Department
for Business
Innovation & Skills

EARLY CONCILIATION:

A consultation on proposals for implementation. Impact assessment

JANUARY 2013

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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: 01/01/2013

Stage: Consultation

Source of intervention: Domestic

Type of measure: Secondary legislation

Contact for enquiries: **Gail Davis**

Summary: Intervention and Options

RPC: RPC Opinion Status

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, One-Out?**	**Measure qualifies as**
£527m	£264m	N/A	No	NA

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 is currently before Parliament in the Enterprise and Regulatory Reform Bill to facilitate early conciliation. This impact assessment considers the detail of implementation. 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 undersatanding, even where they do end up at Employment Tribunal; and improve overall satisfaction with the employment dispute resolution system.

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 have been set out (and some will be delivered through the Enterprise and Regulatory Reform Bill if this achieves Royal Assent). The consultation seeks views on current plans for implementation. These include 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 will affect the overall costs and benefits to all parties significantly. However, where there are risks these are highlighted.

Will the policy be reviewed? It will/will not be reviewed. **If applicable, set review date:** Month/Year

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/No**	**< 20** Yes/No	**Small Yes/No**	**Medium Yes/No**	**Large Yes/No**
What is the CO2 equivalent change in greenhouse gas emissions? (Million tonnes CO2 equivalent)			**Traded:**	**Non-traded:**	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: Date:

Summary: Analysis & Evidence

Policy Option 1

Description: Implement Early Conciliation: all Employment Tribunal Claims first go to Acas to be offered conciliation

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period	Net Benefit (Present Value (PV)) (£m)		
	2012	Years 10	**Low:** Optional	**High:** Optional	**Best Estimate:** 566

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate			32.3	266

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 £3.9m per year. Employers: costs of entering into early conciliation (forms, staff time spent conciliating, legal representation) estimated at £25.1m per year. Exchequer: costs of running early conciliation, currently estimated at around £5m per year, with one off costs to Acas and HMCTS.

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

Maximum of 5 lines

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate			96	794

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 £24.1m per year. Employers: benefits from fewer claims going to Employment Tribunal, savings in staff time, legal costs estimated at £67.2m per year. The Exchequer: savings from fewer Employment Tribunal claims, although quite uncertain, it currently appears these could be in the region of £10m per annum with the potential to rise once Early Conciliation is fully embedded.

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

Maximum of 5 lines

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). There are major changes coming to the ET system in the form of user fees - the impact of this change in Summer 2013 is 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 OIOO?	Measure qualifies as
Costs:	**Benefits:**	**Net:**	No	NA

IA Evidence Base for Consultation on Implementation of Early Conciliation

Background

Government is taking primary legislation through Parliament, in the Enterprise and Regulatory Reform (ERR) Bill, 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.

The ERR Bill 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.

The Bill will place a duty on Acas to provide early conciliation (i.e. to offer conciliation before applicants reach the employment tribunal). This consultation and impact assessment sets out how we intend early conciliation should operate.

Early Conciliation has been assessed previously within the "Resolving Workplace Disputes" consultation and Government response impact assessments[1]. This impact assessment builds on the previous assessments of early conciliation as we move into the implementation phase. It therefore reflects the further thinking we have done on how the process should operate.

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.

1. [1] The Government response Impact Assessment for Resolving Workplace Disputes can be found at http://www.bis.gov.uk/assets/biscore/employment-matters/docs/r/11-1381-resolving-workplace-disputes-final-impact-assessment.pdf

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) they must complete and submit an ET1 form. This form is sent to the employer – the respondent – who would then complete and submit 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 hearing.

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.

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.

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:

- 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.

The proposal to 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 Bill, which is currently before Parliament.

Problem under consideration

The average costs to employers, claimants and the exchequer of going through employment tribunals are illustrated in Table A1 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

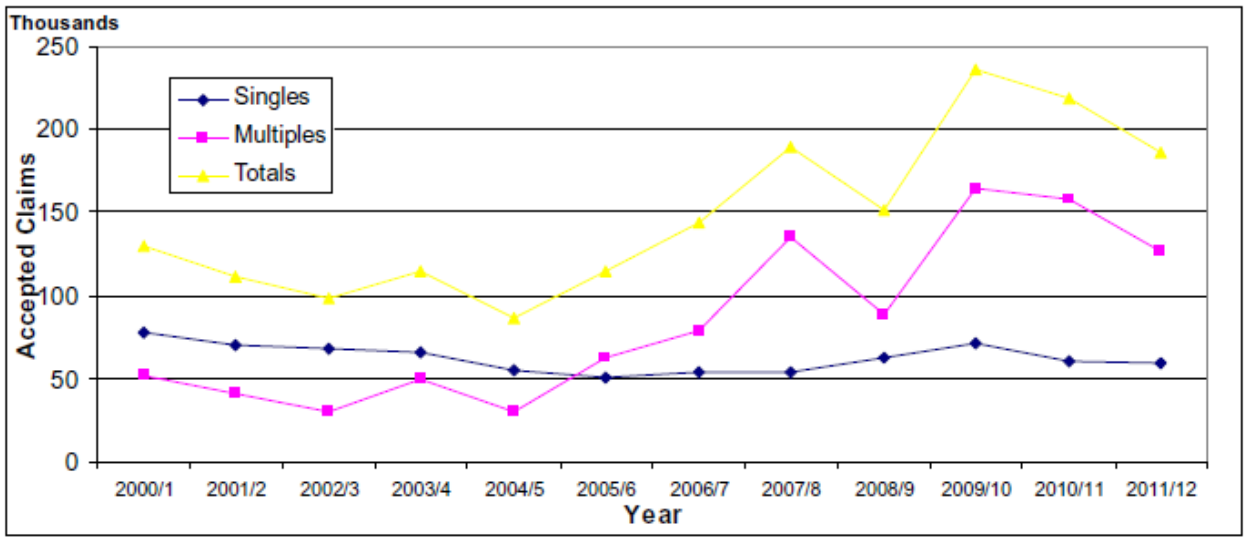
	Employment Tribunal Hearing	Individual Conciliation	Average across ET claim outcome
Employer	£6,200	£3,500	£3,900

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.

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.

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]

There is a body of evidence[3] 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).

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.

2. [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. [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

Rationale for Intervention

Quicker and Cheaper Resolution

Evaluation evidence on how the Acas pre-claim conciliation service 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

Evidence suggests parties have unrealistic expectations of the Tribunal outcome. For example an Institute of Employment Studies literature review for BIS[4] points out that there 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.

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

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, and so to ensure businesses feel more confident about employing people. 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.

In particular, 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

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

[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

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]

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.

Options

1. Do Nothing

Subject to the Parliamentary process, once the ERR Bill receives Royal Assent, and the provisions commenced, Acas will be under a duty to provide early conciliation. 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.

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.

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

The consultation seeks views on the proposals for implementing Early Conciliation (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

4. [5] Why Pre-Claim Conciliation Referrals become Employment Tribunal Claims, Acas paper 14/12 2012. http://www.acas.co.uk/index.aspx?articleid=2056

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. Access to hard copy forms will be made available where claimants are unable to use the on-line route.

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.

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 as to where they can obtain a hard copy if appropriate). We considered whether it would be appropriate for Acas to take telephone requests for EC 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.

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 practicable (for example Interim Relief claims), or where prospective claimants are specifically exempted, or the requirement has otherwise been complied with (as set out in Section 2 of the Consultation Document).

Claimants will remain responsible for ensuring that any claim which they present to an Employment Tribunal is presented within the relevant statutory time limit (ie 3 or 6 months, depending 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, merely to 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.

For Early Conciliation 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 in hard copy, whether by post or by hand, the date received will be that on which it is received by Acas..

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.

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

Once the claim has been received by Acas, we propose to operate a two-stage process where claims are initially passed to an Early Conciliation Support Officer (ECSO) to make contact with the prospective claimant. We envisage that 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

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 recognise, however, that there may be arguments in favour of having the first contact made by a Conciliation Officer, for example because they will have a greater opportunity to persuade a prospective claimant to agree to participate in EC.

We therefore propose to seek stakeholder views on this matter, to identify whether there are any persuasive reasons to justify the higher cost of using a conciliator.

In addition, Acas are currently undertaking an operational trial of the ECSO model as part of their Pre-Claim Conciliation (PCC) service. While PCC differs from early conciliation in a number of respects, there are enough similarities to allow us to better understand the costs and benefits of such an approach in taking a final view on how early conciliation should be implemented.

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 consider that the ECSO should make reasonable attempts to contact the claimant, but that these attempts should not continue beyond 5 working days. We will seek 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.

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.

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 (ie 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 an SoC to certify that they have complied with their obligation to contact Acas.

2.3 Second Stage Contact

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 justiciable claim (for example

it appears that the limitation period has expired), the conciliator will be proceed with conciliation (decisions on justiciability are matters for the tribunal to decide, not Acas).

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 unable to make contact, a certificate will be issued to the prospective claimant. We will seek stakeholder views on whether it is appropriate to adopt the same approach to contacting prospective respondents as that proposed for prospective claimants.

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.

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.

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.

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.

Certificate of compliance

If EC is successful, a legally binding settlement (a COT3) would 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.

A certificate will be issued either electronically, where the prospective claimant has provided an email address, or by hard copy.

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

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

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.

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.

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 line with that.

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. For the minority of claimants who realise after the EC period has ended that they have another head of 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.

We will seek the views of stakeholders on this approach.

Early Conciliation will be free at the point of use to claimants.

Monetised and Non-Monetised Costs and Benefits

Baseline for benefits calculation

In many respects, the options for implementation do not change the likely costs and benefits of early conciliation 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.

We have established that the options above make no material difference to the calculations in this basic model, although if contact by an Early Conciliation Support Officer (ECSO) as set out in Option 2.2a, then there would be some increase in the costs to the Exchequer of running the Early Conciliation service. This would not affect quantifiable impacts on claimants or employers.

Likely reduction in Employment Tribunal Claims Volumes

The main benefits to employers, claimants and the Exchequer of Early Conciliation stem from the expected reduction in claims that enter the employment tribunal system.

There is considerable management and evaluation data available on the outcomes of Acas' current pre-claim conciliation service, which is the best guide we have to outcomes of early conciliation.

The main outcome of interest is the employment tribunal rate of those cases going through pre-claim conciliation. 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.

This is still very difficult to analyse. There is no data on the employment tribunal rate of those not going through PCC, but we have a proxy 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.

The methodology for establishing the marginal effect of early conciliation is described in more detail in Box 1 and suggests under central assumptions a fall in claims of 25 per cent might be expected. This is subject to sensitivity analysis later in this impact assessment.

Once the likely percentage reduction is calculated, we need to apply this to a baseline number of employment tribunal claims to establish the likely reduction in volume of claims. 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.

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.

In terms of costs incurred it is then necessary to establish the average claims per multiple case and reduce the multiple claims figure to a cases basis.

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.

The baseline is then average single claims as given in Table 2 added to average multiple claims that are divided by the median number of claims per case (4). This yields 95,245 cases, but needs to be further refined by removing the existing volume of PCC cases (by subtracting a further 20,000 cases that Acas currently deals with). This means that the marginal effect of introducing early conciliation in terms of the number of ET claims saved is applied to 95,245 cases, less 20,000 (75,245). A 25 per cent reduction on this figure implies about 17,225 fewer ET claims as a result of having early conciliation. This is an **18 per cent** reduction in ET claims overall.

Box 1: The counterfactual and estimated policy effect

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).

Acas management information for 2010/11 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. Where the offer of PCC was not taken up, **39.8 per cent** of cases subsequently became an ET case.

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.

The above reflects the observed outcome of existing policy. To estimate the effect of the policy we must subtract from this the counterfactual. As it is not possible to observe the counterfactual once a policy intervention takes place, we must estimate the counterfactual as follows.

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. We adjust this figure upwards to **50 per cent** to take account of the partial treatment of this group as outlined below under limitations.

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 **39.8%**)

This equates to **25.2 per cent**. The difference between the 'ET rate' for all PCC cases (25.2 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 **24.8 per cent** reduction in ET claims.

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.

Benefits to Claimants

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 (17,225) suggests a benefit to claimants of **£24.1 million** per year.

Benefits to Employers

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 suggests a benefit to employers of **£67.2 million** per year.

Benefits to the Exchequer

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 look at the percentage of cases that is expected to be saved, and apply this percentage (18 per cent) to the current HMCTS budget. In 2012/13, the budget is around £86m, so in 2012 prices, the saving could amount to around **£15m** once Early Conciliation was fully embedded.

It is important to note (as with all the estimates in this IA) that there is considerable uncertainty surrounding these savings.

In the short-run, a proportion of HMCTS costs are fixed, indeed the HMCTS direct budget of around £57m is a better guide for what might be achieved in the early years of operation given the fixed costs. On this basis savings would amount to just over **£10m** (18 per cent of the direct budget. 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.

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.

Recent research for Acas[6] 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).

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

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.

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 number of Employment Tribunal claims avoided, which is the key element of the benefits calculations.

As a result, below we consider the unit costs to claimants, employers and the Exchequer for engaging in early conciliation.

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5. [6] Why Pre-Claim Conciliation referrals become Employment Tribunal claims, ACAS Research Paper 2012

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).

Expected number of intentions to claim made to Acas

A good guide for the number of early conciliation cases is given by the number of employment tribunal claims made.

However, as 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, such 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	95,245	HMCTS	Represents single and multiple cases, working on a median of 4 claims per case in multiples.
5-year average pre-claim conciliation cases	9,470	Acas	Given that the rest of the analysis takes a 5-year average, but PCC has not been running this length of time, cases are averaged out across 5 years.
5-year average ET claims avoided by pre-claim conciliation	8,065	Acas	Acas calculate from their evaluation that PCC cases involve an ET avoidance rate of 77.6 per cent. Therefore 77.6 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	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**	**100,000**	HMCTS, Acas	This is ET claims, plus ET claims avoided due to PCC + rejected claims at ET. Given the uncertainty, this number is rounded to the nearest 10,000.
***Additional* Intentions to claim**	**80,000**	Acas	Currently Acas are resourced to handle 20,000 pre-claim conciliation cases (which are broadly equivalent to early conciliation cases).

80,000 additional intentions to claim will not translate to 80,000 additional conciliations. Insolvency situations often mean that participants cannot proceed with conciliation. Participants (employers and employees) will also decide for other reasons not to engage in conciliation, based on the experience of pre-claim conciliation which has a take-up rate of around 75 per cent (as detailed in Box 1).

Insolvency is a problem in 23 per cent of fast track cases according to Acas data (although this is only 3 and 1 per cent respectively for standard and open track cases). 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 Early Conciliation Support Officer, conciliation itself would not take place.

As a result we estimate that 60,000 additional cases will actually reach conciliators and around 49,000 additional conciliations will take place.

Costs to the Claimant

The unit cost to a claimant for engaging in early conciliation is best assessed using evaluation evidence from the operation of pre-claim conciliation.[7] 2010 evaluation of pre-claim conciliation 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 uprated to 2012 prices by factoring in subsequent growth in average weekly earnings).

In addition, claimants will need to fill in a statement of intent form. This is intended to be short and simple, and therefore not time consuming. It is assumed this takes three quarters of an hour, although consultation and 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.

The calculations used to establish the anticipated unit cost to claimants is illustrated below in Table 4:

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[8]
Cost of conciliation	£64.70	
Total unit cost	**£73**	
Note: figures may not sum due to rounding.		

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 (80,000), as well as the costs of engaging in conciliation (£64.70) multiplied by the additional conciliations that happen (49,000).

This leads to total estimated costs of £680,000 for the statement of intent form, and £3.2m for the conciliation – a total cost of **£3.9 million** per year.

To the Employer

6. [7] http://www.acas.org.uk/CHttpHandler.ashx?id=1079&p=0

7. [8] 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

The unit cost to an employer for engaging in early conciliation is best assessed using evaluation evidence from the operation of pre-claim conciliation.

2010 evaluation of pre-claim conciliation demonstrated that on average employers spent eight hours of time dealing with the case, and spent on average £266.67 in advice and representation costs[9].

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.

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 Uprated to 2012 prices by factoring in 1.8% increase in Average Weekly Earnings between Apr 2011 and Apr 2012
Total labour cost	£290	
Advice and Representation	£267 (2010 prices)	Uprating this for inflation between April 2010 and April 2012 gives **£290**
Total Unit Cost		**£512**

The total cost to employers is given by multiplying this anticipated unit cost by the expected additional number of conciliations. This amounts to **£25.1 million** per year.

To the Exchequer

The costs of early conciliation fall to Acas in setting up and delivering the service.

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 in excess of £2m (likely to be in the region of £2m – 4m)

On the basis of the additional intentions to claim detailed, plus the savings that would be made from Early Conciliation, Acas have calculated that this would require 125 additional staff, at a cost of **£5m** per year (including non-wage labour costs).

8.

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.

Acas have established that on an ongoing basis this will not increase accommodation costs.

There are also potentially some one-off costs to HMCTS in changing systems to allow for the new process. These will be assessed during the course of the consultation period.

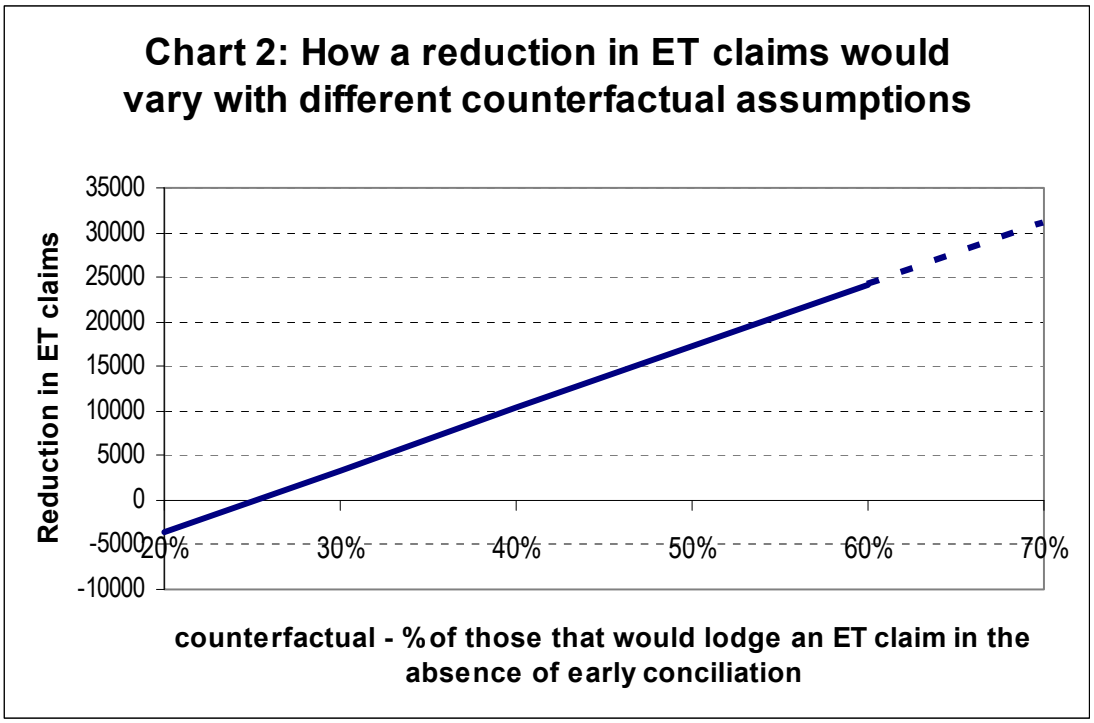
Sensitivity Analysis

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

As discussed in Box 1, 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 pre-claim conciliation).

This sensitivity analysis shows that if the true employment tribunal rate of those not going through pre-claim conciliation were to fall to less than 25 per cent, employment tribunal claims would in fact increase in response to the introduction of early conciliation (this is a tipping point). Given that the employment tribunal rate for those that go through the current pre-claim conciliation 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

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

The existing analysis is based on the assumption that there are 4 claims attached to every multiple case. This is the current median, though as there are some cases with a very high number of claims attached to them, 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.

Using a different assumption here means working with a lower baseline number of claims than has been done through the central estimates (67,100 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 10,800 ET claims rather than the 17,225 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

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 early conciliation is implemented.

HMCTS have announced their intention to introduce fee charging for employment tribunals from Summer 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.

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 early conciliation. On the other hand, the availability of an accessible service like this could encourage more claims than current levels of employment tribunal claims.

The behaviour of parties in early conciliation may also change as a result of employment tribunal fees. Claimants may be more likely to engage in early conciliation 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 early conciliation to rise above current expectations.

However, the respondent (employer) may be less likely to engage in early conciliation 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 early conciliation 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).

This impact assessment assumes that the various options for implementation do not affect the quantifiable impacts on claimants, employers and the Exchequer. However, the one possible exception to this is if option 2.2a is not pursued (ie that first stage contact is made by an early conciliation support officer). Not carrying forward this option could raise Exchequer costs of providing Early Conciliation.

An equality impact assessment is included at Annex B.

One-in-two out Implications

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

Table 5: Summary of Annual Costs and Benefits to Affected Groups (Central estimates, £m)

	Costs £m	Benefits £m	Net Benefits £m
Claimants	3.9	24.1	20.2
Employers	25.1	67.2	42.1
Exchequer	5.0* There are one-off costs to Acas and HMCTS. Estimates of these are being refined over the consultation period.	15* 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	9.9
Total	**34**	**106.3**	**72.2**

These annual figures are also presented as net-present value (NPV) figures in this impact assessment's summary sheets. For the purposes of those NPV calculations it is assumed that in the first year of operation, half of the annual costs are incurred and half of the annual benefits are realised. If consultation and further implementation planning suggests these assumptions should be different then the calculations will be changed accordingly. 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.

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 uprated 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 (uprated 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%

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. [10] 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

9. [10] 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 of employer costs non-wage labour costs 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
Directors	1,112	£52.68	£65.32

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)[11]. 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 advise 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

10. [11] 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

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.

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.

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

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

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

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

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).

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

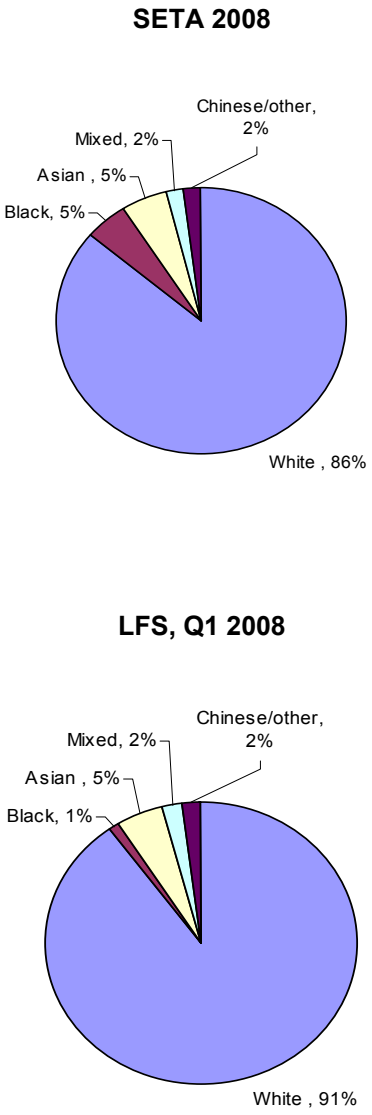
47% of respondents on the SETA (2008) claimant survey were 45+, compared to 38% of respondents to the Labour Force Survey. This varied by jurisdiction. The highest proportion of people of 45 and over was in Breach of Contract cases (74%) and the lowest was wages act jurisdiction claimants (35%).

Religion/belief

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.

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.

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



Source: SETA 2008 and LFS, Q1 2008

Currently, Acas provide pre-claim conciliation (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 early conciliation. This should encourage early dispute resolution, but also ensure that those entering the employment tribunal system are more aware of what is entailed. Early conciliation will be offered to all, regardless of characteristics.

Acas conducted a survey of Pre-Claim Conciliation (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.

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).

This is the most recent data, but in fact the characteristics of future early conciliation users would be expected to be in line with the SETA users as discussed earlier in this assessment.

The main issue raised during policy development and consulation 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".

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.

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

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.

More information can be found on the Acas website[12].

11. [12] 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 Early Conciliation is as effective in avoiding employment tribunal claims as anticipated.

Review approach and rationale

The review will collect a range of admin data (from the operation of early conciliation), 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

Early Conciliation 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 earlier resolution of workplace disputes.

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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