

# Early Conciliation

## Key contact



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## What is Early Conciliation and who has to participate?

ACAS offers Early Conciliation to help to settle a dispute without going to an employment tribunal.

The process has been available from April 2014 and is now a **mandatory** legal requirement for tribunal claims lodged after 6 May 2014, unless an exemption applies.

## Representation

There is no obligation to have a representative in Early Conciliation. However, if a representative is used then conciliation can go through them and they may agree a settlement (subject to the below provisions).

Representatives must:

- understand your requirements
- have express authority to enter into an agreement on your behalf
- regularly keep you updated.

\*The Early Conciliation certificate is still necessary even if settlement is not appropriate.

## Does Early Conciliation affect the timescale to make a tribunal claim?

Each claim has a specific time limit with regard to limitation. e.g. if a person has been unfairly dismissed, they would have three calendar months (less a day) from the date of dismissal

to make a claim for unfair dismissal.

Using the ACAS Early Conciliation method can extend the time limits in two ways:

1. 'Stop the Clock' or 'Pause' (s207B(3) Employment Rights Act 1996)

The period between when ACAS Early Conciliation was applied for (Day A) to when the Certificate is sent by ACAS (Day B) is not to be counted within the limitation period. Thus however long it takes for this period to be completed will be added on to the initial time limit.

2. 'Extension by a month' (s207B(4) Employment Rights Act 1996)

This is the more complex extension. Where the ordinary limitation date (end of three/six month period) falls in the period between Day A and one month after Day B, the deadline to present the claim will be extended to one month after Day B. e.g. The limitation date to bring C's claim is 18 July. Day B is 20 June. The limitation date is extended to 20 July (one month after Day B).

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# Early Conciliation

“Its ‘highly professional and knowledgeable’ team is led by the ‘thorough and friendly’ Catherine Daw.”

The Legal 500

## Further clarification

### **Lester v Garland**

This case provides that a period of a month or months ‘from’ or ‘after’ a particular date will end on the corresponding date in the relevant month. e.g. 5 May is 5 June.

When there is no corresponding date in the month (no 30 February or 31 September), the period ends on the last day of that month.

### **Booth v Pasta King UK Ltd**

The same approach was adopted in this case.

- Mr Booth’s effective date of termination was 2 April 2014. The ordinary time limit to present the claim was 1 July 2014.
- He used the ACAS procedure.
- Day A – 21 May 2014.
- Day B – 21 June 2014.
- Mr Booth presented his claim on 24 July 2014 (Pasta King argued this was out of time).
- Mr Booth argued 207B(3) and (4) apply cumulatively. i.e. 207B(3) applies first and is then further extended by 207B(4).
- He argued as the process took 31 days the limitation date should be 1 August 2014 (extending the ordinary time limit by the 207B(3) method).
- And so 207B(4) did not apply.

### Held:

- The cumulative approach was correct.
- The judge concluded that a prospective

claimant should have the benefit of whichever is the longer time period under subsection (3) or (4).

### Point to Note:

Whilst the case is useful, the decision is not binding authority on other tribunals. Thus there remains a degree of uncertainty until an appellate authority or updated guidance on the matter is given.

### Facts and figures from ACAS’s evaluation of Early Conciliation

- ACAS dealt with over 83,000 Early Conciliation cases between April 2014 and March 2015
- When asked how soon after the workplace dispute at issue ACAS had been notified, 30% said it was between one and three months.
- 3/4 employees and employers agreed to try Early Conciliation in its first year of operation
- 8/10 people who took part in Early Conciliation were satisfied with the service they received from ACAS.

The information contained in this document provides background information only. The document may be misleading if relied upon as an exhaustive list of the legal issues involved. If any matter referred to in this document is sought to be relied upon, further information should be sought.