours workers;
- How the current 12-week reference period for calculating average pay should apply where variable hours are worked – for instance, where the period of work immediately preceding a period of leave is unrepresentative of the worker's 'normal' working pattern;
- Ambiguity around whether zero hours workers continue to be employed during periods of sickness absence – for instance, whether or not holiday entitlement would continue to accrue during long-term sickness absence.

14. Acas' evidence indicates that agency workers also can face a number of particular issues in respect of holiday leave and pay. These include:

- Some workers not being informed by their agencies of their right to paid holidays, or of the operation of their annual leave year, leading to workers missing out on paid holiday entitlement; and
- The use of rolled-up holiday pay by agencies, often accompanied by concerns that this has resulted in miscalculation and underpayment of accrued holiday entitlements.

15. Acas reiterates its view, stated previously in its submission to Taylor, that the current absence of a statutory requirement to provide a written statement of terms and conditions to workers contributes to the limited awareness of the legal rights and responsibilities in these types of contracts. Acas therefore welcomes the government's proposal to extend the right to a written statement to all workers and will comment further on this in its response to the government's consultation on *Increasing Transparency in the Labour Market*.

16. Similarly, in Acas' view the lack of requirement for agencies to provide transparent information at the point of registration to those seeking work through their services also constitutes a barrier to awareness and understanding of statutory rights in those arrangements. Acas welcomes the government's attention to this issue in its *Agency Workers Recommendations* consultation and will comment further on this in its response to that consultation.
17. Given the sometimes complex application of the statutory rights to paid holidays and sick leave to non-standard working arrangements, there is clearly a role here for accessible guidance to help individuals and employers understand what these complexities mean in their particular situations. While Acas, BEIS, trade unions and other stakeholders have all played an important role in recent years in improving the availability and quality of guidance on these types of contracts, this remains an area where more work could be done.
18. Acas will continue to review and develop its guidance in these areas and welcomes the government's commitment, in its consultation on *Increasing Transparency in the Labour Market*, to work with Acas to review available advice and guidance and seek improvement where needed.

Uncertainty around employment status

19. A further issue for some non-standard workers, also previously noted in Acas' submission to Taylor, is confusion around the law on employment status. In terms of a barrier to individuals seeking to receive holiday leave/pay and sick leave/pay, this issue affects in particular workers who are classed as 'self-employed' by their employer but whose working arrangement may in fact be one of a worker or employee.
20. Acas' evidence points to several reasons why workers and employees may be misclassified as self-employed. First, the complexity of the law on employment status can make it difficult to understand, and therefore difficult for employers and individuals to obtain clear information and guidance that can be applied with certainty to their specific working arrangement. Queries received by Acas about the implications of emerging case law on employment status have also been notable in recent times, in the context of several important cases making their way through the courts and tribunals.
21. Secondly, evidence from the Acas helpline suggests that in some instances employers may be choosing to offer contracts of self-employment directly as a means to reduce or avoid the costs of their employment obligations. As noted in Acas' submission to Taylor, recent analysis of helpline calls revealed some callers – notably in the construction, hairdressing, cleaning and logistics sectors – relating how their employer had told them that they would 'need to become self-employed', without any substantive change to the working relationship itself, explicitly to enable the employer to avoid the costs of sick pay and holiday pay, as well as maternity pay or other obligations.

22. Misclassification as self-employed, for any reason, clearly presents a barrier to those individuals from benefiting from the statutory entitlement to holiday leave/pay and sick leave/pay, as well as to other statutory rights and protections that are afforded to workers and employees but not to the self-employed. While in principle it is open to any individual to challenge their employment status in order to access those rights, Acas' evidence suggests that the insecure nature of such arrangements can impact negatively on individuals' confidence to challenge their status either directly with their employer or at an employment tribunal. In Acas' view, this presents a further significant barrier for this particular group (see further paragraphs 24-26 below).
23. Acas welcomes the government's recognition of a need to address a range of issues around the current employment status regime and will respond separately to the government's *Employment Status* consultation.

Lack of confidence to assert rights in insecure arrangements

24. Even where there is clarity and understanding about employment status and applicable rights and responsibilities in a given working arrangement, another significant barrier highlighted in Acas' submission to Taylor is the extent to which individuals in non-standard arrangements have the confidence to question and assert their rights in practice, for example through using informal or formal grievances procedures within their employer's organisation.
25. Acas' practical experience and research consistently finds that zero hours workers and agency workers, as well as those who feel misclassified as self-employed, can be fearful of asserting the right to paid holidays and paid sick leave in case offers of work are subsequently withdrawn or their hours are reduced. This threat of being 'zeroed down', explicit or implied, can also cause anxiety and apprehension when it comes to asking questions about other contractual or statutory entitlements, or raising other types of concerns or grievances about treatment and conditions at work.
26. With little or no recourse open if their hours are reduced in response to raising concerns, many such workers understandably experience deep feelings of insecurity about the potential consequences of any actions they may take and therefore refrain from raising grievances or otherwise asserting their rights. In Acas' experience, this can present a significant barrier to such individuals seeking to ensure they receive payments in respect of holidays/sick leave. It can also contribute to wider feelings of unfairness on the part of workers about the way they are being treated, with negative impacts on good working relations, engagement, wellbeing and productivity.

State-led enforcement of sick pay and holiday pay (Question 4)

27. Acas strongly emphasises the importance of ensuring that all individuals who experience concerns about their rights should be aware they have the right to use internal grievance procedures to voice their concerns, and should have the confidence to seek resolution to any issues they encounter at work. Equally, it is fundamentally important that employers should ensure that grievance procedures are made available and promoted to all workers.

28. As Acas commented in its submission to Taylor, where workers are discouraged from raising concerns or grievances at work, or are fearful of doing so, for instance due to the insecurity of their contract, this is likely to have a negative impact on the effectiveness of basic statutory employment rights in those arrangements. In Acas' view, this is an issue that goes beyond that of improving awareness and understanding of rights.
29. Acas therefore welcomes the government's position in this consultation document that there is merit to the state enforcing the right to statutory sick pay and holiday pay on behalf of the most vulnerable workers, and that it intends to move in this direction. Acas emphasises the need for appropriate resourcing to support the effectiveness of such state-led enforcement, and for an evidence-led approach to identifying problems, targeting action and measuring impact. Acas would be willing to work with the government to ensure that relevant queries to Acas' helpline and online services would be appropriately signposted to any extended state enforcement option, as it currently does with HMRC's Statutory Payments Disputes Team.
30. In Acas' view, the benefits of such an approach would be to help narrow the scope for unscrupulous employers to avoid their basic employment obligations, to help raise wider awareness of the applicability of these rights to all workers, to help boost worker confidence that these rights are genuinely enforceable, and to discourage the use of poor management practices which undermine individuals' confidence to assert their rights.
31. As Acas' submission to Taylor further noted, where vulnerable workers' confidence to assert rights is undermined, there will be additional challenges in ensuring that such individuals feel able to use the routes for redress that are available to them. Acas' experience suggests that, even if an option for state-led enforcement were available, workers who believe they have suffered a detriment (for instance by having their working hours, income or other opportunities reduced in response to asserting their rights) they might nevertheless be reticent to instigate a process for state-led enforcement for fear of suffering further detriment.
32. Therefore, to support the effectiveness of any extension to state-led enforcement of rights for vulnerable workers, Acas suggests that consideration should be given to an associated statutory protection against detriment. In particular, it should be clear that there is protection against suffering a reduction in regular working hours (even where these are contractually non-guaranteed), income or other opportunity as a result of seeking to instigate any state-led enforcement of rights.
33. At the same time, in Acas' view any extension of state-led enforcement should be accompanied by the promotion and encouragement of other options for seeking redress, including the use of internal informal and formal grievance procedures, Acas early conciliation and the employment tribunal system where appropriate. Any extension of state-led enforcement also should not distract from the importance of promoting good management practices, good

employment relations and good working cultures, as discussed further at paragraphs 39-43 of this response.

Other measures to encourage workers to raise concerns (Question 5)

Itemised hours on pay slips for time-paid workers

34. Acas agrees with the view, set out in the government's response to the Taylor Review, that itemising the hours that workers are being paid for on their payslips can be crucial information to help workers understand and query whether or not they have been paid correctly. This will be especially useful in situations where the amount of time worked is variable and the worker's pay varies as a consequence. Acas has therefore welcomed the government's introduction of legislation, earlier this year, both to extend the right to receive a payslip to all workers and to require that employers state the hours being paid for on the payslips of time-paid workers, with effect from April 2019.
35. Acas further supports the recent recommendation by the Director of Labour Market Enforcement (in the Labour Market Enforcement Strategy 2018/19) that the hourly rate of pay should also be included on payslips, to provide additional transparency in the interests of ensuring that individuals can understand and query whether they have been paid correctly.

Clear protection against detriment where insecure workers assert statutory rights

36. A further measure to boost the confidence of insecure workers in raising concerns would be to provide a greater level of reassurance regarding the availability of routes for redress to an employment tribunal should they suffer detriment for asserting their rights. As previously recommended in Acas' submission to Taylor, this might be done by clarifying and strengthening the existing statutory protection against detriment, to ensure that this specifically protects against circumstances where individuals suffer a reduction in regular working hours (even where these are contractually non-guaranteed), or income or other opportunity, in response to asserting a statutory right.
37. As noted above in relation to state enforcement, where vulnerable workers' confidence is undermined by concerns about the insecurity of their contract, there will be additional challenges in ensuring that they feel able to use the routes for redress that are available to them where they believe they have suffered a detriment for asserting their rights. In Acas' experience, this can result in a reticence to raise a grievance with their employer, to seek Acas early conciliation or to make a claim of detriment to an employment tribunal, for fear of suffering further detriment. In Acas' view, an associated protection against 'victimisation' for taking such steps might go some way to addressing this by providing vulnerable individuals with a further level of reassurance.

Clear and accessible guidance

38. Evidence from Acas' helpline consistently shows that where individuals are uncertain about the nature or extent of their rights, this can contribute to a lack of confidence to raise concerns with their employer. This lack of confidence can be heightened for those in atypical arrangements. Therefore, in addition to

improving options for redress and enforcement through the regulatory responses considered above, in Acas' view there is a need to continue efforts to address low awareness of rights and responsibilities in all types of working arrangements, and in particular in non-standard contractual arrangements (see also paragraphs 17-18 above).

Improving management practices and workplace cultures through the Industrial Strategy

39. Acas' practical experience and research further shows that individuals are more likely to feel confident to raise concerns where there is a positive culture of trust in their workplace. This points to the broader importance of encouraging and supporting good relationships between employers, individuals and their representatives, including through good management practices which foster effective worker voice, engagement and wellbeing.
40. An important context for the challenge here is a growing body of evidence which suggests that the quality of leadership and people management in the UK workplace in general is lagging behind our key international competitors. As emphasised in a joint response from Acas, the CBI, the CIPD and the TUC to the 2016-17 BIS Select Committee inquiry into the government's industrial strategy³, a key focus that has been missing in this policy area in the past has been that of improving workplace practices, particularly around how people are led and managed and investment in management training and development.
41. In addition to this general challenge, in Acas' experience the greater potential for an imbalance of power in non-standard contractual relationships can create particular challenges in this regard. This points to a need for accessible practical advice and support aimed at helping employers who use non-standard contracts to make informed decisions about when their use may or may not be appropriate, as well as to understand the importance of good management practices and worker voice, and how to embed these successfully in their organisations.
42. Acas has welcomed the government's prioritisation of 'People' as one of the five foundations of productivity in its Industrial Strategy launched in November 2017. In Acas' view, the implementation of the Strategy should address how government will work with employers, workers, trade unions, business organisations, professional bodies and government agencies on a national, sectoral and local level, to raise the quality of leadership and people management practices across the UK economy. Among the many benefits of this approach, this would foster more working environments in which workers feel confident to raise concerns, provide more managers with the skills to engage in the early resolution of concerns and, in doing so, would contribute to the creation of more inclusive and high-performing workplaces.
43. Acas would welcome working with the government along with other stakeholders to support the implementation of the Industrial Strategy, drawing for

³ http://www.acas.org.uk/media/pdf/i/a/industrial_strategy_response.pdf

instance on the work already undertaken by Acas on boosting workplace productivity.⁴

Section B: Enforcement of awards

44. In Acas' view, the availability of a simple and effective enforcement process for the payment of awards is a matter of key importance both in terms of an effectively functioning employment tribunal system and as integral to the promotion of good employment relations more widely.
45. Acas' experience and research in this area relates to unpaid Acas conciliated settlements rather than to unpaid employment tribunal awards. There are some overlaps between the processes for enforcing conciliated settlements and tribunal awards – for instance, the Fast Track system introduced in 2010 presents an option for eligible claimants to seek enforcement of unpaid Acas conciliated settlements as well as tribunal awards, and there are also close similarities between the civil court processes available to those seeking to enforce awards and settlements. Acas' recognises, however, that the challenges to effective enforcement may differ between tribunal awards and conciliated settlements, and Acas' evidence and observations here reflect this difference.
46. Acas conducted research in 2015 into the payment of Acas conciliated settlements⁵. This research was stimulated by concerns around published research reporting high proportions of non-payment of employment tribunal awards. As noted in the government's current consultation document, research commissioned by the former Department for Business, Innovation and Skills in 2013 had found that only 53 per cent of successful claimants surveyed received full or part payment without enforcement action, while 35 per cent had not received any payment at all.
47. In contrast, the findings from the Acas research show that 96 per cent of claimants who had monetary terms to their Acas conciliated settlement had been paid in full, and 93 per cent had received payment without needing to resort to enforcement. These findings held true for settlements in both 'pre-claim conciliation' (the former Acas PCC service) and conciliation following submission of tribunal claims. (Moreover, and in line with these findings, a subsequent evaluation of Early Conciliation (EC) in 2015⁶ found that nearly all (96 per cent) claimants who received a financial sum as part of their EC settlement similarly confirmed that it was actually paid to them - suggesting that Acas settlements are equally likely to be fulfilled without recourse to enforcement irrespective of the precise service context).
48. Among those claimants with conciliated settlements who had pursued enforcement of their claim via the County Courts, overall satisfaction with enforcement in this way was high. Of those who had pursued such enforcement

⁴ www.acas.org.uk/productivity

⁵ <http://www.acas.org.uk/media/pdf/f/a/0115-Payment-of-Acas-Conciliated-Settlements.pdf>

⁶ See Section 6.3 of <http://www.acas.org.uk/media/pdf/5/4/Evaluation-of-Acas-Early-Conciliation-2015.pdf>

and whose case was now closed, 67 per cent responded that they were either very or fairly satisfied with the outcome of enforcement, while just 12 per cent were dissatisfied. (There were not enough claimants using the Fast Track scheme to report robust findings for this group.)

49. However findings were more balanced when it came to **claimants' awareness and understanding of enforcement options**. Claimants who did not pursue enforcement of their settlement payment were asked if they were aware of each of the specific ways of trying to enforce payment that were available to them. Of this group, just under half (46 per cent) of those based in England and Wales were aware of the direct County Court option, while a fifth (26 per cent) of those eligible for the Fast Track Scheme were aware of that as a method for enforcing payment. Two per cent of claimants had sought advice about enforcing their settlement from any organisation or person.
50. From these findings, it is Acas' view that the high success of enforcement procedures regarding Acas conciliated settlements suggest that higher awareness of the options available for enforcement, such as the Fast Track Scheme, could lead to even higher rates of settlement payments.
51. Further notable findings from the study related to the **factors influencing settlement payments**, with main jurisdiction being found to be the factor most likely to determine non-full payment of the settlement. Other important factors included income levels and size of employer. The latter also emerged separately as one of several features impacting on likelihood of claims being paid in full, with claims against larger employers being more likely to result in payment. The value of a settlement was also found to have an impact upon the likelihood of it being paid (in full), with the lowest value claims (those under £500) being least likely to have been paid in full – and most likely to not have been paid at all. (All such differences were necessarily small, however, with the vast majority of all claimants who had monetary terms included in their settlement being paid in full).
52. In Acas' view, an up-to-date analysis of these and other factors in respect of their influence on payments of *tribunal awards* may provide valuable data to help target awareness-raising of enforcement options among categories of claimants that are particularly likely to face non-payment of their awards. The forthcoming results from the Survey of Employment Tribunal Applications (SETA) 2017 – which Acas co-sponsors with BEIS, and which gathers data on receipt of Tribunal awards (as well as Acas settlement payments) and on the BEIS employment tribunal penalty scheme – ought to be instructive in this regard.
53. On the specific issue of introducing a **simplified digital system** for users seeking enforcement (consultation Questions 7 and 8), Acas emphasises the importance of designing systems that are inclusive and that do not risk excluding in particular the most vulnerable workers with no or limited access to technology.
54. In broader terms, Acas' supports the principle that enforcement processes should be made as simple and accessible as possible for claimants. In considering **how**

best to achieve such simplification, Acas believes that it is important to consider not only the enforcement process itself, but moreover the entire claimant journey into and through the employment tribunal system. In this regard, Acas highlights the work it is currently doing around simplifying the Early Conciliation notification process. Acas welcomes further liaison with HMCTS on this and other areas of reform, in the interests of streamlining processes and joining up information management wherever appropriate. .

55. As regards the proposal to establish a **"naming and shaming scheme"** for those employers who do not pay awards within a reasonable time, Acas acknowledges the greater prominence that 'naming and shaming' has taken in recent years in regard to the National Minimum Wage and the potentially positive impact such an approach might have with regard to other statutory rights. Acas notes that the consultation document estimates that the number of employers that may be named per quarter (around 30 to 36 employers according to paragraphs 43-45 of the consultation document) is very low compared with the number of unpaid tribunal awards. The main value of such a scheme may therefore lie in its potential power to deter a wider group of employers from not paying awards or settlements. Acas notes, however, that the consultation document does not present evidence to suggest whether or not the proposed scheme would have such a deterrent effect, nor does it present an estimate of the anticipated deterrence effect. Comparative evidence on the impact of the National Minimum Wage naming scheme may be instructive here and might help, for example, to determine which employers or types of employers it may be most effective to highlight for naming purposes.
56. Acas suggests that any potential new naming scheme should include a well-publicised statutory protection against detriment for individuals who opt in to the scheme when seeking to instigate enforcement, for similar reasons to those noted above in connection with state enforcement of awards (paragraphs 31-32 above) and in relation to encouraging workers to raise concerns (paragraphs 36-37 above).
57. At the same time, in Acas' view any extension of a 'naming and shaming' approach should be accompanied by the promotion and encouragement of options for seeking redress, including (as noted at paragraph 33 of this response) the use of internal informal and formal grievance procedures, Acas early conciliation and the employment tribunal system where appropriate. It is also important that a 'naming and shaming' approach should not distract from the importance of positively promoting good management practices, good employment relations and good working cultures (as discussed further at paragraphs 39-43 of this response).
58. Acas notes that, while the consultation questions do not reference the inclusion of unpaid Acas conciliated settlements within the proposed naming scheme, the options set out for the scheme (at Annex C of the consultation document) each build on the current BEIS penalty scheme which can be instigated by individuals in respect of unpaid Acas conciliated settlements. Acas would wish to explore further with the government the potential implications of extending a "naming

and shaming scheme" to Acas conciliated settlements, including its potential impact on the motivations and behaviours of parties in conciliation.

59. Acas further notes that there would also be some practical issues to consider with regard to how such a scheme might apply to conciliated settlements. These include, for instance, how the scheme might be instigated in cases where an employer has defaulted on a payment *instalment* agreed in a conciliated settlement. While some such settlements may include a clause specifying that a default on one instalment will permit the claimant to immediately seek enforcement of the full settlement amount, such a clause will not always be included, depending on the wording agreed by the parties. There is therefore a practical question about when enforcement might be sought in such instances. As instalment plans can cover many months or in some cases a year or more, without clarity on this issue some claimants would potentially have to wait until the final due date to be able to initiate enforcement and/or the naming scheme even where there may have been default at a much earlier stage.

Section C: Additional awards and penalties (Questions 15-22)

60. Acas welcomes the government's position stated in this consultation document that strong action should to be taken against employers who repeatedly ignore their responsibilities and the decisions of employment tribunals. In Acas' view, repeated non-compliance with tribunal decisions, and failure to apply them to 'broadly comparable' circumstances in an organisation, undermines the effectiveness both of the tribunal system and of employment law in general, as well as good employment practices more generally.
61. Acas does not seek to comment on the detailed questions in the consultation regarding how these sanctions might be extended. However, regarding alternative powers that could be used to take action against and deter repeated non-compliance, in addition to the options for punitive sanctions set out in the consultation document, Acas believes that there is merit in considering how employment tribunals might also be empowered to take a more constructive approach in appropriate cases to encourage the improvement of working practices in organisations.

Annex A

Typical queries received by Acas' telephone and online helpline services in relation to holiday

	Holiday leave/pay	Statutory Sick Pay (SSP)
Entitlement	<ul style="list-style-type: none"> • Whether workers in general are entitled to paid holidays; • Whether certain groups of workers (e.g. zero hours workers, agency workers, self-employed) are entitled to paid holidays, or have a different entitlement to that of employees in general; • Whether entitlement is dependent on factors such as length of service or completion of a probation period. 	<ul style="list-style-type: none"> • General criteria of eligibility • Whether certain groups of workers, self-employed) are entitled to that of employees in general
Calculation	<p>How to calculate a worker's statutory holiday leave/pay, with confusion commonly arising around:</p> <ul style="list-style-type: none"> • Public/bank holidays (in particular for part-time workers); • Workers with variable hours, rolling shift patterns or shift pay enhancements (how to calculate holiday accrual & pay); • Overtime (whether/how to include in calculations); • On-call and sleep-in shifts (whether/how to include in calculations); • Pay on commission (whether/how to include in calculations); • Lay-offs and short-time working (whether these affect holiday accrual; whether employers can require workers, or whether individuals can request, to take paid holidays during such periods); • Suspensions during disciplinary procedures (whether holiday entitlement continues to accrue during such periods); • Rolled-up holiday pay (whether lawful / how to calculate); • The interaction of holiday entitlement with maternity leave. 	<p>The current SSP rate, for how long to pay it in particular circumstances around:</p> <ul style="list-style-type: none"> • The relevance or effect of work-related illness, stress, pregnancy-related illness • What should be paid to workers on a phased return to work.

¹ Source: Acas management information system data and anecdotal evidence from Acas helpline advisers.

Operation in practice	<p>How the entitlement to annual leave should operate in practice, with confusion commonly arising around:</p> <ul style="list-style-type: none"> • Accrual during the first year of employment; • Whether workers can 'exchange' accrued holidays for pay in lieu; • The interaction of holidays with notice periods (accrual of annual leave during a notice period; entitlement to take leave during a notice period; whether workers can be required to use up outstanding leave during a notice period); • The effect of an employer's 'annual leave year' (e.g. carrying forward leave into a new annual leave year); • Entitlement for workers/employers to cancel booked annual leave; • What '5.6 weeks' means in terms of days, hours, or part-days/hours. 	<p>How the entitlement to SSP commonly arising around:</p> <ul style="list-style-type: none"> • Whether it counts as sick pay part way through the • How long workers can self-certify without medical certification of sickness • Whether entitlement to SSP is affected by circumstances, e.g. if a worker is on sick leave for another employer in a second job • What happens to pay when a worker returns from sick leave • Whether SSP is taxable.
Disputes	<p>What options are available to a worker or employer where the amount of annual leave or pay is in dispute, either during or after employment. For instance:</p> <ul style="list-style-type: none"> • How far back claims for underpayment can go; • Whether employers can deduct holiday pay from wages where a worker leaves part way through an annual leave year having taken more than has been accrued at the effective date of termination. 	<p>What options are available to a worker or employer where the entitlement to, or the amount of, SSP is in dispute, either during or after employment. For instance:</p> <ul style="list-style-type: none"> • What is the position if a worker is on sick leave but the employer disagrees with the worker's self-certification?
Interaction between holidays and sick leave	<ul style="list-style-type: none"> • Whether workers continue to accrue holiday entitlement whilst on sick leave; • Whether entitlement to sick pay is affected if a worker goes away on holiday whilst on sick leave; • Whether a worker on long-term sick leave can convert pre-booked holiday to sick leave, at least in part, into the next annual leave year; • Whether days of sickness can be taken as paid annual leave instead. 	