



ABERDEEN

CITY COUNCIL

Guidance for Managers on Early Conciliation

November 2014

What is Early Conciliation?

The Enterprise and Regulatory Reform Act 2013 introduced ACAS mandatory Early Conciliation. This means that all prospective claimants wishing to raise an employment tribunal claim will require to contact ACAS (the public body that conciliates in industrial and individual employment disputes) to explore the possibility of undertaking Early Conciliation before they are allowed to lodge a tribunal claim. The person raising the claim could be a current or ex-employee or a job applicant. Early Conciliation involves ACAS assisting the parties to a dispute to identify a solution acceptable to both.

What is the purpose of Early Conciliation?

The purpose of Early Conciliation is to help prevent a workplace dispute from escalating into a potentially costly and time consuming employment tribunal. The Government's aim in introducing Early Conciliation is to reduce the overall number of tribunal claims.

Which employment disputes does Early Conciliation apply to?

Early Conciliation applies to **most** employment disputes, including claims for unfair dismissal, discrimination, redundancy payments or selection, deductions from wages, unpaid notice or holiday pay, rights to time off or flexible working and equal pay etc.

What do prospective claimants require to do?

Prospective employment tribunal claimants require to complete an Early Conciliation form and send this to ACAS. ACAS then contact the individual to confirm the nature of the dispute and whether the claimant is interested in engaging in Early Conciliation. Claimants can decline Early Conciliation and still be granted an Early Conciliation Certificate enabling them to proceed to lodge their employment tribunal claim, or they can choose to engage in Early Conciliation at which point ACAS will contact their employer/ex-employer/organisation that they applied to for employment.

What should happen if a Council manager is contacted by ACAS about Early Conciliation?

It is important for Council managers to be aware that they could receive a phone call or communication from ACAS if their name has been supplied to ACAS by the prospective tribunal claimant.

However, it is stressed that the manager will **not** be the appropriate person in the Council to deal with the call/communication. If a manager receives such a call/communication they require, **without delay**, to refer the ACAS enquirer to the Head of Legal and Democratic Services, who is the **nominated officer** in the Council for dealing with contacts from ACAS concerning Early Conciliation.

The Head of Legal and Democratic Services will then allocate an appropriate officer in Legal Services to take the matter forward in conjunction with the relevant Director/Head of Service, assessing the merits of the claim and deciding whether or not to engage in the Early Conciliation process (it not being compulsory to participate).

It is stressed that Council managers must **not** take matters into their own hands and attempt to resolve the issue raised by ACAS. As mentioned above, that will be a matter for the Head of Legal and Democratic Services or nominee in Legal Services, who will decide what the organisation will do about the issue, in conjunction with the relevant Director/Head of Service.

What if an employer wants to engage in the Early Conciliation process?

An employer can, if it wishes, contact ACAS in the first instance to commence the Early Conciliation process. If the Council were considering this then it would be the Head of Legal and Democratic Services, or nominee in Legal Services, who would initiate contact, in conjunction with the appropriate Director/Head of Service. It is likely, however, that it will be the prospective tribunal claimant who will take the first step in most cases.

If **both** parties are willing to attempt to resolve the dispute through Early Conciliation and wish to participate in the process, then an assigned ACAS conciliator will have one month to assist the parties reach an agreement. This timeframe can be extended by up to two weeks with the agreement of both parties to the dispute. It should be noted that the Early Conciliation service is free.

The run up to any settlement will involve the Council's Legal Service providing advice, liaising with ACAS (and/or appropriate legal firm if the employee/ex-employee is legally represented/trade union official) and dealing with the terms of the agreement. It will also involve the employing service, which will have responsibility for the instructions given.

Any agreement reached is **legally binding**, with this recorded on a form called a 'COT 3' or in a settlement agreement. If the parties fail to reach an agreement, ACAS will issue an **Early Conciliation Certificate** to the claimant, who is then able to proceed to lodge an employment tribunal claim. The Early Conciliation Certificate confirms that the Early Conciliation requirements have been met.

How does Early Conciliation affect the time limits for claimants lodging an employment tribunal claim?

Entering into the Early Conciliation process puts the time limit for lodging an employment tribunal claim on hold. Therefore, the period between the claimant first contacting ACAS and the Early Conciliation Certificate being issued would **not** be counted in relation to the time limits for lodging a tribunal claim. The time period only starts to run again once the claimant receives an Early Conciliation Certificate.

Even after a tribunal claim has been made, Early Conciliation can still be available from ACAS if the claimant and employer both request it and the conciliation officer considers that there is a reasonable prospect of a settlement being reached.

How to avoid any additional potential claim of victimisation?

Managers should be aware that to avoid any additional claim of victimisation against the organisation, the individual seeking Early Conciliation must not be penalised in any way. If the person is still an employee, this includes any form of intimidation or other detriment on the basis of having contacted ACAS with a complaint. If the person is a former employee the same would apply, which could include refusal to provide a reference or providing a poor reference on the basis of having contacted ACAS.