

The Enterprise and Regulatory Reform Act

Impact and Effects

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ADR and Appropriateness

- Not all issues involving Workplace Conflict are appropriate to ADR processes.
- We do not expect to resolve every issue.
- Mediation – partic issues about relationships and behaviours. Chargeable, growing private sector provision
- Collective Conciliation (Collective Bargaining)
- Workplace Projects – joint working, joint problem solving often at or near dispute
- Early Conciliation
- Conciliation post ET1
- Sometimes it's perfectly appropriate to take an issue through to ET but is it perhaps the weapon of choice far too often?

Collective referrals to Acas

- National trend is a downwards curve and has been for some time
- Below 1,000 nationally for the first time two years ago
- NW always covered around 1/5th National total ie 200 plus referrals
- This past two years further decline nationally
- This includes typically multiple ET claims on Collective issues where representative is TU
- This causes us concern given high profile of this work and link to our "brand"

Why the downward trend?



- Retirements and voluntary exits for both TU Reps and HR Managers
- Poor reach with young people
- Reducing reach with employers
- Reduced levels of Collective Bargaining
- Reduced levels of TU membership
- Reduced levels of ET Applications due to fees
- Any other reasons?

We do know from research that where people use the Service the feedback from customers is very positive

ET applications with Collective Bargaining implications?



- Redundancy Consultation / Protective Award
- Other Consultation cases
- Wages Act cases
- Those related to T's an C's or Contractual issues
- Discipline / Dismissal of a TU member or TU representative

These often large multiple cases materialise on our desks when the applications are processed. They take time, effort and money via this route (for both of us) does this practice signify a missed opportunity? Aren't these type of issue better resolved through Collective Conciliation?

Early Conciliation



- Quick start.
- Prepared well but still learning.
- Volumes in line with our forecast, actual figures published in July.
- Meaningful conclusions difficult but there are some interesting anecdotes (see slides 7,8,9)

Early Conciliation - Individuals

- Some people apply way too early eg no grievance made, the employer doesn't even know they're aggrieved!
- Some people apply even though they're in procedure but it's stalled or they've not heard anything for some time. (A tactic by the employer?)
- Some people apply rather optimistically from an ET perspective.
- Some people apply because it's cheap?
- For many it's the only route available?
- Some people just want a certificate to go to ET
- Provision of a reference in EC settlements is very attractive

Early Conciliation - Individuals

- It's quick (ten minutes in one case!)
- Reinstatements or restoration of a good relationship more achievable
- It particularly supports the unrepresented individual?

Early Conciliation - Employers

- Some suspicion on first contact, first they've heard of the issue in many cases.
- Resolution internally between parties quite common as a result
- Early resolution without the need of a legal rep (and costs) quite attractive
- Many large multi sited employers have informed us of internal contacts for the organisation, often HR reps.
- The fees obstacle can be common but not insurmountable, the expediency of EC resolution in contrast to ET quite attractive

ADR vs Litigation



- Quicker
- Earlier
- Cheaper (legal costs and resources)
- Less formal
- More flexible outcomes, solutions that a court cannot award
- Increased ownership of outcomes
- Preservation of the employment relationship more likely
- Direct with the parties, particularly face to face
- Increased control of the timetable
- Cathartic, an opportunity to "vent"
- Empathic
- Concessionary statements more likely
- Less adversarial
- Less stressful
- Closure?
