



Conciliation for Individuals

Note: This publication is intended to provide general guidance only. It does not constitute legal advice and should not be relied upon as doing so.

Overview

Introduction

Many issues in the workplace which may lead to disputes can be resolved informally between the individual employee and their line manager. Internal procedures should be in place to deal with these issues effectively and promptly. (Please refer to the employment guide to 'Raising and Handling Grievances'.) Employment Tribunal claims should be a last resort. However, if matters cannot be resolved and a relevant complaint is made to the Employment and Discrimination Tribunal the Employment Relations Service has a legal duty to offer conciliation.

Conciliation is a process whereby an independent and impartial Conciliation Officer will try to assist the parties to reach a mutually acceptable agreement to settle the complaint, avoiding the potential expense and stress of preparing for and attending an Employment Tribunal.

What claims can be settled through individual conciliation?

Claims brought under the following Laws can be settled through conciliation:

- Unfair Dismissal claims brought under The Employment Protection (Guernsey) Law, 1998, (as amended)
- Claims brought under the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005
- Claims brought under the Minimum Wage (Guernsey) Law, 2009

It is also possible for a Conciliation Officer to conciliate on individual disputes, such as non-payment of notice pay, subject to the agreement of both parties.

What will a Conciliation Officer do?

The Conciliation Officer's role is to talk to both parties to see if a mutually acceptable solution can be found. The Conciliation Officer can:

- ✓ explain the conciliation process
- ✓ discuss the options open to the parties
- ✓ assist the parties to understand how the other side views the case
- ✓ inform the parties of any similar cases that may have been taken to Tribunal
- ✓ liaise with the parties regarding any proposals that the parties may put forward
- ✓ explain the law and tribunal procedures

What can a Conciliation Officer not do?

- ✗ make a judgement on the case or the possible outcome at a Tribunal
- ✗ advise either party to accept or decline any proposal for settlement
- ✗ communicate threats
- ✗ compel or advise an applicant to withdraw a case
- ✗ act as a representative, take sides or assist either party to prepare their case

What are the benefits of entering into the conciliation process?

- conciliation is a process for resolving the complaint, thus avoiding the need for a Tribunal Hearing
- it is impartial and voluntary
- it is a confidential process, whereas a Tribunal Hearing is open to the public
- it avoids the time, possible expense and stress of going to a hearing
- the settlement is on mutually acceptable terms
- the settlement can include non-financial terms (for instance, a reference)
- any settlement is on terms agreed by the parties, not decided and imposed by a Tribunal
- the process is non-confrontational and informative

How is the process managed?

Conciliation is usually undertaken by phone or through separate meetings. It is **not** usual to bring the parties together in joint meetings unless requested by the parties and the Conciliation Officer is of the view that it would assist the process. Initially the Conciliation Officer will explain the process and find out whether the parties wish try and conciliate. As conciliation is voluntary the parties can either agree or refuse to enter into the process.

The Conciliation Officer will assist the parties to explore the issues/differences to assist the parties to reach an agreement. They will put forward offers/proposals from the other party for consideration.

If, during the process, there is information that either party does not wish to share, providing the Conciliation Officer is informed of this, the information will **not** be disclosed.

Do I need to be represented? What is the role of a representative? Who can represent me?

There is no legal requirement for either party to be represented; it is a matter of choice if the parties wish to be represented. Anyone can be a representative, whether legally qualified or not. If either party chooses to be represented the Conciliation Officer will deal directly with the representative. The representative may agree a settlement on behalf of the Applicant/Respondent which would be legally binding. It is, therefore, important that the representative fully understands the position and views of the party they are representing.

What happens if settlement is reached during the conciliation process?

If a proposal is put forward to settle and agreed by the parties the agreement will be legally binding. Whilst agreements do not need to be put in writing to be legally binding, the Conciliation Officer will draw up a settlement form for all parties (including the Conciliation Officer) to sign as proof of the agreement. Once signed, all parties will receive a completed copy. This brings the matter to a close.

Will taking part in the conciliation process affect the Tribunal process?

No, conciliation operates separately and is confidential from the Tribunal process.

What happens if agreement cannot be reached through conciliation?

If agreement cannot be reached and the complaint is not withdrawn by the Applicant the Secretary to the Tribunal will arrange for an Employment and Discrimination Tribunal to hear the complaint and make a legally binding decision.

What should an Applicant do if the terms of the settlement reached through conciliation are not complied with?

The Applicant or representative should contact the Respondent (usually the employer) to remind them of the legally binding agreement. If the Respondent fails to comply with the agreement the Applicant can contact the civil courts in Guernsey to enforce the settlement.

Other Publications

Publications can be downloaded from the website on a wide range of employment relations matters including local employment legislation and best practice guidance on other employment related matters.

Contact Information

For further advice

- Check www.gov.gg/employmentrelations
- Email employmentrelations@gov.gg
- Contact the **Employment Relations Service**, Edward T Wheadon House, Le Truchot, St Peter Port, Guernsey, GY1 3WH
- Call us on 01481 732583