



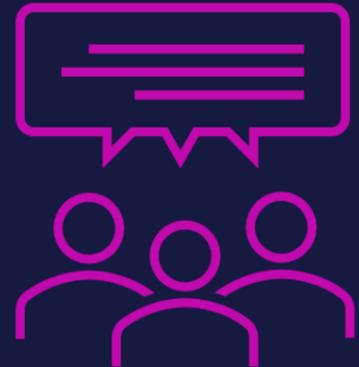
# □ DMH Stallard

How (not) to lose an employment tribunal claim

Part 2: The early stages of a tribunal claim

Have you ever settled a claim via the ACAS Early Conciliation process?

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## Overview of the EC process

- Mandatory first step for almost all Tribunal claims
- Tribunal time limit frozen at point that claimant starts process
- ACAS available to assist with resolution
- EC process continues for up to one month
- Can be extended by 14 days
- From 1 December 2020, six weeks and no extension
- If not successful, Tribunal time limits start running again, extended by length of conciliation period/by one month

## How does the process work?

- Claimant submits EC form online, by post or telephones ACAS and gives basic details
- ACAS contacts the claimant to ask if they wish to conciliate
- ACAS contacts the respondent to ask if they wish to participate
- Who does ACAS contact?
  - ACAS database of contacts for large employers
  - [Eccontactslist@acas.org.uk](mailto:Eccontactslist@acas.org.uk)
- Conciliation period follows
- ACAS issues EC certificate if not fully resolved

# What percentage of tribunal claims get settled via ACAS?

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## Potential benefits of Early Conciliation

- Effectiveness
  - 73% of EC notifications did not progress to Tribunal
  - ACAS settled 51% of cases
- Simplicity
  - COT3 Agreement can settle wide range of claims
  - No need for independent legal advice
  - Cost
  - Speed
- Neutrality
- Confidentiality

## Should you use the EC process?

- How strong is your case?
- What is the claim worth?
- Process can be used to extract further details
- Process can be used to buy time
- How much time and cost will the case involve?
- How committed does the claimant seem?
- Can an offer at this stage look “too keen”?
- Positions tend to harden once a case progresses
- Do stronger tactics work as well?

Questions...

# Responding to a claim

- Overview of process
  - 28 days to file a response (ET3)
  - Strict time limit
  - Extensions
  - Form of response

## Responding to claim (2)

- Drafting the response
  - What should go in it
  - The level of detail
  - How you can help

# Requests for further information

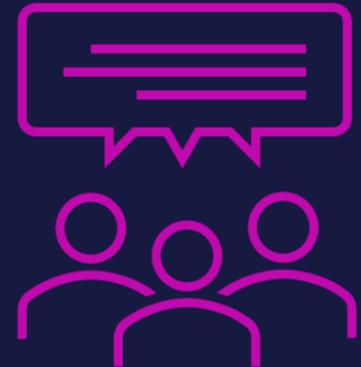
- When should these be made?
- What are the risks?

## Putting pressure on Claimant

- Applications for strike out
- Applications for deposit order
- Costs warnings

How long does it typically take between a claim being submitted to tribunal and a claim reaching a full hearing?

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## Gathering information

- What are the factual allegations made by the Claimant?
- What is our position in relation to those allegations?
- What documentary evidence exists?
- Who will be our witnesses to cover each issue?
- Prepare a table

## Preserving documentary evidence

- E mails
- Correspondence
- Minutes/notes/recordings
- The importance of originals

# Witnesses

- Who are the witnesses?
- Securing their cooperation
- Dealing with witnesses who might be leaving the organisation
  - Witness statements
  - Agreement to cooperate
  - Witness orders

## What else can be done?

- Gather evidence on mitigation
- Tune into the grapevine/social media to see what Claimant is doing

## Protecting the organisation

- What is the employee saying about the claim
- What do you tell staff
- What messages might you be sending to staff and how might these impact on future claims

## COVID 19 - The impact

- Pressure on Tribunal administration
- Virtual hearings
- The implications of long delays
  - Withdrawal of cases/fewer cases?
  - Challenges for Respondent
- Negative impact on re-employment prospects

## Speakers



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