

Citizens Advice Bureaux clients and advisers' perceptions of Acas

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Disputes, April 2015

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Executive summary

Background

The Advice, Conciliation and Arbitration Service (Acas) provides free and impartial information and advice to employers and workers on all aspects of workplace relations and employment law. It also provides an individual conciliation service aimed at helping both parties to an employment dispute reach a mutually acceptable solution without having to seek recourse to an Employment Tribunal.

This report describes how individuals with workplace disputes who seek advice from Citizens Advice Bureaux (CABx) and the CAB advisers from whom they seek advice experience their interactions with Acas across a range of different services.

The data presented was drawn from six research sites: three CABx in Scotland and three in England. Study participants comprise 134 workers, of whom 67 reported some interaction with Acas, as well as at least one adviser from each CAB bureau.

Key findings

General perceptions of Acas and its services:

- The Acas website and telephone Helpline are important sources of information to CAB clients. They can empower workers and help them understand and engage with the dispute resolution process.
- CAB clients are often unaware of Acas' independence and its roles.
- CAB clients can misunderstand Acas' impartial role in the conciliatory process. This can lead them to experience Acas conciliators as simply a 'go-between' in interactions between workers and employers or, worse, acting on the employer's side.
- CAB clients and advisers can feel pressure to settle in the Acas conciliation process.

Having independent legal advice is important for CAB clients to make the most of Acas conciliation:

- Acas advice can be drawn on by employers to assert their position. This can deter CAB clients from pursuing their claim or making them feel in a weak position as they participate in Acas conciliation.
- CAB clients can lack the knowledge and skills to effectively reach a settlement through Acas. This is especially the case with respect to an appropriate figure for financial compensation. Many worker participants do not have access to this expertise, particularly where they have little or no legal representation
- During Acas conciliation workers sometimes feel intimidated by cost threats made by the employer. These messages from employers are often relayed by Acas conciliators during the conciliation process. Without independent legal advice the worker is not in a position to make an assessment of the reasonableness of the threat.

Introduction

This report describes how individuals with workplace disputes who seek advice from Citizens Advice Bureaux (CABx) and the CAB advisers from whom they seek advice experience their interactions with the Advice, Conciliation and Arbitration Service (Acas) across a range of different services.

The data that are presented were collected as part of a European Research Council funded project entitled *Citizens Advice Bureaux and Employment Disputes*¹. The overall aim of this project was to understand workers' experiences as they attempted to resolve problems faced at work, including identifying barriers to justice. Our particular focus was on workers who could not easily afford the services of a solicitor. As such, participants were recruited through CABx who are a key provider of employment advice to this group. We tracked the experiences of workers as they sought to resolve their workplace disputes – from their initial advice session with CABx to the closure (or in some cases abandonment) of the problem². The data collection period ran from July 2011 to December 2014.

This report brings together information from six research sites: three CABx in Scotland and three in England. This comprises data from 134 workers and at least one adviser from each bureau. Of these 134 workers, 67 reported some interaction with Acas, be this directly themselves or via a CAB adviser³.

Acas and its services

Acas provides free and impartial information and advice to employers and workers on all aspects of workplace relations and employment law⁴. This provision extends to the following:

- Providing employers and employees with 'free impartial expert advice' through its telephone Helpline and Helpline Online services.
- Producing the statutory Code of Practice on Disciplinary and Grievance Procedures (the Code) which 'provides basic practical guidance to employers, employees and their representatives and sets out principles for handling disciplinary and grievance situations in the workplace.' In addition, Acas also provides associated guidance across a range of employment-related topics.
- Providing an individual conciliation service. Since May 2014 it has been mandatory for any individual planning to lodge a claim with the Employment Tribunal to first notify Acas. A notification will trigger the Early Conciliation (EC) scheme which is aimed at 'helping both

¹ For more information about the broader project, refer to our interim report:

<http://www.bristol.ac.uk/media-library/sites/law/migrated/documents/cabxinterim.pdf>.

² See Appendix 1 for a description of the methodology.

³ It is possible that more of the workers participating in the study did have interaction with Acas. However, the workers did not mention this in our interactions with them. Details of the type of interaction the 67 participants reported on here did have with Acas are contained in Appendix 2.

⁴ The information in this section is taken from the Acas website:

<http://www.acas.org.uk/index.aspx?articleid=1342>

sides reach a mutually acceptable solution, which avoids the potential cost, time and stress of the tribunal system'. If no solution is reached through EC, the claim can still go to an Employment Tribunal. Acas will continue to offer conciliation services right up to the hearing date.

Scope of the report

This report presents the views and experiences of CAB clients and the advisers who supported them (volunteers and paid staff including, in some bureaux, solicitors). These perceptions cover the different aspects of study participants' understanding of and interaction with Acas. Key findings are presented under two headings: firstly, general perceptions of Acas and its services and; secondly, the importance of legal advice to make the most of Acas conciliation. Limited information specifically about EC is detailed. This is due to the fact that the majority of our data was collected prior to EC becoming mandatory in May 2014.

Throughout the report, the CAB clients who participated in the study will be referred to as worker participants, while the CAB advisers who participated in the study will be referred to as adviser participants.

Key findings

General perceptions of Acas and its services

The Acas website and telephone Helpline are important sources of information

Both the Acas website and telephone Helpline provided a source of information to some of the worker participants. This group generally had positive experiences of these Acas services. The Helpline advisers were viewed as playing a particularly supportive role in worker participants' efforts to understand and engage with dispute procedures. For example, they provided advice on how to submit a grievance letter to an employer. Some of this group of worker participants reported phoning the Helpline advisers on one or two occasions, while others contacted them frequently. Some sought information from Acas only prior to attending the CAB for advice, while others continued interaction with the Acas website and Helpline in combination with the information provided by a CAB adviser.

The website and Helpline also provide important resources for the adviser participants. The adviser participants would signpost clients to the website/Helpline or provide publications by Acas, including the Code and associated guidance, to enable clients to progress the resolution of their problems themselves or if the bureau did not have the capacity to deal with a client's employment problems.

Interacting with Acas was experienced as empowering by some CAB clients. It helped them to understand the steps involved in the employment dispute resolution process and, importantly, the

language used to describe these steps. This was viewed as critical to worker participants' engagement with the process. Comments from participants included the following:

[On contacting the Acas Helpline before a disciplinary hearing] *I rang them because I didn't want to be going in blind. I wanted to know if [employer] were following guidelines.* [DC004]

[On contacting the Acas Helpline about his employment status after being off work for 5 years with depression] *To find out exactly where I stand with work. Cos me counsellor I was seeing at the time told me, kept telling me, I need to get it sorted one way or the other so I can move on and ... either, if I'm not employed by them anymore, look for another job or find out what sort of job I want. But he said you can't do anything until you know where you stand with them like.* [DC032]

[On contacting the Acas Helpline after being made redundant] *Basically asking whether it [the process] was right, what criteria was used ... I asked [former employer] to see the criteria score cards [used in the decision to determine who should be made redundant].* [DC006]

CAB clients often lack awareness of Acas' independence and roles

Some worker participants were unclear about the role of Acas and its status as an organisation which is independent from the parties to the dispute. Some worker participants thought that Acas was a type of trade union or advice bureau. Comments from worker participants included:

I got this letter through. I don't understand it properly. From Acas. [When asked by the researcher if he knows who they are] *I 'aven't got a clue. All it says 'The Employment Tribunal has sent this copy of the claim to Acas as our' – what's that? 'collectors'?* [AiiC0002]

... it's a bit like the CAB, I thought. Is it somewhere for your rights, really? Is it like a human rights association or something like that? [EC008]

Well all I really knew was they were like a ... they were a union or they were like, they would give you advice on employment law and your, your rights like. [DC032]

CAB clients can misunderstand Acas' impartial role in the conciliatory process

The Acas website and associated literature explains that Acas takes an impartial role when conciliating and that the advice given by its conciliators is necessarily limited,⁵ However, some worker participants experienced the Acas conciliator's role as merely a go-between who simply

⁵ For example, as detailed in the advice leaflet 'Conciliation Explained', see www.acas.org.uk/media/pdf/c/1/Conciliation-Explained-Acas.pdf, or under the heading 'What will the conciliator do?' on the webpage www.acas.org.uk/index.aspx?articleid=2011. In addition, the Acas Helpline will provide general legal advice and information to individuals involved in the conciliation process, for example, specifying what their rights are and the different options open to them, but cannot give complex advice or tell them what to do. Specific issues related to the case itself are supposed to be referred to the conciliator.

relays information between themselves and the (former) employer or even as someone who was not on their side, but rather the (former) employer's side.

This was particularly so when the worker participant did not have any or sufficient legal advice to help them in their dispute or they had used the Acas Helpline and received detailed support on their dispute and then were not able to receive this once engaged in the conciliation process. Although the Helpline can continue to give general advice to those involved in conciliation, to avoid duplication of or conflicting advice, any specific questions regarding the dispute should be addressed to the Acas officer assigned to the case once the conciliation process starts. The officer's impartial role means that such guidance is neutral and cannot take the form of 'advice'. Worker participants in this situation often found it difficult to discern what the conciliator should or could deal with and what they should approach the Acas Helpline or other forms of support about.

I mean, I built up quite a good relationship with the Acas lady. I know she had to remain impartial, and that's absolutely fine. ... At the beginning, I thought, 'oh, they're not helping, ... she is taking sides' and I'd ask the odd question and she'd say, 'I can't answer, I've got to remain impartial'. And then I went back on the internet again and was reading about how they all go through with it and even on there it says, they've got to remain impartial to it, they can't take sides and things like that, but no, I think she was really good. [EC024]

Well the gentlemen ... the Acas conciliator, [name of conciliator], the last time I spoke to him, I mean he does listen to my issues that I have but he can't really help me because he doesn't get involved with the documents or the paperwork. He says that his job is to try and settle out of court. ... He doesn't really get involved. He just kind of like puts up with me really. I'll explain what my concern is ... But most of the things he can't advise me on ... So no, it's not really much help Acas conciliation. I mean the helpline was excellent before. [EC009]

CAB clients can feel pressure to settle in the Acas conciliation process

The participants in the pilot phase of this research⁶ commonly felt that the focus for Acas was to settle. This view also emerged in the findings reported on here. For example, one worker participant noted:

I did get the feeling towards the end that she just wanted me to settle it so she could move on. She was getting a bit fed up with it because it had been going on for like two months. [DC032]

This view was also observed by one adviser participant. She noted that some of her clients felt they should be satisfied with a financial offer that had been facilitated by Acas but, in practice, the client may have a particular amount in mind or other details contained in a settlement. In essence, the settlement represented to the client more than simply money in the bank. The adviser participant stated:

⁶ Busby and McDermont (2012) 'Workers, Marginalised Voices and the Employment Tribunal System: Some Preliminary Findings' *Industrial Law Journal* 41(2): 166-183.

From my point of view, [my experience of Acas has] always been quite positive. But I know a lot of clients come back to me and say that they're sometimes not very helpful or even, as one client recently said, she was quite rude because this client was saying 'no, I don't want that'. It's almost like they expect you to just say, 'yes, I'll settle for that amount of money', and because [the client] said no, [xx] is what she wants, [the Acas conciliator] was quite rude and put her off a bit. I think sometimes [the Acas conciliators'] think, oh, it's just about the money, where it's not necessarily just about the money, is it? [DSOL01]

The importance of legal advice to make the most of Acas conciliation

Acas advice can be drawn on by employers to assert their position

It was not uncommon for the worker participants to be told by their (former) employers that the employer had correctly followed Acas guidance or other advice received from Acas. This had the effect of legitimating the employer's actions and giving weight to the claims they made. The worker participants could find this intimidating, particularly when they did not have independent legal advice through which they could gain an objective and informed opinion.

Employers' use of Acas to legitimise their actions could deter participants from pursuing their claim and thus reach the stage of Acas conciliation. Alternatively, it could make the worker participant feel as though they were in a weak position throughout the Acas conciliation process. Having independent legal advice was an important corrective to this power imbalance.

[The employer] said that they had been in contact with Acas and they believed that they were in the right. So they were going to just offer me this and that would be it ... So that was pushing me because I don't know if they really did speak to Acas or if they just put that down to get me to drop out. I'm not too sure. [BiC119]

Reaching an effective settlement requires expert knowledge that CAB clients often cannot access

Many of the worker participants who engaged in the Acas conciliation process had no concept of the appropriate financial figure they should attempt to seek in a settlement. This was particularly the case for participants who did not have adequate access to legal advice from the CAB or some other avenue.

The wife of one participant, who had assisted her husband in the Acas conciliation process, found it hard to understand what was required in conciliation discussions with Acas:

So the lady from Acas phoned Monday, saying that [her husband's ex-employer] had been in contact with her and that they're going to look at a settlement on a commercial basis. So I said to her, I said, 'what does a commercial basis mean?' And she said, 'well, it could mean a couple of hundred pounds or a couple of thousand pounds'. So she just said, 'go away, have a little think about it and then come back to me'. [Wife of EC022]

The participant's wife subsequently explained that she felt under pressure to provide a proposed figure for settlement but that she did not have the legal knowledge required to calculate this. Without independent legal advice, the participant and his wife were struggling to understand what would be an appropriate financial figure to aim for in the conciliation process.

An adviser participant also commented on the problem. She noted that the issue was broader than simply being able to identifying a suitable financial figure.

Clients often don't know what they want [from Acas conciliation] or what they could get. And so they're having to approach Acas, 'oh, I've been dismissed'... And Acas, they'll ask them, 'well, what do you want?' And they don't know what they want. So I think if [the worker has] got the information, I think [Acas conciliation] can be useful ... That's the difficulty, if there isn't any legal advice anywhere and they're just approaching Acas—Acas are not there as a representative, Acas just want to settle it. [DSOL01]

CAB clients can feel intimidated by cost threats made by the employer

During the Acas conciliation process, some worker participants were on the receiving end of threats from their (former) employer that they would be liable to pay the employer's legal expenses. This information was, on some occasions, passed through the Acas conciliator.

The threat of being liable for the employer's legal costs can hinder a CAB client's effectiveness in the conciliation process because he or she is typically in a weak financial position, having more often than not recently lost their job. If the CAB client does not have access to effective legal advice, the power of such a threat is magnified. This is because he or she is not in a position to make an assessment of how reasonable that threat is. Making such a judgement is not the role of an Acas conciliator. One worker participant described his experience as follows:

[Ex-employer] came to me through Acas and they asked me what I was looking for. I said a well-worded reference reflecting the 22 years I worked in [ex-employer] without a disciplinary, and I said I'd like a year's compensation, because that's what the court suggested ... [The ex-employer] never came back to me and then said I would have to pay the court costs ... I was quite shocked, because I mean I actually I never thought about the court costs. I thought I had the right to take the company to court, because I had been unfairly dismissed ... it wasn't something I thought I would be charged for. So I asked [the Acas conciliator] ... he said I could be charged the courts costs. [But] only in extreme circumstances, he said. And I asked him if these were extreme circumstances and he said no, and then I said to him, I think they're trying scare me. He said they were using barristers. He didn't say anything when I said they're trying to scare me.

The above quote suggests that the Acas conciliator did indicate that the employer's cost threats were unlikely to be realised. However, generally, Acas are not able to make judgements on a case or act as a representative might. This was highlighted by one adviser participant when she was asked if she had any clients who threatened with legal costs by their employers:

Yes, Acas will pass [the employer's threat of legal costs] on ... They can't give legal advice ... They have to just say 'look, the employer's position is this, this is what they're looking to do, they're willing to offer you this in return for this and if you don't then they're going to ...' I mean I've had that just with [client's] case and they're saying 'well they're considering costs and they're considering this and that ...' And I explained they really don't have any grounds for costs ... This is something that's not new. They've been putting pressure on our client from the very beginning and we've asked for a schedule of their expenses and all that. All Acas can say is, 'well my understanding is they might have', [the Acas conciliator] said 'I understand they might have a limited chance or whatever' [AiiC012]

The CAB client referred to by the adviser participant was fortunate enough to have the adviser inform them that the threats were unwarranted.

Conclusion

The Acas website and telephone Helpline services are used by CAB clients at various stages during their employment disputes and, for some, in conjunction with advice sought from CAB advisers. These Acas services, especially the telephone Helpline, are very much valued by CAB clients. They can provide a form of support that helps worker participants and develops their understanding of the dispute resolution process in a way that assists them to engage more effectively with the various steps involved.

Some CAB clients do not fully understand what Acas is and the services that it provides. This inhibits their utilising and potentially benefitting from Acas. Further, some CAB clients experience the impartial role of Acas conciliators as the conciliator being on the employer's side. This is particularly the case when the employer has access to legal advice and the CAB client does not, and in situations where the CAB client previously obtained detailed advice from Acas about their dispute but, given that the CAB client is in the conciliation process, are no longer able to receive this service from Acas.

The Acas conciliatory service can provide an often welcomed alternative solution to resolving a workplace dispute. However, CAB clients are best placed to get the most from Acas conciliation if they have access to independent legal advice to help guide them during the process. Having such legal support will assist CAB clients to gain an objective sense of their legal position, have an understanding of what is appropriate to seek in a settlement, in particular guidance on the financial aspect of this, and provide advice on the reasonableness of any threats made by an employer regarding worker liability for legal costs.

Appendix 1: Methodology

Data collection for the project *Citizens Advice Bureaux and Employment Disputes* ran from July 2011 to December 2014. The methodology involved ‘tracking’ CAB clients from their initial contact with bureaux through the process of their working their way through their employment dispute. Information has been collected from 134 CAB clients from 6 bureaux throughout England and Scotland. Twenty-six additional CAB clients were recruited from a bureau in Northern Ireland. However, given that Acas does not operate in Northern Ireland, information collected about these study participants are not reported here.

Data sources included observation of CAB adviser and client interviews, engaging in ongoing interaction with CAB clients as they work through their disputes, observation of Employment Tribunal hearings, and interviewing CAB advisers and managers.

Appendix 2: Worker participants' interaction with Acas

Sixty-seven worker participants had some interaction with Acas. This comprised 27 who consulted the website and/or made use of the Helpline, as well as 48 who engaged with conciliation. (Some worker participants utilised more than one service available from Acas). Of those who engaged in conciliation, 36 did so via a CAB adviser or CAB solicitor and 12 did so directly themselves. It should be noted that engagement with conciliation may include merely making a notification to Acas of EC, as the first step in the Employment Tribunal process, through to reaching a settlement through Acas.