

**The contested terrains of workplace disciplinary processes
and practices.**

by

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Abstract

It is widely acknowledged that discipline at work is a neglected area of study in the context of contemporary employee relations. Within the workplace, the handling of discipline is largely prescribed by formal rules that are captured in policies, applied through procedures and then interpreted by the actors who facilitate this process. This thesis argues that an empirical understanding of the disciplinary process can only be achieved if it includes an appreciation of the nature of the relationship that is established during the disciplinary process and that this is crucial for us to develop a full understanding of the dynamics that take place within this activity. It contends that disciplinary handling is subject to ongoing contested terrains (Edwards, 1979) that are constantly being played out by the various actors that enact this vital role in relation to aspects of power, control and consent. As a result coercion and resistance exists simultaneously and that power dynamics and inequalities are reinforced and challenged throughout the process

The aim of this thesis is therefore to provide us with valuable empirical understanding of disciplinary process and subsequent practices that occur in the workplace. Specifically the research will consider the following three questions:

How is the form and content of disciplinary procedures shaped in practice within various organisational contexts over time?

How does the balance between formal and informal mechanisms play itself out in the development of disciplinary procedures and their use over time?

How can we benefit from understanding the dynamics of management and the changing relations between operational managers and human resource managers?

After observing workplace discipline, this thesis argues that disciplinary handling should not simply be equated with the application of formal disciplinary rules captured in policies and consequent procedures, and that consideration of the complex social interactions and micro dynamics occurring between the various actors involved at each stage in the process is also required in order to fully understand how discipline is handled in the contemporary workplace.

It is equally acknowledged that the key actors involved within the disciplinary role are HR professionals, operational managers and union/employee representatives therefore a full appreciation is required of how these actors work together in dealing with disciplinary issues to shape subsequent outcomes. Further insight will be provided by revealing the, often contested and conflicting, nature of the activity through identification of the subtle, nuances of power, control and consent which shade the formal relationship between the main actors.

The methods adopted for the research will be mainly qualitative, including targeted interviews, and will consider analysis of case studies from eight different types of organisations across the North West of England. In addition it will review their discipline and associated policies as well as compare and contrast the findings with the Workplace Employment Relations Survey data and relevant literature.

The findings suggest that the extent of devolvement of disciplinary handling down to operational managers by the HR function, as identified within related mainstream literature, is somewhat exaggerated. It identifies the existence of contested terrains (Edwards, 1979) throughout the process which results in opposed and conflicting approaches being taken. As a consequence a drive for procedural conformity and standardisation – has been instigated by HR practitioners - not only to comply with legislation but also to promote their continued role within the handling of disciplinary procedures. Conversely other actors, in particular operational managers, will operate in a non-compliant, informal manner to serve their own requirements.

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Abbreviations

ACAS	Advisory, Conciliation and Arbitration Service
BIS	Department for Business, Innovation and Skills
CAC	Central Arbitration Committee
CoVE	Commission of Vulnerable Employment
DTI	Department of Trade and Industry
EC	European Commission
ET	Employment Tribunal
WERS	Work Employment Relations Survey
WIRS	Workplace Industrial Relations Survey

Chapter one: Introduction

It is widely accepted that workplace discipline is an essential component in the field of employee relations, and disciplinary rules have long been recognised as a key element sitting at the heart of the employment relationship (Edwards, 2005). What is somewhat alarming is that disciplinary handling is seen to be one of the most visible sources of conflict within the workplace, yet quite possibly the least understood, and the management of this process remains a persistent challenge for workplaces to manage effectively.

The genesis of discipline when applied in the context of the workplace derives from employment rules drawn up in order to achieve desired levels of employee conformity and work performance. Over time this development of rules, buttressed by periods of legal intervention, can be seen to have instigated a steady growth in the application of formal procedures that are used in order to regulate the handling of discipline resolution in organisations, as is clearly charted throughout the Workplace Industrial Relations Survey series (1999; 2000; 2006; 2013).

Generally the standard approach to the application of disciplinary procedures is to enact a set of linear prescribed methods that adhere to legislation. The introduction in 1971 of law relating to unfair dismissal, the subsequent Employment Relations Act 1999, the Employment Acts of 2002 & 2008, and the introduction of the Dispute Resolution Regulations 2004 all have had an impact on individual and collective employment rights. The law is further supplemented with a series of Acas codes of practice in 1977; 1987; 2004 and 2009 that provided guidelines on the handling of disciplinary matters. The concern is that the disciplinary process can quickly become highly formalised because component stages, including hearings, lend themselves to pseudo-judicial formulae in the interest of achieving outcomes of fair-minded justice. Yet in reality the handling of workplace discipline is mainly conducted by operational management who often require different outcomes from those laid down by formal procedures. This incongruity causes the development of a 'contested terrain' (Op.cit.) to occur between the actors that play out this process. Essentially the rules that underpin discipline are put in place to ensure acceptance and adherence by both sides not least in the interest of avoiding costly legal action. This concern was acknowledged and resulted in the Government commissioning Anthony Gibbons to review the British system of

Dispute Resolution and in 2007 his report recommended greater informality to be considered within the handling of discipline. Following Gibbons' Report the existing statutory procedures were repealed and replaced by a more concise, principle-based, Code of Practice in 2009. To date the solving of the resolution gap has remained clearly problematic in that public policy has tended to focus on the impact that legal regulation has on employment and economic effectiveness. Employers argue that the present system is costly, complex and subject to speculative legalisation. Alternatively it can be argued that the introduction of fees for employment tribunal applications and hearings erode justice and weaken employment protection (Saundry *et al.*, 2014).

The development and upkeep of disciplinary policy and its associated procedures is widely accepted as being the remit of the Human Resource function and is considered to be one of the many HR responsibilities required to promote procedural fairness at work. It is often customary for HR Departments to create both policy and procedures and then to implement them laterally for operational managers and employees to use and adhere to.

Historically this was not always the case, the indications are that, originally, the role of operational managers included responsibility for people management but their influence waned in parallel with the growth of the personnel/HR function as a profession (Hutchinson, 2008). In time the understanding arose that the Human Resource function should include custodianship of disciplinary handling and this can be seen to have driven increased formality and standardisation within the disciplinary process in order to ensure legality and maintain procedural conformity. Evidence that this transformation has taken place can be seen in the extent to which powers have since been devolved back to operational managers from HR Departments. This later development is worthy of consideration for two reasons: firstly, to what extent has disciplinary practice actually been devolved from HR back to operational managers and secondly: if there is now a discernable and significant trend, to what extent should the continued regulation of the disciplinary process - by the HR function - continue to be accepted by those managers?

In practice, the handling of disciplinary matters does not necessarily have to be treated in the formalised manner which the discipline policy and procedure advocates. The general understanding is that each disciplinary case requires careful consideration but that there are

occasions when a formal process is self-evidently unnecessary, and there is an ongoing debate within business organisations about where the formal/informal line might be drawn.

Until the debate is concluded our recognition is that there are currently two, apparently contradictory, theories relating to disciplinary practice which confuses both academics and practitioners alike when faced with decisions regarding which factors should determine a formal or informal response to disciplinary situations.

Within our current understanding of the formal processes that are applied to workplace disciplinary handling there appears to be a lack of appreciation given to the existing debate and this will be ill informed so long as it fails to take account of the fact that the subjective nature of individual contributions, from an ever changing company of actors, can lead to fundamentally different outcomes in cases that might otherwise have been expected to deliver similar results.

Although the area of discipline has generated some academic interest there still remains a paucity of research afforded to the subject. There is still insufficient attention paid to relationships that are developed between the key actors that carry out this process, explicitly: human resource professionals, operational managers and union or employee representatives. Moreover a neglect of qualitative research specific to this area leaves a fundamental gap in our understanding of this important factor. To date, literature concerning workplace discipline has largely tended to concentrate on the role played by 'managers' and while the research has pointed to heterogeneity in managerial approaches to discipline (Edwards, 1989; 1994 and 2000) nonetheless it does provide comprehensive analysis of discipline at work. Rollinson *et al.*, (1997) offers valuable insight into worker experience of being disciplined at work; Marchington and Goodman (2000) provides an examination of discipline procedures. More recent studies have explored the consistency of employee discipline, Cooke (2006); Cole (2008) and how operational managers' personnel, or Human Resource departments work together in practice on disciplinary issues (Jones and Saundry 2011). In particular, how outcomes of disciplinary cases are influenced by the relationships and interactions developed during execution of the process. By observing the contingency of social practices that are often affected by micro dynamics of power, control and consent that operate at the basic level within processes of workplace discipline this

thesis will assist our deeper understanding of these important roles. Human fallibility and the misuse of procedures are prominent influences that interfere with the effective handling of discipline. Importantly, the rules of discipline are framed by the attitudes and ideologies possessed and evidenced by the identified players as they enact their disciplinary roles. Moreover, by providing analysis of the nuances that affect responsibilities for disciplinary ownership, this thesis will explore to what degree the notion of devolution of disciplinary handling, from Human Resources to operational management, has actually translated into practice.

The research methods adopted for this thesis will consider the findings from eight case-study sites across the North West of England. Cases were selected to reflect diversity in workplace size, sector and workplace composition. The essential factor was that they all contained the three main actors. The method used for data collection was predominantly qualitative, via interviews, but the research also considered other methods such as organisational disciplinary documentation and comparison with existing research. The main rationale of this study is the gaining of meaningful insight into the micro dynamic world of the key actors that are involved in the disciplinary process. Secondary research and data will be used to situate the research findings within the context of pertinent existing literature in order to illuminate any gaps. The data sets out the initial findings, firstly by providing an examination of the way in which disciplinary policy and procedure is formulated and how it is communicated, and secondly by exploring the process of handling practices in the management of disciplinary issues. Moreover it will identify and evaluate the roles played within disciplinary processes by the key organisational actors: operational managers, HR professionals and union or employee representatives, and explain how these groups determine whether it is the formal or informal approach that is to be taken. Finally it explores the role that HR plays in the disciplinary activity.

Chapter two presents a contextual review of the existing literature that surrounds the area of discipline comprising an examination of the history behind, and the development of, relevant policy and procedures within the UK workplace by evaluating the early work of Ashdown and Baker (1972); Paul Edwards (1989,1994 and 2000) in order to provide background context. The introductory section demonstrates how early forms of discipline management and dispute resolution - often achieved via the voluntary application of

disciplinary sanctions - gave way to a steady and continued growth in rule formation and the increasingly formalised procedural approach that defines the contemporary position. Here the valuable studies of Mellish and Collis-Squires (1976); Rollinson, (1992); Rollinson *et al.*, (1997); Goodman *et al.*, (1998) facilitating the framing of discipline in the actual work context, were all drawn upon. Similarly, the work of Gouldner (1954); and Kessler(1993) helped the author to evaluate the extent to which informal working rules have been codified into a body of regulation for use in governing the relationship between employer and employee. Additionally the notion of a 'contested terrain' in the work of Edwards (1979), was reviewed, with particular reference to its highlighting of the existence of conflict inherent in capitalist industry and how this has been used in relation to the dynamics of management power, control and consent.

Finally, it looks at how, in dealing with workplace transgressions, the application of managerial approaches to disciplinary action has propelled the natural evolution of 'punitive' and 'correctional' methods. Here the work of Henry (1987); Fenley (1986) and Edwards (2000) were useful to distinguish these approaches.

Chapter three examines the impact that government legislation has had on the handling of conflict in the workplace and how its growth has shaped the development and delivery of disciplinary processes and procedures. It explores the evolving legal landscape of employment law from its early, voluntarist, origins, involving limited legal interventions, through more recent periods of major external influence, notably the impact that the Donovan (1968) and Gibbons (2007) reports have had in shaping legal statutory Acts. It provides analysis of this growth in related industrial law making and interventionist perspectives as they affect disciplinary handling in the workplace. Moreover it evaluates how intervention has been applied in order to stem the flow of formalised disciplinary handling and manage the proliferation of tribunal applications.

Chapter four assists our understanding of the role that each of three main actors that enact discipline handling play within the workplace. In providing analysis of the roles that each of these functions plays it explores the complex relationship that is built up by the actors throughout the process of disciplinary handling and how this then shapes emerging theory, policy and practice. Furthermore it explores how individual relationships can be affected by

contested issues of power, control and consent. This is considered to be the most complex and least understood aspect within the existing workplace discipline literature. Gaining insight into the micro dynamics that are played out throughout the disciplinary process and procedure by these organisational actors is therefore critical if we are to fully appreciate the extent that their contribution has on the process. Essentially this chapter argues that workplace disciplinary disputes are driven by the very nature of work processes, are informed by the management styles and approaches in operation, and are also shaped and formed by the organisational context within which they are acted out in everyday practice. Explicitly it explores the formal role that Human Resource professionals play in response to the increasing body of employment law, which can be seen as a critical factor in the selection of disciplinary strategies. Potentially this can lead to shifts in employment practice by means of forcing greater procedural compliance and conformity across workplaces. Furthermore it argues that for us to recognise the central role that human resource management (HRM) play within the workplace disciplinary process there is a vital need for us to consider how the HR function operates within organisations from a strategic disciplinary perspective and how this determines the selection of formal or informal approaches within disciplinary handling. Journal articles by Caldwell (2001, 2003) as well as Legge's book (2005) provided depth of understanding on the development of the role of HR. Whilst in the context of their involvement within workplace discipline: Leopold and Harris (2009); Marchington and Wilkinson (2008) and Dundon and Rollinson (2011) were useful works of reference as were articles by Purcell and Hutchinson (2007) and Jones and Saundry (2011).

The role played by unions and employee representation is fundamentally reliant on the strength of the union organisation within the workplace. The WERS series as well as Knight and Latreille (2000); Williams and Adam-Smith (2006); Rose (2008); Saundry, Antcliff and Jones (2008); Wood *et al.*, (2014); and Dundon and Rollinson (2011) all provided further context. This segment of the chapter examines the nature of employee representation and how it interacts with formal and informal processes to assist and inform disciplinary decision outcomes. Furthermore it considers the relationship that representatives have with the other key actors involved within the discipline process and the level of trust afforded between them.

Arguably, the role that operational managers play within the process of disciplinary handling is crucial as it is widely accepted that disciplinary procedures are to all intents and purposes management procedures. Studies that supported understanding of this function were: Clegg (1979) Evans *et al.*, (1985) Goodman *et al.*, (1989); Dickens *et al.*, (1985) and Earnshaw *et al.*, (1998). Therefore they are explicitly considered to be management tools. This section questions our underlying assumption that management is a unified group sharing common interests and perspectives when deciding workplace rules. It argues that this may be contingent upon how relationships are developed over time within the workplace. Given their different perspectives it should not be surprising that operational managers' relationships with HR specialists are shaped by occasional conflict. It reviews the evidence that although recent policy agendas concerning dispute resolution have focussed on providing operational managers with greater flexibility in the way that they might handle individual disputes - which broadly reflect the pragmatic approach traditionally favoured by many operational managers - this has led to tension in their relationships with HR professionals who prefer conformity in disciplinary handling.

Chapter five provides analysis of how the complexity of the decision making process drives the choices that are made between formal and informal approaches in disciplinary handling. It explores the conflict and tension that occur between operational managers who often have a preference for informality and flexibility in handling disciplinary outcomes, which appears to be in stark contrast to the requirements of HR professionals who seek formality of disciplinary handling by driving a procedural adherence, which in turn raises questions regarding the extent to which devolved responsibility has actually occurred.

Chapter six provides detail of the research design, data collection, and data analysis methods used for this thesis. It considers the philosophical perspective adopted and it provides an explanation of the rationale behind the methods used. In this aspect the research consists of multiple case study analysis across eight organisations in the North West of England It then outlines the data collection methods.

Chapter seven provides detailed analysis of the findings in order to highlight any contradictory aspects that affect the nature of disciplinary handling in the contemporary workplace.

Firstly it explores and evaluates the extent to which workplace disciplinary policy and procedure evolves and is shaped in response to legal, regulatory and organisational requirements. It then examines how the policy and procedure is communicated to the actors that operate the disciplinary role. Chapter eight examines the extent to which formal and informal application of the discipline policy, and subsequent procedures, are adopted and applied. Essentially, by exploring the subtleties that operate at this level it allows us to understand what triggers and forces these two contrasting approaches? Chapter nine examines the changing role that HRM play in dispute resolution in their respective workplaces.

Chapter ten provides analysis using a conceptual framework of how the nature of discipline has been shaped in respect of the understanding gained from the related research. Importantly it considers how this is affected by a range of social practices operating at the basic level of the process. The use of a model: *Sources of formality and informality of approaches within disciplinary handling* (fig 1.) will illuminate the themes that have emerged from the thesis findings in order to provide classification of the causes of formality and informality of disciplinary practice.

Chapter eleven sets out the final discussion and conclusion of the enquiry; chapter twelve demonstrates how the aims and objectives of the thesis have been met, including an overview that shows how the work provides an original contribution to knowledge, as well as identifying areas to be considered for future research. Limitations of the work are also discussed within this chapter.

Research question

The aim of the thesis is to provide a considered examination of how the handling of discipline is played out within the workplace. By investigating the roles that are played by the key actors who exercise this process namely: HR practitioners, Union or employee representatives and operational managers, it will aim to uncover inclusive understanding of how these functions interrelate to shape the disciplinary process and inform its subsequent outcomes. Importantly it will explore the contested terrains (Op.cit) that exist within the disciplinary process, in order to reveal tensions that may exist in relation to power, control

and consent and indicate how these may develop over time. Specifically the research will consider the question of:

How is the form and content of disciplinary procedures shaped practice in various organisational contexts over time?

How does the balance between formal and informal mechanisms itself in the development of disciplinary procedures and their use over time?

What can we learn from understanding the dynamics of management and the changing relations between operational managers and human resource managers?

How do changes and developments in HRM and HR Departments configure the dynamics of disciplinary procedures especially in terms of supposed devolution of HRM practices?

In addressing these questions the thesis seeks to divulge greater appreciation of workplace disciplinary process and practice. By exploring that the handling of workplace discipline is more than just a set of laid down procedures. It will expose that the handling of discipline is subject to contested terrains by the actors that play out this process and that oppression and resistance exists in tandem, causing aspects of power and inequality to be challenged and reinforced throughout the process.

Chapter two: The nature of disciplinary procedures

In an attempt to understand what is meant by industrial discipline, Jones (1960) cited in Wheeler (1976:237), defines it as *'some action taken against an individual when he (sic) fails to conform to the rules of the industrial organisation of which they are a member'*. Alarming, Rollinson *et al.*, (1997:283) highlight that although British industrial relations acknowledge the individual nature of many workplace issues traditionally the emphasis has been on collective matters, resulting in limited focus being applied to the important issues of discipline and grievance in the workplace. Therefore discipline at work should not simply be equated with the existence of formal disciplinary policies and procedures. In order for us to really understand how workers experience workplace discipline it is important to consider and critically evaluate their operation (Williams and Adam-Smith 2006:246).

Historically the management of workplace discipline was seen as a key problem sitting at the heart of the employment relationship and itself as one of the most significant sources of conflict. It is surprising therefore that workplace discipline is somewhat a neglected area of scholarship in the associated employment relations and personnel literature (Fenley, 1986; Edwards, 2000), yet a full appreciation of the dynamics of workplace discipline is crucial in developing a full understanding of contemporary employment relations. As Edwards (1994) explains; the governance of workplace rules can be seen to be developed over a period of time as a consequence of negotiation between employers, trade unions and workers. Hence this results in employers always needing to ensure that adequate performance of work tasks was completed by their labour force (Edwards 2000; 2004). Likewise Ashdown and Baker (1972) provide an invaluable overview in their 1972 paper, *In Working Order: a study of industrial discipline* which clarified that discipline in Britain has its origins in the great changes that were seen in manufacturing production resulting in the growth of large manufacturing units which made it necessary for workers to adjust to speed, regularity and discipline of factory work. The development and implementation of formal rules was seen to become necessary as organisations became large and bureaucratic because employers could no longer oversee work operations personally. Pollard (1965: 181) provides particular insight into some of the challenges of disciplinary problems faced by early industrial employers in that the new factories demanded compliance through regular attendance and the carrying out of tasks in a prescribed fashion.

Fundamentally, we can assume that the overriding aim of discipline is to correct the tendencies of employees to flout organisational rules and norms, rather than take retribution for rule breaking (Rollinson, *et al.*, 1997). We can see that as firms grew increasingly bureaucratic the old and informal models of discipline became unworkable. Specifically, as bureaucratic systems of control developed punishment flows 'from the established organisational rules and procedures 'and is no longer coercive in purpose or arbitrary in application' (Edwards, 1979). What was noticeable was that as organisations moved to formalise their approaches to managing discipline this helped to bolster managerial authority, not least because the laying down of formal procedures added legitimacy so that managers found workers more ready to accept their decisions (Williams and Adam-Smith, 2006:247).

In general terms the overriding goals of discipline counterpose coercive and corrective approaches (Ashdown and Baker 1973) with the former being based on strict rules and harsh punishment of infractions and the latter on induced behavioural change. Edwards, (2004) suggested that this also meant a shift from arbitrary sanctions to one of clearly defined penalties for stated breaches of rules which, in turn, resulted in the formation of organisational approaches being used as a means of providing a systematic approach to the management of workplace discipline.

A broader context is provided by Edwards and Whitston (1989:3) who acknowledge two main themes pervading the literature on discipline: firstly, longstanding historical developments, with the emergence of new regimes based on the notion of 'self-discipline', and secondly the interaction between formal disciplinary rules and informal understandings to produce sets of norms and conventions. One integral feature of managerial prerogative is the ability of managers to discipline workers for breaches of workplace rules, and impose sanctions on them where deemed appropriate. In such cases , the operation of discipline could be interpreted as 'the vivid and crude expression of managerial power over employees' (Fenley 1986:16), but alternatively discipline can also be seen as a technical activity driven by procedure to ensure compliance with the relevant legislation and avoidance of the threat of unfair dismissal. These two contrasting approaches, although useful, do not really provide us with any real depth of understanding to how discipline in the workplace is actually being played out.

In providing insight Edwards', (1989, 1994, 2000) extensive work does provide some additional critical exposition of workplace discipline in that we can establish its three 'faces': Firstly, actions taken by management when breaches of workplace rules occur, secondly, the elaboration of formal procedures within individual organisations and thirdly the everyday process of negotiation which constitutes and reconstitutes an informal rulebook. Thus, what 'the rule is cannot be discovered from the rule-book' (Edwards 1989:377) suggesting that the way discipline is enacted cannot be understood solely by reference to formal written procedures instead being shaped and underpinned by complex behavioural and social processes. By adding layers of behavioural complexity between the formal strata of written procedures day-to-day experience creates standards 'which may differ sharply from official rules' (Edwards 2000: 318). What Edwards signifies here is of critical importance to the deeper understanding that workplace discipline is more than a perfunctory process. Behind this process there lies a complexity of overt and covert, negotiated and renegotiated, order and acceptance.

It would be remiss at this point not to draw on Gouldner (1954) who, in his seminal work, *Patterns of Industrial Bureaucracy*, distinguishes between different types of workplace rules, which, depending on their nature, were ignored, supported or obeyed. Essentially the day-to-day experiences of disciplinary handling will create standards which may differ sharply from the rule-book. On this point, Edwards argues that the 'day-to-day understandings' between managers and workers have as much of an influence on the experience of employment relations as the formal rule-book, if not more. Thus discipline is 'part of a continual negotiation of order, not just a technical activity' (Edwards, 1994:564). The reality here is that not all managers enforce the rule although the continued existence of the rule-book means that it can always be re-imposed should they wish to enforce their authority when required (Williams Adam-Smith, 2006). Fundamentally therefore we can consider that workplace rules are contingent upon the relationship that is developed between managers and workers and we must understand that discipline is more than the simple application of sanctions. Worker discipline invites us to consider the ways in which the day-to-day understandings are exchanged between workers and managers. Furthermore some types of rules are treated more seriously than others, and there is an underlying process of shop

floor negotiation which defines which rules are respected and adhered to and which are not (Edwards and Whitston 1994:320).

What is also worth considering is that the handling of discipline can sometimes be dependent on the size and nature of the organisation. The proliferation of small organisations in the UK is now becoming increasingly apparent and the handling of discipline in small businesses is often managed quite differently in terms of formality; essentially because those organisations do not necessarily have the same infrastructure as large ones. Therefore, proportionately, disciplinary sanctions are used to a lesser extent in smaller than in larger organisations, if the measure reflects assessment of the number of disciplinary case per year (CIPD 2007). Potential reasons for this could be attributed to the tendency for small firms to handle discipline in a much less formal manner.

Evans (1971) defines work rules as a '*body of regulations governing the relationship between employee and employer*', which are not only established as terms of the contract but that also form the employer's disciplinary rights over the worker. Therefore it is not surprising that these can vary greatly in content and style between organisations (Ashdown and Baker, 1972:9).

Essentially this approach provides the accepted development from 'punitive' to 'correctional' methods (Anderman 1972; Ashdown and Baker 1973). First identified by Jones, (1961) the punitive and corrective distinction between approaches to workplace discipline has become part of the established literature on the subject. Jones suggests that industrial discipline can be divided between an 'authoritarian' approach, where discipline is simply used as punishment, or form of retribution, where its purpose is to deter others from committing the same action, and a 'corrective' approach, where the emphasis lies on reform. This approach to disciplinary handling was seen to characterise more radical approaches in relation to hierarchical control as developed in large firms (Edwards 1979).

However it would be wrong to assume that corrective and punitive approaches to discipline operate in isolation. Further analysis demonstrated that both methods were intertwined and so co-existed within organisations. The difference between corrective and punitive discipline according to (Gouldner, 1954) could be seen to depend on which amongst three types of bureaucratic controls were employed. Firstly, "Representative" controls,

characteristically safety rules, which were initiated by both management and employees, which were committed to by both - albeit for different reasons - and which interpreted breaches as oversights to be corrected by education rather than punishment. The result being that safety rules were highly bureaucratised and rules were imposed (Edwards, 2005:383). Secondly, "Punishment-Centred Bureaucracy" controls which are characterised by rules but enforced by one side only. Here, sanctions could be imposed for insubordination or transgression and any breach of rules is usually interpreted by the enforcer as deliberate and punishable in order to deter repetition. Finally, "Mock-Bureaucratic" controls where formal rules, applying to both management and employees, were effectively evaded or ignored having been superseded by discretionary behaviour. These were rules often seen to be imposed by external forces and any breach of a rule is seen as accepted and therefore not compulsory to be followed by management or workers. It is implemented officially but not in the daily behaviour that is enacted therefore the rule might not be enforced neither by manager or worker. Examples of this might include the managers' reluctance to apply formal rules with respect to good timekeeping in the case of an employee valued for reasons exceeding that isolated criteria.

Henry (1987) also argues that early forms of workplace discipline can be attributed to using punitive – authoritarian discipline, which was based initially upon the master-servant relations of the feudal era. Here the model reflects the notion of organisational control supported by authoritarian structures of ownership where discipline tended to be punitive, moralistic, harsh and capricious. The principle components of the punitive approach to workplace discipline are an emphasis on getting workers to obey managements' rules for fear of punishment, such as dismissal, that would result from any failure to comply (Fenley 1998). An authoritarian approach to discipline was seen to characterise early approaches taken by management who saw their own authority as absolute and, therefore, who were then able to impose discipline in an arbitrary manner.

According to Edwards, (2000:320), after the Second World War, managers became more aware that punitive discipline appeared to have an adverse effect on morale and efficiency. They also faced pressure from trade unions, legal restrictions on their powers, and difficulties of recruitment in tight labour markets. In practice it is difficult to make too hard

and fast a distinction between the punitive and corrective approach within organisational practice (ibid).

It would be neglectful at this point not to assist our understanding of workplace disciplinary handling without reference to labour process debates which have been highly influential within the sphere of industrial sociology in attempting to provide understanding of the origins of industrial conflict. The term 'labour process' is derived from Marx's discussion of the nature of capitalist society (Marx 1976:283) and in simplistic terms it can be understood as the process by which capitalist owners of production exploit their workers whilst constantly seeking to redefine and modify labour processes in order to achieve maximum profit. To achieve this goal management (agents of capitalism) need to assert as much control over the labour force. Therefore aspects of power, control and consent (Purcell and Earl, 1977; Thompson and Murray, 1976) should not be overlooked in the context of disciplinary handling at the organisational level. The various forms of control are well charted within labour process debates, for example systems of control, (Edwards, 1979:17); frontiers of control, (Friedman, 1978:13) which will be discussed in greater detail below. Essentially these approaches expect a rationalisation of procedures and, therefore, within labour process theory, disciplinary rules are contested because they intersect with key dimensions of the employment relationship specifically in relation to control and consent.

Furthermore, according to Watson, (1995) the labour process perspective in industrial sociology represents an attempt to connect issues such as: work design and managerial control over labour to the political economy of the society in which they arise. It is stressed that organisational practices within capitalist economies cannot be fully understood without considering the implications of capitalism itself for managerial practices and work design. Although this is a complex and often nebulous area to define, traditionally the academic study of work and work relations has been distributed among managerial studies and organisational theory, industrial relations, the sociology of occupations, and industrial sociology (Littler 1982:25-26).

Since the experience of work within industrial capitalist societies takes place in the context of the employment relationship, employer-employee conflict is often inevitable. On this point Edwards (1986) characterises the basic conflict of interests between capital and labour

in terms of structured antagonism. Each side of the employment relationship 'depends on the other while having divergent wants'. This means that 'conflict is intertwined with cooperation; the two are produced jointly within particular ways of organising labour processes' (Watson, 1995:283).

As noted by Reed, (1989:43) the need to relate forms of management control to the changing conditions under which they are most likely to be practised - whether at the level of a specific organisational domain, general state structures or the international system of capital accumulation - has been a recurring theme in the sociology of management. He further explains in general terms that the literature within labour process debates has identified a long-term historical trend away from the relatively simple forms of direct and personalised systems of control to more complex forms. One of the earliest writers on issues of control was Friedman, (1977) who argued that the means of control recognised by Braverman, (1974) was not the only strategy available to management, or the most effective. Friedman proposed that there are two types of strategies which managers might use to exercise their authority over labour power, these are 'Responsible Autonomy and Direct Control' which are explained in more detail on page 66, both of which have existed throughout the history of capitalism (Brown 1992:194).

Throughout the development of control over the labour process radical theorists have seen processes of production becoming more rationalised and subject to increasingly tighter controls (Burrell and Morgan, 1979). Much of the contemporary interest of Marxism and radicals in the issues of labour and industrial control is derived in some way from the seminal work of Harry Braverman's (1974) book, *Labour and Monopoly Capital*. Here Braverman reopened a concern of Marx that the critical area for explaining social conflict and control was the labour process itself (Grint, 1994:184). Braverman's theory of degradation of work in which he argued that the continuous decline of skill among the workforce lead to a weakening of bargaining power and a loss of control. He illustrated this process by referring to Taylor's system of Scientific Management, which according to Braverman, inevitably led to the continuous reduction in the skills levels at work, and to those skill levels becoming increasingly reorganised in order to satisfy the logic of managerial efficiency (Hollinshead *et al.*, 1999).

According to Brown, (1995:190) much of the power and persuasiveness of Braverman's account of the development of the labour process came from its broad sweep and its apparent success in incorporating a large number of not obviously related developments within one overall framework. It has not been difficult for those sympathetic to his formulations concerning the nature of the capitalist labour process, and the historical tendencies which have flowed out of it, to provide empirical evidence which appears to 'fit' into the framework offered. However it could be argued that the evidence that has been put forward by Braverman is often romanticised and that it is often too simplistic to equate the 'reorganisation' of work with the notion of management deskilling work in a desire to gain greater control over work processes. Nonetheless there are certain elements of the labour process debate that are important in relation to the nexus of work control and consent, in particular the nature of the employment relationship, how employers, or their agents, exercise control and, interestingly, how employees either accommodate or resist it. Further criticism of Braverman's thesis can also be observed in the work of Friedman (1977), who notes that the deskilling thesis ignores alternative management strategies. Also that it exaggerates management's objective of controlling labour Kelly, (1985); and that the deskilling thesis is seen to treat labour as being passive Edwards, (1979). Additionally Burawoy, (1979), argues that it understates the degree of consent and accommodation by employees; Beechey (1982) that it ignores gender; and Penn, (1983) that it overlooks skills transferability. Much of the criticism has come from writers not unsympathetic to a radical analysis of work relations and considerable attention has been paid to refining labour process theory (Knights and Willmott, 1989) in order to acknowledge and incorporate the role of human agency and subjectivity.

Possibly the most significant publication in relation to the dynamics of management control is the work of Edwards (1979) and the notion of a 'contested terrain' where he highlights the conflict that is inherent in capitalist industry. He advocated that the simple employee control strategies of early competitive capitalism were gradually found wanting as the trend towards modern monopoly capitalism developed. He argued that as class resistance towards 'simple' managerial controls grew and as the centralisation of capitalist organisation increased, alternative approaches to control were tried. (Watson, 1995:326).

Edwards defined a system of labour control in terms of three interrelated elements consisting of: a directive mechanism specifying the nature, the timing, sequencing and precision of work task; an evaluative mechanism assessing and correcting work performance; and a disciplinary mechanism eliciting compliance with the capitalist's/manager's direction of the labour process. He then acknowledged three types of control that prevail in order to provide the co-ordination of the three elements, these being: simple control which relies on the personal intervention of managers; technical control which involves more formal, consciously continued controls embodied in the physical structure of the labour process as identified in Benyon's (1975) study on workers at Ford who exposed their feelings of assembly line working and the effects of pace and working time. And, finally, bureaucratic control which embeds control mechanisms in the social structure of the workplace, especially the institutionalisation of hierarchical power. Here employees are controlled through impersonal rules and procedures particularly in larger organisations. Bureaucratic control represents an attempt to overcome the deficiencies of technical regulation by embedding in the social and organisational structure of the firm. It is built into job categories, work rules, promotions, and discipline in order to establish the impersonal force of 'company rules' as the basis of control (Edwards, 1979:131). The requirement for control is, primarily, because employers and managers are compelled by the logic of profit maximisation to seek the cheapening of the costs of production and control over the labour process (Ackroyd and Thompson, 1999:21). Edwards argues that in response workers use covert or overt resistance to protect themselves against the constant pressure for increased production. Conversely capitalists use and employ a variety of sophisticated devices and approaches to restore the balance in their favour. Here we can see the interplay that occurs within the dynamics of workplace struggle where the pattern of control and resistance is a fundamental part of organisational life.

Importantly Edwards contends that although workers are treated fairly within the rules they have no say in establishing the rules. The concern with Edwards's analysis is that different control strategies are connected to different stages of capitalist development, suggesting that, at any given time, there is a single, or at least predominant, strategy of control which will ensure continued accumulation capital (Blyton and Turnbull, 2004:108). Moreover it is worth mentioning at this point that the variety of control strategies identified in labour

process literature is drawn from the manufacturing sector which is both a declining and minority sector within the contemporary workplace. Undoubtedly contributors to the labour process debate do provide valuable insight into modes of control which reflect worker resistance and changing socio-economic conditions. Examples such as bureaucratic control with its aim to gain commitment of the employees'- employer purposes and to encourage 'reasonable' and predictable levels of performance, offers management a means of imposing impersonal rules and regulation. What can be seen as apparent is the contradictory nature of the control process and the need to relate changing managerial strategies to the dynamic social contexts in which they are implemented. Furthermore any long-term developments in control strategies and structures must be grounded in more sophisticated understanding of the complexities of the organisational work in which managers are necessarily engaged (Reed, 1989:59).

Edwards (1979) also makes an important distinction between 'coordination' and 'control'. The former is essential in any work production system where more than one or two people are involved; the activities of the various participants have to be meshed together if inefficiency and chaos are to be avoided. 'Control', as 'the ability of the capitalist and/or managers to obtain desired work or behaviour from work' was for Edwards a feature of class-based social systems, where the willingness of the worker to do the work cannot be taken for granted and where more or less coercive means may be needed to ensure that the labour power purchased is transformed into labour. Other concerns from labour process theorists relate to worker and management resistance, or what Noon and Blyton (2002) refer to as 'survival strategies'. Here the extent of the manipulation of the wage-work exchange is substantially covered by authors such as Lupton (1963) and Cunnison (1964) who observed the extent to which workers adapt their working day in response to scientific methods of management. Similarly Roy's (1952) classic study provides illustration to how workers alleviate the monotony of their working day by creating 'games' and 'rituals'. Researching the same factory that Roy studied earlier, Burawoy (1979) shifts focus to the production of consent. Observing the familiar attempts by workers to manipulate the effort bargain and 'make out' against the system, Burawoy argues that participation in labour process 'games' conceals the exploitative social relations of capitalist production and redistributes conflict away from vertical management-worker relations to intra-employee

disputes. Flawed and partial though his argument was, it affirms the growing sophistication of the labour process theory, notably in attempts to produce a more integrated framework in which conflict and consent could be understood within the same typology, and without recourse to the 'panacea fallacy' whereby capital is seen as always moving towards 'the' solution to its labour control problems (Thompson and Bannon, 1985; Hyman, 1987).

Fundamentally the consideration of work as a disciplined compliance underscores two components essential to capitalist production: acceptance of the management prerogative and obedience to time structures. According to Noon and Blyton (2007), the 'managerial prerogative' refers to the right of managers to direct the workforce as they deem fit, based on their 'expertise'. This can be traced back to the work of Max Weber and the ideal type of modern bureaucracy that encompasses the rational-legal model. (Theobald, 1994). Therefore the task of labour process theory becomes that of understanding the combination of control structures in the context of the specific economic location of the company or industry (Thompson, 1989:152). Furthermore as argued by Sakolsky (1992:237) labour process should not be analysed in relation to the mode of production, but as a site of disciplinary power. This point was highlighted by Clegg (1989:176) who indicates that any aspect of control when applied in the work context is treated merely as another version of discipline, and is functionally orientated towards the creation of obedient bodies rather than to sustaining exploitation. Consequently it could be contended that the contested rationality between capital and labour is somewhat reduced to a 'local site of struggle' and that labour is not regarded as a distinctive or significant agency (Thompson 1999:158). What is important at this point however is that even within the influential framework provided by Edwards (1979:18) the apparatus of discipline is only one of three components of a system of control. Nonetheless approaches of workplace disciplinary power and surveillance are often considered less effective as alternatives to concepts of control and resistance.

Sociologists have, over time, attempted to categorise models of discipline that are used and applied by management and these broadly straddle both punitive and correctional approaches as detailed in the work of Goulter (1954); Henry (1987). Initially the simple punitive approach was favoured but over time a more corrective instrumental method was adopted. However Edwards and Whitston (1994) demonstrate that it is wrong to assume that a punitive approach to discipline has been superseded by a corrective one. Discipline

approaches can ebb and flow and are very much dependant on the circumstances and pressures being applied. Edwards (1994) argues that, 'disciplinary systems have not evolved towards a more corrective style and...punitive strands remain a significant component of current practice'. Furthermore Earnshaw *et al.*, (1998), argue that procedures and processes are often about legitimising decisions already made. This is supported by Cooke, (2006) who states that discipline is not just simply a matter of ' *carrots and sticks*', she argues that the use of the stick had been somewhat underrated and that approaches to the handling of workplace discipline can still be seen as punitive within contemporary discipline handling.

Cooke (op cite) also highlights that throughout the 1980s attempts were made to rehabilitate punishment as a disciplinary tool and this was encouraged by behaviourist psychology (Arvey and Ivancevich, 1980; Simms, 1980). This according to Cooke fitted well with the political climate that was operating at the time and can be seen to coincide with the start of the neo-liberal era characterised by an erosion of employment rights and a reassertion of manager's 'right to manage' (Ackroyd and Thompson, 1999).

The punitive approach is often associated with 'hard' management that is often enthusiastic about exercising prerogative with limited intrusion from trade unions and without regard to law or outside agencies. Here employees are expected to obey stipulated workplace rules for fear of punishment, and the probability of an outcome of natural justice is likely to be unpredictable because of the potential for the discretionary negative appliance of procedure. Considerations underlying the punitive model revolve around the notion of 'legalistic reasoning' which is concerned with administrative effectiveness through compliant rule enforcement. Here, management is predominately concerned with extracting obedience to the rule and the allocation of blame (Fenley 1998:352).

Although the punitive approach does provide an advantage in setting appropriate corrective standards in order to prevent repeated undesirable behaviour, it is not without widespread criticism. Firstly, by disregarding the employee, management can address issues in ways that lead to the arbitrary treatment of offenders and the application of inconsistent and/or unpredictable penalties. Secondly, it neglects any restorative possibilities of a disciplinary policy in developing employees to obey the rules in that it obviates any potential for

reconciliation. Finally, it has the potential to generate increased conflict between employees and management.

Contemporary approaches to disciplinary handling have moved away from coercion as corrective and representative discipline has been preferred as a replacement for a punitive approach which was seen both to alienate the worker whilst no longer meeting the needs of modern capitalism (Henry 1987). It can be argued that the corrective approach developed in the context of regulatory change. In particular, the introduction of the right to claim unfair dismissal under the Industrial Relations Act 1971 which promoted the acceptance by organisations of the “corrective approach” when dealing with industrial discipline (Mellish and Collis-Squires, 1976:164). The so called corrective phase was noted by Steve Anderman (1972), in his publication *Voluntary Dismissal Procedures and the Industrial Relations Act* where he argues that the Act marked a change from the traditional “punitive” approach to discipline to a more rational “corrective” approach (Ibid). The corrective approach makes the assumption that employees are mostly prepared to abide by well-established, equitable standards of behaviour with the view that self-discipline can be nurtured amongst employees (ibid). The belief was that with the adoption of the corrective approach came a methodical instrumental approach to discipline that stressed the presence of written procedures, investigation of the case, a hearing affording the right to be represented, followed by progressive sanctions and the right of appeal in required. In short, this can be perceived as a system which is underpinned by due process, formal fairness of treatment and natural justice. The principle of ‘natural justice’ is considered an important and integral feature of the corrective approach that affords the employee with the process of a fair hearing.

According to Fenley, (1998:353) the corrective model is a means to foster self-discipline (Edwards, 1986; 2000; Hyman 1987). Furthermore the prime consideration under the corrective approach is to try to establish whether rules or orders are reasonably related to the effectual and safe operation of the organisation. For example, as identified by Edwards (2000), a constructive and high-trust relationship between the employer and unions or other employee representatives can help to inspire self-discipline and underpin the legitimacy of disciplinary handling.

Mellish and Collis-Squires, (1976:165) highlight that the overall appeal of the corrective approach is that it 'offers a way of analysing and categorising tribunal decisions, and of saying something positive about the way discipline operates in practice. In short, it links the legal and social norms of discipline'. The criticism is that however useful it is for the organisation in framing of legal decisions, it hinders our understanding of how discipline functions in actual practice. Furthermore, Mellish and Collis-Squires argue that it seems a shame that the dichotomy between punitive and corrective discipline was developed without reference to our historical analysis of industrial discipline or recent sociological literature. For example, Anderman (1972:57) argued, in reference to the Industrial Relations Act, 1971, that the "standards set in both the Industrial Relations Code of Practice and the dismissals provision of the Act propose support for an overall approach to discipline with strong 'corrective' elements". Furthermore the standards also implicitly reject an unsystematic punitive approach to discipline. However, at the time there was considerable apprehension about its introduction (Daniel and Stilgoe 1978). These concerns included fears that it would discourage organisations from employing, and that it would impose higher administration expense through having to keep additional disciplinary records. In addition, establishments were concerned that they might be forced to hold onto unproductive employees for fear of expensive unfair dismissals. Management however, became aware of the fact that punitive discipline often had an adverse effect on morale and efficiency. In addition, management's power to take unilateral decisions concerning discipline at the time was limited by the influence of trade unions and consequently coercion ultimately gave way to correction (Ashdown and Baker, 1972).

Amongst the criticisms that have been levelled at the corrective approach is that it is based on unreasoned premise namely, if an organisation treats its employees progressively worse, in return they will gradually get better (Redeker, 1983:241). In addition it has been argued that corrective discipline is no more than a sophisticated form of punishment, that it is '*a negative incentive causing the suppression of actions that might bring about unwanted consequences*' (Wheeler, 1976:241). Within the corrective approach there is an emphasis on procedure rather than the substantive aspects of discipline, and therefore it could be argued that it exaggerates the benefits of formalisation. The corrective approach has also been labelled managerialist in nature because it tries to separate discipline from the wider issue

of control (Mellish and Collis Squires, 1976:167) and it has been suggested that managers feel the “constitutionalism” of the corrective model interferes too much with their ‘right to manage’ thereby reducing operational effectiveness (Fenley 1984). Beyer and Trice (1984:760) found in their research that “*results supported opinions often voiced...if it must be used, mild discipline is most effective*”. Mellish and Collis-Squires, (1976:167) argue that the punitive-corrective dichotomy is a false one. Working practices and situations that fall out of it do not routinely fit into compartments. It can be argued that the value of such models is that they allow practitioners to reflect on the construction of their disciplinary systems and the way that specific cases are dealt with.

What can be seen from the various patterns identified by Gouldner (1954) is that there is some complexity in the dynamic relationship between appliance of formal and informal rules within the organisational setting over time. According to Gouldner potential weaknesses within the corrective approach can be attributed as follows: Firstly ‘*it concentrates on strict adherence to the procedures for handling discipline and on procedural reform and therefore providing insufficient treatment of the substantive rules in which any procedure has to enforce*’ and secondly, ‘*it appears to be committed in an uncritical way to the unmitigated advantages of formalising disciplinary procedures*’.

In addition to both the punitive and corrective approaches, Fenley, (1998) recognises the notion of a revisionist model, originating in the USA and sometimes referred to as ‘*progressive discipline*’. This approach claims to be more objective in that it fosters the promotion of self-respect (Redekar, 1983 and Huberman, 1964). The unique feature of the revisionist model is that entire forms of punishment and threats of reprimand are removed as they are construed as being counter-productive. What is important is future behaviour, based upon the supposition that the best predictor of a person’s future behaviour is their past behaviour. The revisionist approach has been criticised on the premise that despite its assertions - given that there are no formal procedural stages between failed affirmations and the actual termination – it is fundamentally just a refined version of the corrective approach containing elements of the punitive model,.

The revisionist approach looks at the various stages that take place throughout the process of an employee’s appearance within the organisation; commencing at the induction stage

where new employees sign a statement of agreement to accept laid down workplace rules of conduct. Any subsequent lapses in behaviour are dealt with informally (potentially through counselling or mentoring approaches) in an attempt to rectify deviant or unwanted behaviour. However, repeated consistent 'bad' behaviour or commitment of serious offences may ultimately lead to termination of employment. Essentially the overall feature of the revisionist approach is its future orientation, based on the proposition that the "best predictor of a person's future behaviour is his [sic] past behaviour" (Fenley, 1984: 355). Criticism of the revisionist approach to discipline is that it basically provides nothing more than a refined version of the corrective approach which contains the various elements of both the corrective and punitive models in managing discipline. However, claims that it rectifies employee behaviour and attitudes are unsubstantiated and at a practical level, the revisionist model is inconsistent with a framework of unfair dismissal legislation under which a failure to follow certain procedures can render a subsequent dismissal unfair.

In evaluating how the nature of discipline has evolved over time, from a punitive to a corrective style, we can observe that there are predominantly two schools of thought informing the academic discourse. The first acknowledges the two mainstream approaches whilst the second regards this as too basic an assumption suggesting instead that management style in early industrial organisations was more eclectic than 'consensus' theory purports. Some businesses relied heavily on paternalistic approaches to the management of labour (Edwards, 2000). Furthermore Edwards and Whiston (1989:335) found that it is wrong to assume that a punitive approach to discipline has been superseded by a corrective one. Instead they highlight the important influence of financial pressures on the use of discipline observing that *'disciplinary systems have not evolved towards a more corrective style and...punitive strands remain a significant component of current practice'*. In addition, Gouldner (1954) in his well-cited analysis of the emergence and withdrawal of a management exercised - "Indulgency Pattern" indicated the development of a complex relationship forged between formal and informal rules. Essentially Gouldner's argument was that patterns of bureaucracy can and do exist. Consequently the rules that typify these patterns affect the different ways in which discipline rules are enforced and these cannot be explained. As Mellish and Collis-Squires (1976:147) argue, *'it is this type of analysis that the corrective/punitive dichotomy fails to make in that it concentrates on the procedures for*

handling discipline and on procedural reform and therefore give inadequate treatment of substantive rules which any procedure has to enforce'. In addition, it appears committed in a subtle way to the advantage of formalised disciplinary procedures. Finally, it views discipline almost wholly from a management perspective as well as separate from wider issues of control. Labour process theorists have been particularly interested in questions of control within organisations and the techniques applied by management, which are seen potentially, by some, as methods of worker exploitation (Burrell and Morgan, 1979; Edwards, 1979).

In summary the historical developments in workplace disciplinary procedures are seen to be necessary conjunctions as organisations develop over time. Bott, (2003) provides a convincing case for organisations having procedures in her observation that they help to clarify the relationship between parties to facilitate agreed mechanisms and resolutions. Arguably the adoption of disciplinary procedures must include varying approaches between punitive and correctional methods in order to maintain conformity and this has been evaluated throughout this chapter. The underlying issue is how workplace disciplinary policies are used as it is likely that different levels of management will have conflicting perspectives regarding their operation.

When policy is translated at an organisational level, this is normally developed into a sequential list of substantive rules of behaviour which can then be found in a disciplinary procedure or employee handbook provided as a guide for employees and without which, according to Rollinson (1992), it would be hard to demonstrate that a transgression had occurred. An important factor that comes into play here is that substantive rules of conduct can easily become out of date if currency is not maintained. Historically formality of disciplinary procedures can - as has been observed previously - be seen as a response to a range of statutory and management interventions. The result being that the greater the extent to which management relies on pre-determined, prescribed, responses for dealing with conflict, the more likely it is to lose the flexibility and adaptability associated with customary practices (Reed, 1989) and this, it can be argued, is where potential tensions can arise. Additionally the impact that Human Resource Management has had on the practice of discipline has changed conventional styles of management of the process from traditional Personnel Departments. There is a general assumption that a proliferation of new

approaches and techniques introduced through HRM has generated high commitment working practices which make conventional modes of discipline increasingly redundant (Williams Adam-Smith, 2006) although HRM as the new employee relations paradigm should be regarded with some degree of scepticism.

The significance of rules and procedures in the handling of workplace discipline over time is that they are widely recognised to be management control instruments (Purcell and Earl, 1977). Throughout this development Jones and Saundry, (2011:2) highlight that an overlooked aspect of discipline is the way in which processes and outcomes are moulded by the relationship between different functions and levels of management. Workplace rules are not simply laid down by managers to be obeyed by workers; which would otherwise naively place the primary focus of discipline on a formally applied technical process (Edwards, 2000). In reality they are interpreted, and then adjusted, by both managers and workers as part of the continuing process of compromise and re-negotiation that characterises an employment marriage; one that is often subject to a fluctuating power relationships and shaped by conflict. To date the literature surrounding this area has tended to focus on the role played by 'managers' and while the research has pointed to the heterogeneity in managerial approaches to discipline (Edwards, 1989), there has been little dialogue as to how operational managers, personnel or Human Resources and trade unions work together in practice when dealing with disciplinary issues.

As this chapter has highlighted, substantive work rules are seen, historically, as an essential element in the context of managing and regulating workplace employee behaviour. Throughout a period of development the literature recognises that as organisations grew and evolved the handling of discipline became more formalised in practice. It also suggests that across the array of disciplinary approaches, developed over time, the use of punitive methods remained a commonplace feature of discipline within the workplace. However it discloses that beneath formalised perfunctory approaches in disciplinary handling there exist 'contested terrains'(Edwards, 1979) that is a catalyst for a complexity of issues in relation to power, control, and negotiation that is better understood within the labour process literature in that the workplace is governed by behaviour that exists outside formally set rules. The proceeding chapter will now assess the impact that legislation has

had on regulating discipline within the workplace in response to prevailing political economic and social factors.

Chapter three: The legal framework and the development and spread of discipline procedures

Traditionally, the approach to workplace discipline in the UK was managed in a voluntaristic manner with no specific legislation covering discipline and dismissal. Until the 1960s, there was little in the way of legislation to guide the relationship between employer and employee in the workplace. Prior to this, only a relatively small proportion of firms possessed their own disciplinary procedures (Anderman, 1972; Fenley, 1986; Henry, 1982). As observed by Wedderburn (1986:1), at the time the prevailing view in British industrial relations was that *'most workers want nothing more of the law than that it should leave them alone'*.

Consequently organisations introduced reform on a voluntary basis and at their own discretion. As Dickens, (2008) points out, the heart of the voluntary system was legal abstention with support for regulation of any kind being governed only through collective bargaining and with statutory support being provided only in those sectors where collective bargaining was insufficiently developed. In regard to disciplinary rules there was no legislation in place to regulate the handling of discipline therefore these issues were determined in the workplace. The problem with this was that it provided a source of both individual and collective conflict. In the absence of statutory regulation workplace disciplinary issues were generally dealt through collective bargaining and therefore individual disciplinary issues became wider collective disputes. During this time the proportion of strikes caused by rules and discipline rose from 15 per cent in 1938 to 29 per cent in 1966. (Minster of Labour Gazette, Employment Productivity Gazette in Coates and Topham, 1980).

The early part of the 1960s saw the introduction of legislation pertaining to individual employment rights. This gradual shift commenced with the Contracts of Employment Act 1963 which laid down provisions concerning minimum notice periods and the provision by employers of written particulars covering employment in situations where no written contract existed, but the major changes in employment relations during the 1960s can be attributed to the Donovan Commission, established to investigate (among other things) ways of reducing workplace conflict. In respect of individual employment disputes, the

report recommended, most significantly, the implementation of a system that afforded employees better protection against unfair dismissal by introducing the right to claim unfair dismissal and the establishment of a system of industrial courts. In addition, it called for increased use of company industrial relations procedures and for the reorganisation of personnel management along professional lines.

The Commission made certain assumptions about industry-level bargaining on the one hand, and the informal system of organisation and workplace bargaining on the other. For example, the formal system of industry-level bargaining assumed that it was possible to negotiate and resolve all industrial relations issues in a single written agreement which then could be applied throughout the industry. Trade unions and employers' associations could ensure that the terms of any agreement were observed by their members. The function of the industrial relations system at the organisational level was primarily one of interpreting and applying the industrial agreement and providing a basis for joint consultation between management and employees.

The informal system however assumed that many industrial relations issues were specific to the organisation and could be regulated by informal arrangements or 'custom and practice' at the workplace. Both management and union members at workplace level enjoyed a relatively high degree of autonomy when it came to making decisions independently of their central organisations. The distinction between the processes of joint consultation and collective bargaining - between which issues were appropriate for which process - was often blurred.

According to the Commission findings, the informal system at the organisational level tended to undermine agreements reached in formal industry-level bargaining. The Commission suggested that the resolution of the conflict between the formal and informal systems could be achieved on a voluntary, not statutory, basis through management and trade unions accepting the reality and importance of decision making at the organisational level and developing this on more formal and orderly lines.

The main recommendation proposed by the Commission was that there should be more formal and orderly relations at organisational level on a voluntary basis and this was eventually implemented, but in a sporadic and piecemeal fashion. Responsibility for

initiating change tended to lie with management and success in this area often then depended upon the agreement of the relevant trade unions.

These reforms were mainly initiated in the public sector and in larger private organisations, the most important involved the systematic development of formal substantive and procedural agreements at organisational level. Focusing on the latter, these included written discipline and grievance, redundancy and dispute procedures. According to Purcell, (1981) the Donovan Report put forward an extraordinary list of functions, and at the time many managers felt that the challenge to management prerogatives, implicit in the list of items to be jointly determined, was too great. Since Donovan, the handling of discipline in the workplace has been subject to increased statutory regulation including the introduction of a right within workplaces not to be unfairly dismissed and the growing jurisdiction of industrial tribunals to consider resulting claims, both of which were incorporated in the Labour government's White Paper 'In Place of Strife' and subsequently introduced by Edward Heath's Conservative government via the Industrial Relations Act 1971 (Saundry *et al.*, 2008).

The Industrial Relations Act 1971 accorded a central role to legal intervention in the reform of industrial relations. The introduction of the Act gave individual employees the right to claim unfair dismissal to protect employees from subjective treatment, and to offer 'just and equitable' compensation. Essentially, the Act was a failure as Hepple, (1995:308) highlighted *'it was based on the assumption (mistaken at the time) that employers would use the law and that unions would co-operate'*. The Act was primarily based upon American collective bargaining models with the aim being to legally enforce collective agreements and 'unfair dismissal practice'. At the time, these were met with some opposition and failed because it tried to bring about too radical a change in existing behaviour by means of law. Furthermore it did not fully consider the socio-political differences that were present at the time between the United States and Britain.

The lasting significance of the 1971 Act was, firstly, in the unfair dismissal provisions, which were largely influential across organisations in providing formal disciplinary and dismissal procedures and secondly, in the Industrial Relations Code of Practice which accompanied and supported the Act, which survived its repeal, and which was adopted as a model by

many organisations (Kessler, 1993). The Act was repealed in 1974, replaced by the subsequent Trade Union & Labour Relations Act 1974, and today is encapsulated within the provisions of the Employment Rights Act 1996 s.94-107.

The Employment Protection Act 1975 restructured the institutional framework of the industrial relations and employment law system, which provided a statutory basis for the activities of the Advisory, Conciliation and Arbitration Service (Acas), which took responsibility for dispute settlement functions from government, and which established the Central Arbitration Committee (CAC), which replaced the Industrial Court in 1971, to carry out statutory functions (Dickens and Hall, 1995:126). The provision of a standing national arbitration body, namely the Industrial Court, which dated back to the Industrial Courts Act 1919, had been initially recommended by the Whitley Committee (1917). Despite these changes, there was no compulsion to introduce specific procedures for disciplinary matters. Encompassed within the Employment Protection Act 1975, was a requirement for employers to include the written particulars of terms of employment of their employees, including details of any workplace disciplinary procedures. However, as indicated by Antcliff and Saundry, (2009:11) the legislation did not specify the scope, extent or operation of such procedures. Organisations in which employers did not operate written discipline or grievance procedures were not legally obliged to introduce them.

Nevertheless, unfair dismissal law soon began to have an impact on employers' disciplinary practices. By 1998, more than 90 per cent of all workplaces operated formal grievance and disciplinary procedures (Cully *et al.*, 1999). As acknowledged by Antcliff and Saundry (2009), there is some evidence to suggest that the cause for the extensive introduction of formal grievance and disciplinary procedures was prompted by the fear of litigation and organisations' reluctance to risk unfair dismissal claims (Blackburn and Hart 2002; Department of Trade and Industry 2002; Goodman *et al.*, 1998; Hayward *et al.*, 2004). In particular, small firms felt vulnerable to the threat of litigation (Curran and Blackburn 2000; Edwards *et al.*, 2004; Evans *et al.*, 1985).

The introduction of the 1977 ACAS Code of Practice on Disciplinary Practice and Procedures gave detailed guidance for employers and employees on disciplinary handling. The overall principles of the code were to afford guidance on what could be expected of a reasonable

employer during the handling of discipline. While the code was not legally binding it could be taken into account by industrial tribunals. As a result, employers were likely to be found to have acted unfairly if they had not followed the norms of good practice set out in the Code.

From 1974 to 1979, the so called era of the 'social contract', legislation satisfied each of the three roles that were identified by Kahn-Freud (1972) in his classic book *Labour and the Law*. Firstly, the auxiliary function, designed to promote certain behaviour towards certain ends lest the law be required to regulate behaviour. This was seen to be served by institutions such as ACAS and Central Arbitration Committee as well as a variety of measures initiated to include trade union recognition and the extension of collective agreements (Hepple, 1995; 309). Secondly, the regulatory function which began to emerge in the early 1960s was fulfilled to some extent whereby collective bargaining could be built on in areas of unfair dismissal and redundancy with the basic purpose being to restore and extend the legal base for voluntary collective bargaining together with an improved 'floor to rights' for workers and unions. Thirdly, the restrictive function established the 'rules of the game' was reduced by clarifying and extending protection from common law in respect of industrial action which was essentially regarded as collective *laissez-faire* because it supported the operation of voluntary autonomous collective institutions (Webberburn, 1986:6).

Nevertheless the social contract period came to an end as the growth of endemic pay disputes in the public sector, culminating in the 'winter of discontent' of 1978/79, was followed by the election of a Conservative government holding very different ideological views about state regulation than previous post-war governments (Leopold and Harris 2009:77). The core goal according to Howell, (2005:5) of Thatcherite Conservatism was to 'tame the trade unions'.

The major break with the voluntary system was determined by successive Conservative governments, dedicated to a more free market ideology, between 1979 and 1997. As Dickens 2008: 5) notes, employment law reforms at the time 'constituted a decisive shift away from a long-standing public policy view that joint regulation of the employment relationship through collective bargaining was the best method of conducting industrial relations'. De-regulation was seen to be the most appropriate course of action in the

achievement of flexibility and cost effectiveness of the workforce. This resulted in successive Acts which aimed to reduce regulation seen to stifle business growth, whilst trade union immunity was progressively dismantled through the Employment Acts of 1980 and 1982, the Trade Union Act of 1984 and the Employment Act of 1988.

Presenting workers with a right to be accompanied at disciplinary and grievance meetings by a trade union representative, or fellow employee, was encapsulated under s.10 of the Employment Relations Act of 1999 was a significant step to proceedings. Later on the 2004 Dispute Regulations (introduced under the Employment Act 2002) established minimum statutory dismissal and grievance procedures for the first time. This was followed by the Gibbons Review (Gibbons, 2007) which established that current methods of dispute handling procedures were not facilitating the early resolution of disputes because they were not being used in a spirit required *“to deal with problems which could have been resolved informally”*. The inappropriate use of formal processes, it was argued, wasted managers’ time and increased stress to the detriment of employees. Following the recommendations laid down by the Gibbons’ Report, the existing statutory procedures were repealed by the Employment Act 2008 which arguably brought about a transformation in public policy resulting in a shift towards increased flexibility and employer discretion in the management of workplace discipline (Saundry, Jones and Ancliff, 2011:195), but it has been argued that the need for early enactment in providing early dispute resolution prescribed by Gibbons has simply reduced the level of employment protection (Sanders, 2008). Furthermore within the new ACAS code of practice on disciplinary and grievance procedures there is no automatic unfair dismissal if the employer does not follow the new code (CIPD 2010). Noticeably as stressed by Dibben, Klerck and Wood, (2011) this is a key change in the law, and could be regarded as a real attack on workers’ rights.

Between 1977 and the election of the Blair’s New Labour Government and re-election in 2001 there was little change apart from honouring existing protections against unfair dismissal and provisions for qualifying periods. Ironically, despite a focus on collective industrial action and widespread intervention, the issue of workplace discipline was virtually ignored by government out of fear of being portrayed as restoring trade-union power. But the new Labour Government, after its election in 1997, emphasised that any further

regulation of the labour market would take place primarily through individual labour law to be enforced through state agencies, not a revitalisation of collective labour organisation and collective regulation of industrial relations: the decollectivist system of industrial relations has been reinforced, even if alternative mechanisms of labour protection have been introduced (Howell, 2005:15). Nonetheless the Blair Government supported the need for greater direct statutory intervention in relation to discipline and grievance procedures. In some ways, the Government's approach reflected that of the Donovan Report in that it presumed that the most effective response to workplace conflict was to strengthen the formalisation of procedure and process.

This was encapsulated in new Labour's first White Paper '*Fairness at Work*' introduced in 1998 (Department of Trade and Industry, 1998). The paper stated that the intention of the government was to create '*the most regulated labour market of any leading economy in the world*' while at the same time providing a '*minimum infrastructure of decency and fairness*'. What was significant was that specific emphasis was placed on extending '*the rights of the individual...as a matter of choice*' (Saundry *et al.*, 2008:12). Arguably, this approach to managing workplace disputes 'individually' could be seen as a result of declining union power and the demise of collective action (Shackleton, 2002). Furthermore the Employment Relations Act 1999, s10, introduced, in September 2000, the right for workers to be accompanied at disciplinary or grievance meetings which again was driven by a perception that individual conflict was an increasing problem and that the way to respond to this was increased uniformity and consistency by defining that disciplinary meetings include formal linear stages.

Disciplinary outcomes as a result of increased formal processes led to a growing increase in employment tribunal applications. As Kersley *et al.*, (2006:211) highlights, '*the formalising of procedures to manage disputes between employers and managers has been a feature of workplace change in the past twenty five years, with a growth in arrangements to respond to individual and collective conflict*' cited in Dix *et al.*, 2008:18). Cully *et al.*, (1998) highlighted that the rate (per thousand employees) of employment tribunal claims among firms with 25 or more employees increased by 73 per cent between the years of 1984 and 1998. The rate of growth is evident in later WERS survey that was carried out in by Kersley *et al.*, (2006) who reported that there was an average of 2.2 claims per thousand employees

(across all workplaces). This caseload had increased by 2007 to 132,577 cases (Harris 2009:80). Employment tribunal statistics suggest that individuals are more likely to resort to the law in order to resolve work-based disputes and grievance. The Employment Rights (Disputes Resolution) Act 1998 contains provisions that govern the administration of workplace tribunals and cases dealt with by tribunals and ACAS have risen dramatically partly due to this growth in individual claims. Previously claims would, arguably, be more likely to be collective. In 1990 ACAS received a total of 52,071 cases for individual conciliation with 26 per cent of these proceeding to tribunal. The WERS (1998) identifies that among workplaces in transport and communication, an average of 5.8 employees per 1,000 lodged an Industrial Tribunal application, a rate double of that in public administration. The lowest was in education (0.8 employees per 1,000), but hotel and restaurants (1.5) were also below average suggesting that there was no straightforward correlation between dismissals and Industrial Tribunals (Cully *et al.*, 1999). This case load had increased to 132,557 by 2007 although the proportion of cases proceeding to an employment tribunal had remained virtually unchanged at 25 per cent (Harris, 2009:80). In 2010, tribunal claims rose to 236,000 which is a record figure representing a rise of 56 per cent on 2009 (Department for Business, Innovation and Skills, 2011). The consequence of this is that workplaces will have to spend significant amounts of money to defend against a claim. Furthermore a series of concerns were raised by workplaces in that the system has now become too expensive as well as taking up too much valuable time. Also it appears too easy to make unmerited or vexatious claims which can place unnecessary stress on small businesses.

The evidence from recent discussion on the development of pre-claim conciliation (PCC) suggests that users have found it to be quicker, cheaper and less stressful than litigation (Saundry *et al.*, 2014:8). The data on this indicated that in 2011 ACAS handled approximately 16,000 cases and in 2012/13 just over half of the 22,630 cases that were referred to PCC were resolved or settled whilst fewer than one-third progressed to tribunal (Acas, 2013). Evaluation of PCC found that that it had been relatively successful in settling issues that might have otherwise found their way to the employment tribunal. Although it was more likely to be used by smaller, private sector, workplaces without the use of an HR

department, therefore, lacking the capacity to resolve individual employment disputes (Dix, 2014).

As referred to earlier, one of the key points within the Employment Relations Act 1999 was that it allowed accredited union representatives to accompany members at a disciplinary hearing even in non-union recognised workplaces. It was expected that in permitting workers access to workplace representatives, the employees would be afforded greater equability and fairness within grievance and disciplinary processes. Moreover, Antcliff and Saundry, (2009:101) highlights that effective representation was seen as a crucial component in reducing levels of workplace conflict by facilitating positive resolution within individual disputes. Furthermore they acknowledged that there was widespread agreement amongst both employers and union's officials that the Employment Relations Act 1999 made a major influence to achieving a change in both the atmosphere and behaviour with regard to employee relations.

However, the most significant change was the introduction (for the first time) of statutory dismissal and grievance procedures under the (Dispute Resolution) Regulations (DDR) 2004. Employers contemplating dismissal of an employee were duty bound to set out the grounds for considering dismissal in writing to the employee; it was required that they invite the employee to a meeting to discuss the matter (at which employees have a right to be accompanied); and afford the employee with a right to appeal any decision (Antcliff and Saundry 2009:103). If this procedure was not automatically followed then the dismissal is deemed automatically to be unfair (Daniels, 2006). In addition, if both the employer or employee failed to follow the minimum laid down procedure, reimbursement in the event of a finding of unfair dismissal could be increased or reduced by between ten and fifteen per cent. This was intended to ensure legal compliance is adhered to on the part of the employer as well as providing a strong incentive to fully exhaust internal appeal procedures before making a tribunal claim (Saundry, Antcliff and Jones, 2009: 14).

The introduction of the 2002 Act was essentially aimed at a minority of Small Medium Enterprises (SME's) who had no procedures in place and it was generally seen as an extension of regulation. Hepple and Morris (2002:245) saw this Act as a potential diminishment of the process of procedural fairness. They argued that statutory disciplinary

procedures did not reflect the spirit of best practice enshrined in the ACAS Code of Practice, therefore this resulted in an erosion of the existing principles of fairness as employers with more sophisticated approaches 'levelled down' to the three principles contained inside the new procedures. Furthermore, it could be found that as long as the employer followed the statutory procedure, they could not be culpable of unfair dismissal on the grounds that procedural defects would have made 'no difference' to the decision to dismiss (Antcliff and Saundry 2009:104).

However, these measures did not prevent a proliferation of tribunal applications and the sheer number of cases caused consternation among both government and employees. In reviewing the growth of tribunal claims Leopold and Harris (2009:81) highlight that consideration needs to be given to the wider context. One interpretation of the growth is that individuals are becoming more litigious, but the escalating number of tribunal claims may well be better explained by the increase in jurisdictions that can be considered by Employment Tribunals when compared with the situation 20 years ago. However, there is little direct evidence of an individual propensity to litigate and Hepple and Morris (2002) observe that published research evidence suggests several underlying reasons for the rise in tribunal applications associated with the introduction of new statutory rights, for example: the growing rate of female workforce participation and the lack of formal procedures in small firms. Although the statutory provisions brought in by the 2002 Act were widely criticised at the time it was estimated that the improvement in 'management controlled' workplace procedures would reduce costs by cutting employment tribunal claims by up to 31 per cent a year. In practice however this has not been the case (Renton 2008).

Consequently, in response to such criticism from employers, in 2007, the Government commissioned Michael Gibbons to review options for simplifying and improving all aspects of employment dispute resolution (Gibbons 2007:7). Gibbons commented that *"the overall purpose of the recommendations is to bring about effective resolution of disputes as early as possible. The consequences of success would be less disruption to workplaces and to individuals' careers, and reduced burdens on the resources of all concerned – employers, employees and the state."* Gibbons identified that unnecessary formalization was not conducive to dispute resolution and a more flexible, informal approach emphasising the early resolution of conflict was needed. Moreover, as the existing approaches taken by both

employers and employees tended to comprise the seeking of advice from third parties at an earlier stage these encouraged defensive attitudes therefore making it increasingly difficult to avoid legal proceedings. For employers operating in small organisations, it was considered that stress placed on procedure and written communication was 'counter cultural' and only contributed to more intensified conflict (Ancliff and Saundry 2009). Essentially, the Review recommended the repeal of statutory dispute resolution procedures proposing instead the construction of 'clear and unpretentious, non-prescriptive guidelines' for all employers and employees in relation to grievances, discipline and dismissal, and consideration of the promotion of workplace mediation.

Following consultations (Department of Trade and Industry 2007), the government accepted the main recommendations laid out by the Gibbons Review and in the Employment Bill 2007 proposed the repeal of the statutory dispute resolution procedures and related changes to the law regarding on procedural unfairness in dismissal cases. On the 6th April 2009 the Employment Act 2002 (Dispute Resolution) Regulations 2004 was repealed and substituted by the Employment Act 2008. The existing mandatory three-step procedure was eliminated and replaced with a revised, simpler statutory Acas Code of Practice (2009) on Discipline and Grievance Procedures. This was introduced with the intention of providing for flexibility and timely resolution.

Consultation in response to the revised Discipline and Grievance Code of Practice identified that employers tended to prefer the shorter, principles based, Code issued for consultation; nonetheless trade unions voiced disappointment that more of the existing Code was not retained. The sea change brought about by the adjustment in public policy stimulated a shift towards increased flexibility and employer discretion in the managing of workplace discipline raised concerns. Furthermore, arguments from the TUC (2007) highlighted that evidence pointing to a need to strengthen the right to be accompanied was discounted by government at the time. In essence, these reforms meant that the former requirement for a 'standard statutory dismissal and disciplinary procedure' has vanished and had been replaced with guidance, which suggests what 'could' happen rather than instruct what 'must' happen (Dundon and Rollinson, 2011:215).

In addition, legal bodies articulated the most concern regarding the effect on the Code of the provision in the Employment Bill for tribunals to adjust awards by up to 25 per cent for unreasonable failure to follow the Code. (Acas 2008). Essentially what the Bill aimed for was to give employment tribunals the power to vary awards in regard of reasonable failure to comply with the Acas Code of Practice on disciplinary and grievance procedures (Ancliff and Saundry 2009)

However, as a result of this change, tribunals have new powers to adjust awards up or down between 0-25 percent in respect of either party if they have acted unreasonably in complying with the statutory code. £37 million of Government funding has been provided to Acas to boost its helpline service to provide enhanced provision of information to employers and employees and to help resolve problems without recourse to judicial determination. It has also provided employers and employees with a free pre-claim conciliation service to help resolve disputes that could potentially develop into costly tribunal claims. Recent changes in employment regulation and tribunal procedures saw the introduction of employment tribunal fees in 2013 which resulted in a dramatic decline in claims since their introduction. Settlement agreements and extended 'without prejudice' protection for employment and new Employment Tribunal Procedural Rules were further introduced in 2013 (CIPD 2015) whilst, in 2014, a further change saw the introduction of early conciliation by ACAS that built on experience of pre-claim conciliation. As highlighted by Saundry *et al.*, (2014:6) within the policy discourse that outlines dispute resolution, governments' attention has largely focused on reducing the burden placed on businesses by employment regulation. This can be seen as a response to a proliferation of minor claims that employers are compelled to settle in order to minimise costs and time (CBI, 2013) further reinforced by a fear of litigation, which restricts informal approaches to resolving disputes. Changes to the current system appear to be biased towards employers and limit employees to enforcement of their rights (Hepple, 2013; Ewing and Hendy, 2013). It is perhaps too early to assess the full impact of the government's law reforms although, unsurprisingly, there is evidence that single claims have fallen since fees were introduced. According to Churchard (2015), in a recent People Management article this has encouraged fresh calls from MPs for employment tribunal fees to be scrapped as that they argue that the system has undermined employee rights and encouraged rogue employers to flout the law.

Furthermore they argue that fees not only prevent access to justice but support a perception that employee rights and protection should be regarded as an optional extra.

These reforms also need to be considered in light of concerns over the extent to which the UK's regulatory regime provides protection to more vulnerable groups of workers and employees. The TUC's Commission of Vulnerable Employment (CoVE) 2008 found that few workers appear to know their employment rights in any detail. This was further exaggerated because workers appeared to lack clear access to advice on their rights. The Commission damned the UK for being an "advice desert" when it comes to the provision of independent advice on such matters. Pollert and Charlwood (2008) article '*How do Non-unionised, Lower Paid Workers respond to Individual Problems at Work?*' They looked at the problems encountered by vulnerability of non-unionised workers – who had weak labour market bargaining power - with regard to rights and 'fairness' at work and they identified that very few respondents used formal procedures irrespective of whether or not they had identified their availability. Additionally, respondents who had access to a formal grievance procedure were not significantly more likely to achieve a satisfactory conclusion or resolution than those who worked in a workplace without such a procedure.

Improved ways in which workplace disputes are resolved were recently introduced alongside an "Employer's Charter", the methods being intended to give businesses greater confidence to take on workers and support business growth. Initiated in January 2011, the consultative briefing report, *Resolving Workplace Disputes: A Consultation*, produced jointly by the Department for Business Innovation and Skills (BIS) and Tribunal Service outlined new plans to improve the way in which workplace disputes are resolved. This led to a subsequent extension, from the existing one year to two years, of the qualifying period for claims of unfair dismissal and it proposed to introduce a fee regime for tribunal claims (Ewing 2012) which were then introduced in 2013 with two levels of claim. The briefing report placed greater emphasis on encouraging parties to resolve disputes between themselves without any delay by requiring all claims to be lodged with Acas in the first instance to allow pre-claim conciliation to be offered. In addition the introduction of settlement offers aimed to inspire parties to make sensible offers of settlement in an attempt to avoid unnecessary tribunal hearings and include the promotion of other forms of early dispute resolution such as mediation.

The primary intention of the new proposals was to speed up the existing tribunal process by extending the powers of judges sitting in isolation to include unfair dismissal, by introducing the use of legal officers to deal with certain case management functions and by taking witness statements as read. The purpose of these changes was to bring efficiency to the employment tribunal system and allow cases to be listed and heard more rapidly; potentially saving time and money and eliminating vexatious claims by providing Employment Tribunals with a range of more flexible case management powers enabling weaker cases to be dealt with ways that did not involve disproportionate costs for employers. Additional fees would be payable if an employer wanted to counter-claim: when appeals are taken to the Employment Appeal Tribunal and when applications are made to tribunals to set aside default judgements or dismiss claims.

The losing respondents will then be required to reimburse victorious claimants in addition to paying other compensation required by the tribunal although this will be a matter for the tribunal to decide. Exceptions will be made for people who are unable to afford these fees along the lines of the scheme already operated in the civil courts.

This overview establishes that attempts have been implemented both through legislation and best practice to provide a system of fair natural justice in the workplace. But, while this gives an illusion of progress, it may also mask a more uncomfortable reality. As Harris (2009:95) highlights, legislation can lead to a preoccupation with formal procedures as a demonstrable organisational defence against litigation resulting in a perceived depersonalising of the employment relationship at the level of the individual. This can actually work against the delivery of organisational justice and mutual benefits for both employers and employees.

There is no doubt that the management of conflict in the workplace places significant importance on organisations attempting to solve workplace disciplinary issues. Considering this in the context of ever changing workplace relations, which shape conflict and dispute resolution there has been limited attention given to the contemporary policy discourse. Instead, as pointed out by Saundry *et al.*, (2014) the focus of attention has been in reducing what the current government sees as the 'burden' placed on businesses by employment

regulation. Furthermore the government’s commissioning of the Beecroft Report (2012) underlines its commitment to this approach.

Despite the increased emphasis on informality and government attempts to increase managerial discretion, the evidence points towards a consolidation of formality in disciplinary handling. Between 2004 and 2011, the proportion of workplaces with written disciplinary procedures increased from 84 to 89 per cent. By 2004 the vast majority of large workplaces had discipline procedures however, between 2004 and 2011, there was growth in procedures and the degree of formality increased in smaller non-unionised workplaces and organisations. This suggests that despite the government’s attempt to relax the regulatory regime the growth of formalisation of procedures has continued.

The trajectory demonstrates that there has been a progressive spread of written procedures for handling disciplinary issues and employee grievances between the years of 2004 and 2011. Wood, Saundry and Latreille, (2014) provided sound analysis of the 2011 WERS findings specifically in relation to discipline procedures. They found that the number of workplaces using written disciplinary procedures had increased in the second period of the 2000’s from 84 up to 89 per cent. They also identified that there was rigid consistency applied in written disciplinary procedures, with more than four out of every five workplaces adhering to the three-step approach constituted in the statutory regulations that are now the core principles in the Code of Practice on Disciplinary and Grievance Procedures (Table 1)

Table 1. Adherences to key principles of disciplinary and grievance procedures 2011

	Discipline	Individual grievances
	%	%
All three, all of the time	81	46
All three, but not all of the time	11	36
One or two, all or some of the time	5	16
None of the principles	2	2

Source: WERS 2011 MEQ; Results weighted by establishment; N = 2,660 (2011). Totals do not sum to 100% due to rounding. Cited in Wood et al., (2014).

When adhering to the stages of discipline the evidence from the WERS 2011 identifies the different levels of formality across each stage. The findings show that 81 per cent (Table 1.)

of organisations approach the handling of discipline in a highly prescribed manner and that formal meetings are common when applied in the context of discipline. This evidence suggests that there has been a significant tightening up of procedural disciplinary handling with workplaces electing to apply all three of the principles recommend by the Acas code. Interestingly the handling of workplace grievance adopted a more flexible approach.

Table 2 Adherence to key principles of disciplinary and grievance procedures, 2004-2011

	Discipline		Individual grievances	
	2004	2011	2004	2011
	%	%	%	%
All three, all of the time	74	83*	42	45
All three, but not all of the time	14	10	29	38*
One or two, all or some of the time	12	5*	27	14*
None of the principles	0	2*	2	3

Source: WERS 2004/2011 Panel; Results weighted by establishment; N = 966; * - significant at 5% level. Cited in Wood *et al.*, (2014)

Evidence also suggests the gap between traditional workplaces, operating rigid disciplinary procedures, and those applying less prescriptive approaches, was reducing. One possible reason for this might be attributed to compliance with external legal factors as opposed to physical and workplace level factors. In smaller workplaces the evidence suggests that procedural adherence increased between 2004 and 2011 in a higher proportion of smaller workplaces (22 per cent workplaces with 49 or less) compared to 15 per cent of those with between 50 and 259 employees, 5 per cent of those between 250 and 999 employees and 10 per cent of those with 1000 employees or more (Wood *et al.*, 2014:15).

Table 3 provides details of the responses in relation to each of the three principles for disciplinary and grievance procedures respectively. Again according to Wood, Saundry and Latreille, (2014) there was a difference in the level of formality between disciplinary and grievance procedures. In 85 per cent of workplaces, the employer was always required to provide written details of any disciplinary allegation, while just 50 per cent of the workplaces required the mandatory submission of written grievances by employees. Formal meetings were also more commonly required in respect of disciplinary matters than employee grievances. However, appeals were provided for in 96 per cent of workplaces in response to both disciplinary and grievance decisions.

Table 3. Key principles of disciplinary and grievance procedures

	Discipline			Individual grievances		
	<i>Always</i>	<i>Some of the time</i>	<i>Never</i>	<i>Always</i>	<i>Some of the time</i>	<i>Never</i>
	%	%	%	%	%	%
Issue required to be set out in writing	85	10	5	50	33	17
Formal meeting	87	9	4	69	25	7
Employees have a right to appeal	96	0	4	96	0	5

Source: WERS 2011 MEQ; Results weighted by establishment; N = 2,660 (2011). Totals do not sum to 100% due to rounding. Cited in Wood et al., (2014)

The findings, by Saundry and Wibberley, (2014) however suggest that employers are often prepared to accept and address grievances in a less formal manner.

The evidence suggests that written procedures for dealing with individual employment disputes have become more commonplace within the workplace. The principles set out by the Acas Code of Practice appear to be applied consistently, with the vast majority of organisations adopting the three stages set out in the statutory procedures when handling disciplinary matters.

Overall, a key tension in the policy debate outlined above has been between formal procedure and informal process, with the latter increasingly equated with flexibility and business efficiency. In reviewing the initial growth of formality within organisational disciplinary practice, consideration must be given to specific drivers. Firstly, it could be argued that formality is linked to the impact of, and subsequent response to, the requirements of statutory regulation. Secondly, it could further be argued that the greater formality of disciplinary practice is caused by a raft of broader issues in the sense of the employment relationship being influenced by forms of control and consent.

One of the causes of greater formality within disciplinary practice is as a response to changing statutory requirement at national level which later gave way to a gradual shift toward a corrective approach. As Henry (1983:102) has argued, legal changes were part of a broader policy of intervention by the state which reflected a belief that formalised and standardised procedures would reduce the number of shop floor strikes, thereby contributing to a more general process of industrial relations reform (Edwards 2000:322). As highlighted earlier in the work of Anderman (1972), prior to the publication of the Donovan Report in 1968 workers enjoyed limited intrusion into their employment rights and only a

minority of organisations had formal disciplinary procedures in place. Broadly speaking, we can see that, from the early 1970s onwards, workplace discipline has been subject to increased statutory regulation with continuing growth of formal disciplinary procedures. The shift towards organisations implementing formal procedures was noticeably sudden. From 1971 employees were afforded some protection against arbitrary dismissal through unfair dismissal legislation and as a consequence formalised disciplinary procedures were disseminated widely and quickly throughout the remainder of the decade (Anderman, 1986). The threat of unfair dismissal prompted a growth in the formalisation of disciplinary procedures throughout a multiplicity of organisations, including small firms (Evans, Goodman and Hargreaves 1985; Goodman *et al.*, 1998) resulting in many of them codifying existing practices within written procedures. The 1998 Workplace Employee Relations Survey (WERS) found that 92 per cent of workplaces employing 25 or more workers had a formal disciplinary procedure, and that all workplaces also allowed employees to appeal against decisions (Cully *et al.*, 1992). This proportion rose from 81 per cent in 1980 (Millward *et al.*, 1992). Small firms falling below the survey threshold remained informal, for example, only one third of those with fewer than 20 employees in the study carried out by Evans *et al.*, (1985:30) had a written disciplinary procedure.

Edwards (2000) observed that legal changes in the late 1990s may have given further encouragement to formalisation. The *Fairness at Work* White Paper of May 1998 proposed changes that introduced a reduction from two years to one in the qualifying period before an employee had the right to take a case to an employment tribunal lowering the existing ceiling of tribunal awards for unfair dismissal. In addition, as discussed in the preceding section, this provided the right to be accompanied at a disciplinary hearing by a trade union official which is enshrined in the Employment Relations Act 1999. Analysis of the WERS 2011 data identified that just four in ten respondents said that 'employees were allowed' to be accompanied by a full-time union official. (Wanrooy *et al.*, 2011).

It would be wrong however to attribute this growth of formalisation of discipline handling simply to just as a response to changing regulation. As highlighted earlier, the introduction of formal rules became necessary when organisations became too large and bureaucratic (Edwards, 2005). It could therefore be argued that disciplinary procedures are, to all intents and purposes, management procedures (Clegg 1979; Dickens *et al.*, 1985; Earnshaw *et al.*,

1998; Evans, Goodman and Hargreaves 1985) and that they give legitimacy to disciplinary and dismissal decisions. In short, their existence buttresses managerial authority rather than eroding it (Williams and Adam-Smith, 2006). From the 1970s many workplaces formalised their arrangements for managing employment relations in general as a means of accommodating workplace militancy and of taking control over their own employment relations. In the case of discipline, the trend towards formalisation helped to bolster managerial authority, not least because by following formal procedures managers found that workers accepted their decisions more readily, since they were accorded added legitimacy (ibid).

Furthermore the formalisation of procedures for handling individualised conflict in the workplace represents one of the hallmarks of contemporary employment relations arrangements. The existence of formal procedures in respect of discipline according to Edwards (1994:572) 'still leaves a great deal of discretion to management in deciding what is acceptable conduct and how it is to be enforced'. Ironically, there is evidence to suggest that with increased formalisation of processes there is a greater likelihood that conflict might be generated (Turner *et al.*, 1967 and Bateson, 1984).

Turner *et al.*, (1967:112) highlighted at the time that:

The consequent 'standardisation' and 'formalisation' of procedures in management generally or in labour relations, implies also a bureaucratization and increased rigidity that goes with a higher, rather than a lower, strike incident.

According to Reed (1989:112) this seems to suggest that the greater the extent which management relies on formal procedures for dealing with conflict, the more likely it is to lose the flexibility and adaptability associated with customary practices. As such Reed proposes that formal regulation and informal containment may need to be combined in such a way as to avoid an excessive reliance on formal methods that can produce an intensification of organised conflict. In other words he suggests that there can be a trade-off between formalisation and informalisation, the terms of which may alter as the power relationship between management and unions' changes.

Interestingly, Batstone's (1984) research on the post-Donovan situation in workplace industrial relations also reveals the conflict generating consequences of formalisation:

Agreements could in fact reduce rather than increase managerial prerogative...the explicit statement of rules increased their visibility: it was now easier for groups to challenge management actions which were not consistent with the rules...rules are general by their very nature but have to be applied to specific situations. This provides considerable scope for negotiation over which rules should be applied ...and their precise interpretation. This point is particularly important where the new 'formal' rules are introduced into a situation previously governed by a complex of understandings, custom and practice and ad hoc rules...new 'formal' rules do not exist in a vacuum: they have to be applied to the ongoing social situations which are characterised to varying degrees by understandings about 'normal ways of doing things'. To this extent that the new rules challenge these conventions, and then far from leading to a new 'normative order' they may foster the very situation they were designed to avoid – some form of anomie. (Batstone, 1984)

Edwards, (2000) nevertheless argues that radical perspectives that see workplace discipline as the embodiment of management domination fail to take into account the heterogeneity of management and the way in which workplace discipline is shaped by a continuous negotiation and renegotiation between, amongst others: HRM, unions and other agencies. Instead a focus on the way in which the relations between key actors are played out within both formal (technical) procedures and informal (relational) processes is needed as well as on how these are shaped by key contextual factors. (Saundry, Jones and Ancliff, 2011).

Throughout time it could be argued that changing policy developments in relation to workplace discipline are heavily influenced by intervening law and policy reform. This in some way helps to form the dominant managerial conceptualisation of workplace discipline as a linear technical process through which behaviour can be 'corrected' by the application of 'fair' and 'just' disciplinary procedures (Edwards and Whitston, 1989). As a result it discounts the possibility that different approaches may interrelate or be used in tandem (Fenley, 1998; Rollinson, 1992; Rollinson *et al.*, 1997), therefore it focuses almost entirely on formal procedure whilst neglecting the informality of processes that influence disciplinary

outcomes (Edwards, 2000). In doing so it ignores both the centrality of power relations and management control (Mellish and Collis-Squires, 1976; Thompson and Murray, 1976).

The following chapter will go on to explore the role that the key actors play when effecting the disciplinary process. In particular it will assess the interrelationship that is developed in order to shape potential issues of power, control and consent.

Chapter four: The role of the key actors within the disciplinary process

Perhaps the most complex and least examined area within the arena of workplace discipline is our understanding of the micro dynamics that are played out within the disciplinary process by key organisational actors. Fundamentally workplace disciplinary disputes are driven by: the nature of work processes, the management style that is applied to the dispute, and the organisational context within which they are acted out. Therefore a full appreciation of the role that human resource professionals, operational managers and trade union or employee representatives play within the management of conflict is crucial to our understanding of how their relationship forms and shapes disciplinary outcomes.

The role of HRM professionals

Traditionally, the 'personnel' function took a relatively interventionist position in dealing with individual employment disputes (Storey, 1992) operating in the role of contract manager (Tyson and Fell 1986) in workplace negotiations designed to resolve day-to-day problems. Arguably since the 1990s (Hutchinson, 2008) there is acknowledgement of the trend that HR is being 'returned to the line' but with support to try to improve the effectiveness of operational managers when handling people management practice. Furthermore the increasing presence of employment rights can be perceived as a critical factor in the selection of human resourcing strategies which can then be seen to lead to radical shifts in employment practice (Harris 2009). For us to recognise the role that human resource management (HRM) plays within the workplace disciplinary process we need to consider how the function operates within organisations from a strategic perspective.

The shift from personnel to 'HRM' became increasingly popular from the early 1980s however its beginnings can be found in the human relations approach of the 1950s and 1960s (Dibben, Klerck and Wood, 2011). It could be argued that HRM covers a broad range of activities associated with managing work and people, however it has never been easy to define and is somewhat ambiguous (Boxall and Purcell 2008; Blyton and Turnbull 1992; Sisson 1993). In some interpretations it is presented as a metaphor with the message it carries being more important than the actual practices used (Keenoy and Anthony 1992). In others it could be claimed that 'HRM' operates within a rubric of industrial and employee relations and is ultimately focussed on the alignment and implementation of policy and

practice driven by the needs of the business. As HRM is seen as a relatively new function of management it has provided an attractive target for criticism and in research carried is generally berated (Thompson, 2011:355). Scholars such as Delbridge (2010) disparage studies on HR for their 'conservatism' and 'irrelevance'. He attributes much of this weakness to the absence of interaction with critical HR, and proposes engagement with 'proximate social science disciplines and, in particular, critical management studies' (ibid).

Salamon (1998:39) contends that the importance of HRM to employee relations "*lies in its association with a strategic, integrated and highly distinctive managerial approach to the management of people*". It could be argued that Human Resource Management is by definition closely tied to more general "managerial" interests, and therefore brings a strong unitary approach to the management of employees within what is otherwise a collective and rejecting a pluralist understanding of the employment relationship in so doing.

In the sphere of contemporary HRM literature where does this currently place the function within the wider context? According to Francis and Keegan (2006: 231) 'for the past decade research on HRM has focused on the take-up and impact of commitment-seeking "high performance" with HR practices being boasted to lead to improved employee and organisational performance'. There is however some discontent with the human resource profession and it now faces a crisis of low trust and a loss of legitimacy in the eyes of its major stakeholders. The two-decade effort to develop a new "strategic human resource management" (HR) role in organisations has failed to realise its promised potential of greater status, influence, and achievement (Kochan 2006). According to Thompson (2011:361) in his thought provoking article '*The trouble with HRM*', much of the writing tends to fold HRM into a variety of new managerial discourses and practices. These include HRM as a power-knowledge discourse (Townley, 1993: 538) involves a set of HRM disciplinary practices that were aimed at ensuring employees behaviour and performance were predictable and calculable.

In linking HRM to workplace discipline Storey (1992), specifies that the traditional emphasis has been on the regulation of the employment relationship via constant intervention in disputes between employers and managers. Generally, HRM texts on the subject of discipline tend to treat it as a technical activity in the sense that it provides advice on how to

establish appropriate disciplinary procedures and avoid successful claims for unfair dismissal within the context of relevant legislation (Williams and Adam-Smith 2006). Bach (2005:33) identifies the expertise developed in response to the growth of legal regulation as one rationale for the development of the occupation as a distinct specialism and, consequently, for rendering its continued growth a dominant feature of HR practitioners' working lives (Legge, 2005).

In practice, the HR function experiences a double bind in its responsibilities for ensuring legal compliance (Watson, 1986; Legge 2005) which has been exacerbated by the on-going trend to devolve HR responsibilities to line managers (Kersley *et al.*, 2006). This specialist expertise within this area has led to substantial procedural reform in HR practices with most HR professionals now considered legal experts within their respective workplaces. Undoubtedly the notion of HRM as 'legal' expert (Legge, 1988) does keep HR policies and practices high on the organisational agenda as Gratton *et al.*, (1999) found in their longitudinal study of HR strategies. As Harris and Bott (1996) pointed out, knowledge of legislation potentially offers the personnel function a source of influence and power-base more self-evident and transparent than anything that had gone before. The relationship between levels of regulation and the HR function's organisational role goes to the heart of some of the tensions and ambiguity long identified as inherent in professional personnel management.

This is further reinforced by Leopold and Harris (2009) who indicate that despite initiatives to 'professionalise' the function it was still difficult to identify a specialism that distinguished the HRM occupation from other managerial groups until the significant expansion of labour law in the mid-1970s generated a requirement - that other managers appeared not to recognise - for professionals with expertise in precisely that field.

Arguably, the HR function can be seen as a source of strategic policies which are then unilaterally applied across the organisation. However, a range of commentators have picked up on the contested role of front-line managers and their application of people management policies in practice (Purcell and Hutchinson 2007) which is discussed in greater detail below. Nonetheless for HRM, procedures are seen as a crucial tool in the regulation of managerial behaviour and in ensuring consistency of approach within their organisations.

These developments resulted in HR professionals being widely considered as the 'neutral' third party with responsibility for ensuring that employees are fairly treated when subject to procedures of a disciplinary nature (Harris *et al.*, 2002) leaving them in position to broker informal and formal resolutions of disciplinary disputes (Jones and Saundry, 2011).

Taking account of the fact that the handling of discipline broadly remains a jointly-regulated activity, (Whittaker and Marchington, 2003; Hales, 2005; Kersley *et al.*, 2006). It has been widely accepted that HR professionals have wanted to remove themselves from the day-to-day management of disciplinary problems and surrender the responsibility for disciplinary decision making to operational managers (Hall and Torrington, 1998). This might indicate that the HR function is attempting to develop a more 'advisory' (Storey, 1992), or 'business' partner role (Ulrich, 1997) in order to provide operational managers with arms-length advice expertise and advice over procedural and legal issues. Moreover, it might also reflect the HR professions yearning to adopt a more strategic focus (Ulrich, 1997; Caldwell, 2003; Prichard, 2010) although much misperception are rife over the actual differentiation between what is understood by HRM and SHRM (Beardwell and Holden, 2010). As Harris (2009:87) indicates the political, economic and industrial relations climate of the 1980s lent further support to organisational initiatives to return responsibility for the conduct of the employment relationship back to line management. Importantly, the reallocation of HR responsibilities to operational managers was further assisted by the erosion of legal protection and a reduction in workplace bargaining in the UK. As a result the onus now appears to be placed on operational management to take responsibility for the, day-to-day responsibility for discipline and grievance, (Storey, 1992; Hales, 2005; Hall and Torrington, 1998). Questionably this leaves HR practitioners to undertake the role of procedural and legal experts to ensure consistency and compliance (Cooke, 2006; Hunter and Renwick, 2009). Debatably, devolution of accountability in relation to the management of conflict is seen as a wider progressive shift of the HR function (Ulrich, 1997; Prichard, 2010) and this is reflected in the increasing use of remote and outsourced HR services (Saundry and Wibberley, 2012) although in practice this is restricted to larger organisations (Reilly *et al.*, 2007). This shift can now be seen to the extent that HR professionals concentrate on the provision of a 'business partner' role (Ulrich, 1997) to provide specialist expertise (Cunningham and Hyman, 1995; Hunter and Renwick, 2009).

In defining HR's role in relation to discipline handling further, Jones and Saundry, (2011) identify its constituent functions as : (a) the design of policy and procedure, (b) ensuring the consistent application of disciplinary rules (c) providing the necessary legal guidance in order to ensure that managerial decisions do not lead to costly and disruptive litigation and (d) offering a broader view of the organisational implications of disciplinary decisions (Goodman *et al.*, 1998, Cooke, 2006).

However, it has been argued that the devolvement of responsibility for disciplinary handling to operational managers could position HR professionals, according to Caldwell, (2003) to be '*stranded without real influence, administrative resources or power as they have simply become internal consultants*' which perhaps suggests that HR might be reluctant to lose control of the disciplinary handling as this might be a threat to their position. This claim is also somewhat inconsistent in that a lack of appetite, knowledge and expertise being demonstrated by operational managers within the disciplinary handling, coupled with the progressive juridification of workplace discipline it could be argued might also reinforce HR's position within the management of this conflict.

It is widely acknowledged that operational managers fear the legal consequences of making the wrong decision (Harris *et al.*, 2002) and are therefore more inclined to rely on HR intervention in disciplinary matters (Guest and King, 2004). Overall it might be suggested that the extent of devolvement down the line has been somewhat exaggerated. Moreover this has clear implications for attempts, discussed above, to promote more formal approaches to conflict and dispute resolution. In contrast to the rhetoric of informality it could be argued that the emerging role of HR and their increased hold over procedure only serves to increase the formality of disciplinary processes.

The role in workplace discipline played by HR practitioners also raises questions over their ethical orientation. The notion of 'best practice' sits at the heart of HRM rhetoric (Gilmore and Williams, 2007), and approaches to the handling of workplace discipline are based fundamentally on a philosophy of uniformity, procedural adherence, and legal compliance. The ethical interests of HRM practice however can be considered as problematic in that any definition of ethics could encompass much wider and more general notions regarding what

is considered 'good' or 'moral'. Academics such as Legge (1998) have attempted to question the ethical standpoint of HRM and if it is possible for HRM to be ethical?

However, the difficulties faced in reality are all too apparent, Foot and Robinson (1999) found that HR managers are, in changing degrees and contingent on the circumstance, *'able to exert some influence on ethical practice in organisations, but at some risk'* (Macklin, 2006). HR practitioners are similar to any other actor operating in the context of work, they become part of a complex and emergent set of structural, political and symbolic aspects of organisational life (Lowry cited in Leopold and Harris, 2009). HR managers are expected to conform to, and formulate the rules and procedures and they must debate and negotiate acceptance of their activities with other organisational members in a way which is both politically and culturally acceptable (ibid). This suggests that the ethical stance adopted by HR is more likely to be governed by personally held moral beliefs. For example, as explained by (MacIntyre, 1985) *'we all like to think of ourselves as autonomous moral agents, yet in organisations we become engaged by bureaucratic models of practice, which subject us in varying degrees to manipulative relationships with others'*. This relationship can involve both active and passive forms. As Jackall, (1988) states in his seminal book "Moral Mazes" bureaucratic contexts typically facilitate managers to *'constantly adapt to the social environments of their organisations in order to succeed. In such contexts, they have no use for abstract ethical principles, but conform to the requirements of bureaucratic functionality'*. As a result, workplace bureaucracy causes people to 'bracket' the moralities they might hold outside the workplace.

'Bracketing' is essentially a form of manipulation and this concept provides us with a means to explore the level of ethical involvement exhibited by HR professionals which can be applied specifically in their role within disciplinary handling. Using empirical research, Fisher (2000) explored the subtleties behind the process of bracketing and the range of options available to HR in terms of adopted ethical stance. Fisher recognised three main forms of ethical *inactivity* among HR managers which can be applied in the context of disciplinary outcomes. The most extreme form is 'quietism', this refers to imposed decisions (through the pressure of other organisational strategic decision-makers) whereby the HR manager is likely to be punished in some way unless organisational requirements are met, for example the wrongful removal of an employee through the disciplinary process. Here according to

Fisher the HR manager is *'forced to internalise organisational values and activity, even if they are unethical'*. A second form of inactivity identified by Fisher is 'neutrality' where the HR manager chooses to be mute. This moral muteness can range from a limited opportunity to 'whistle blow' on immoral acts and can be affected by the speed and political nature of organisational life as well as a sense of their positional power. The final form of inactivity is the situation where HR managers might tolerate unethical organisational activity, such as poorly executed procedures, whilst showing contempt in the form of ironic comments or facetious humour. Within the disciplinary process these forms might exist for HR when the issue of power comes into play, for example, senior management want to use the disciplinary process to 'manage' an employee out. Although ethically this is seen by HR as being unacceptable they remain quiet in order to comply with the decision. Additionally they may lack positional power to challenge decisions or the supporting business case. Although it is considered that the handling of workplace discipline is largely a jointly regulated activity (Whittaker and Marchington, 2003; Hales, 2005; Kersley *et al.*, 2006), with HR being widely acknowledged as a 'neutral' third party given their responsibility for ensuring that employees are fairly treated (Harris *et al.*, 2002), the ethical stance can change in relation to disciplinary matters being very much dependant on their own moral compass. Fairness and consistency in the use of disciplinary procedures and processes are considered vital in maintaining an effective workplace that is built on mutual respect. Inconsistencies in the use of discipline can reduce employee morale leading to a loss of production (Franklin and Pagan 2006), though Edwards (1994: 568) provides a caveat in that the existence of written disciplinary rules does not necessarily alter actual practice in a significant manner. Despite the façade of fairness and equality, the applications of disciplinary procedures are a prime example of management control and the fundamental inequality of the employment relationship.

It would be naïve to neglect the impact that HR professionals have had on the practice of workplace discipline. Initially it was assumed that the elaboration of new management techniques aimed at generating increases in worker efforts by involving them, motivating them, and eliciting commitment would make conventional modes of discipline increasingly redundant (Williams and Adam-Smith, 2006:248). According to Edwards (2000) organisations are still heavily dependent on traditional practices and therefore still

formulate application of procedures as well as - in practice - create the expectations that govern behaviour which in regard to discipline is underpinned by requirements of consistency, procedural adherence and legal compliance.

So where does this place the HR function in the contemporary workplace? The HR mantra: 'people are our most important asset' does not resonate like it did in previous decades. Interestingly Kochan (2006) refers to HR as going from steward of the social contract to business partner and handmaiden to the corporate elite but HRM is still very much seen as a chimera by many outside the function.

Trade unions and representation

Heery, (2011:342) points out that the use of systems of representation is considered central to supporting the employment relationship in developed economies. Trade unions and organised workers are allowed a voice in the workplace through hierarchies of paid and volunteer representatives. The latter monitored employer behaviour, raised grievances, negotiated collective agreements regulating the employment relationship and engaged in joint consultation and problem-solving with their members' employers. He concludes however that with the decline of trade unions within the UK many UK workplaces are despotic places where the interests of employers and their managers hold sway. Nonetheless the act of protecting employees against disciplinary action has long been a central function of trade unions (Saundry, Jones and Antcliff, 2011).

The presence of strong trade union representation and the potential threat of collective industrial action was traditionally seen as essential in restricting managerial authority and safeguarding a process of fairness at work that might achieve natural justice in respect of the management of disciplinary matters (Edwards, 2000; Purcell, 1981). Traditionally, the negotiation of conventional issues of disciplinary sanctions was negotiated informally by shop stewards who, by definition were worker representatives or 'lay' trade union officials who represented to management the interests of fellow employees who elected them as representatives on workplace matters.

What is concerning is that contemporary approaches relating to the management of employee relations tend to marginalise union involvement in employment matters.

However studies by (Edwards, 1995; Saundry and Antcliff, 2006) clearly highlight the positive part played by trade unions in helping to resolve workplace disputes.

The Conservative government reforms of industrial relations since 1979 have helped to weaken trade unionism through the execution of state power that embraced neoliberalism and radical industrial relations reform and leading to the process of “modernising” the Labour Party which eventually led it to embrace “Third Way” policies (Howell, 2005:4).

Between 1979 and 1997 trade union power was progressively weakened by successive Conservative administrations whose adoption of “neoliberal” economic theories, combined with a willingness to utilise state power, resulted in the implementation of, often radical, industrial relations reforms. In response, and following successive electoral defeats under Foot and Kinnock, the Labour Party was persuaded that a process of modernisation - somewhat in the vein of Bill Clinton’s “Third Way” - was required.

Supported by Anthony Giddens this was the Labour Party’s attempt to build itself a new ideological foundation based on the idea that the old class-based divisions of ‘left’ and ‘right’ were now redundant. This resulted in a manifesto committed to change that eventually gave rise to a range of domestic legislation covering individual and collective employment rights that also responded to the impact of EU labour law and social policy. New procedures to address both the recognition and de-recognition of trade unions as well as introducing a range of equal employment measures and individual rights for employees.

Noticeably, many of the new provisions were eventually rooted in the Employment Act 1999 but the Employment Act 2002 also made provision for the introduction of statutory disciplinary and grievance procedures under the Dispute Resolution Regulations (2004).

This established minimum statutory discipline and grievance procedures for employers and employees, although it was argued that procedural changes brought by the Act downgraded rather than enhanced procedural fairness (Hepple and Morris (2002)). Widespread condemnation saw the government commission the Gibbons Review in 2007 in an attempt to simplify and improve all aspects of employment dispute resolution. The proposed changes were encapsulated in the Employment Bill 2007-2008 which proposed the repeal of

the statutory dispute resolution procedures and related changes to the law regarding procedural unfairness in dismissal cases. The Bill gave employment tribunals the power to vary awards for unreasonable failure to follow the Acas Code of Practice on Disciplinary and Grievance Procedures.

Since the evidence demonstrates that trade unions play a significant role in directly shaping peoples working lives it is surprising that their influence has diminished.

The table below, 4. showing analysis of the WERS 2011 data, demonstrates that there has been a small decline in union membership between the 2004 and 2011 surveys. Although the change in percentage of employees belonging to a union is fairly insignificant, there is however a more noticeable drop in unions recognised in different workplaces except for the public sector where union presence remains fairly constant. Union membership remains strong in larger public sector establishments. The drop in union recognition in the private sector has mainly been in smaller organisations (Aylott 2014: 171).

Table 4. Measures of union presence (WERS, 2011)

	2004	2011
Percentage of employees belonging to a Trade Union	32%	30%
Workplace with Union presence – private manufacturing	23%	14%
Workplace with Union presence – private services	20%	14%
Workplace with any union presence – public sector	90 %	90%

The value that unions bring to conflict resolution can be seen in the research by Saundry *et al.*, (2011: 203) who found that union representatives were able to play a more beneficial role to those of non-union representatives throughout disciplinary proceedings due to their relative independence from management as well as their competence and expertise in dispute resolution. Managers in union-recognised workplaces generally felt that union representatives helped to ensure that disciplinary hearings operated in a more procedurally fair and efficient manner than might otherwise have been the case. It could be further argued that not only does the presence of a trade union provide workers with protection from arbitrary, unjustified, management allegations (Edwards, 1995; Knight and Latreille,

2000) but it also helps to resolve disputes informally before the initiation of formal disciplinary procedures. The role played by trade unions in conflict resolution can account for lower levels of disciplinary sanctions and employee dismissals (Millward *et al.*, 1992; Knights and Latreille, 2000; Antcliff and Saundry, 2009) This suggests that union representatives can play '*a more nuanced role in brokering informal resolutions, managing employees' expectations and instilling self-discipline amongst their members*' (Batstone *et al.*, cited in Saundry and Wibberley, 2012:8). Such outcomes were most likely to occur in workplaces where high levels of trust had been forged between union representatives and managers.

According to Saundry *et al.*, (2011:197) equating trade union representation in disciplinary issues with direct resistance to managerial control is overly simplistic, they argue that unions both accept the need for discipline as well as promote self-discipline amongst their members. The impact and nature of trade union representation is much more likely to depend upon the nature and quality of a relationship with management that has developed over time. For example, the presence of high-trust relations may go some way to assisting the early and informal resolution of workplace disputes (Oxenbridge and Brown, 2004). Additionally, Edwards (2000) has also claimed that positive relations developed over time between employers and trade unions can reinforce ideas of discipline and the development of self-discipline. Here literature on self-discipline implies that managing through commitment rather than control is a novel idea, and in some accounts it suggests that control has been replaced by commitment. Theoretically this has long been understood Friedman, (1977) identified direct control, which could be equated to early punitive approaches (managed through tight discipline), and responsible autonomy as fostering engagement and self-discipline (allowing workers discretion). In contrast, where mutually respectful employer and trade union relations are not apparent, employee representatives are more likely to assume antagonistic approaches in defending members (Saundry, Jones and Antcliff 2011:209).

A recent survey conducted by Ruhemann for Acas exposed that union officials were more likely to take a conciliatory rather than an antagonistic approach when negotiating disciplinary matters with employers. Over 50 per cent of officials agreed strongly that they

would seek a compromise solution, whereas 15 per cent agreed strongly that they would opt for a positive outcome on behalf of their members at any cost (Acas, 2010:15)

The contemporary policy debate over the UK's system of dispute resolution (Gibbons 2007; BIS, 2011) provides limited discourse on the influence of employee representation, which is somewhat surprising given the central role traditionally played by employee and trade union representatives in workplace dispute resolution (Saundry and Wibberley, 2014). Furthermore there appears to be ongoing evidence to suggest that where union recognition and union density is high there is a tendency for disciplinary sanctions and dismissals to be much lower (Millward *et al.*, 1992; Knight and Latreille, 2000; Ancliff and Saundry, 2009). Evidence also suggests that trade union or employee representation presence makes disciplinary action less likely. Firstly operational managers feel less confident when dealing with union representatives who they perceive as having superior knowledge of policy and employment law (*ibid*). Edwards (1995) and Moore *et al.*, (2008) argue that the lower occurrence of disciplinary action in unionised workplaces may reflect their ability to confine managerial privilege and 'punitive modes of discipline'. Moreover, there is substantial evidence to indicate that positive employer-union relations help broker informal resolutions thereby reducing or even avoiding the need for any formal disciplinary sanctions (Oxenbridge and Brown, 2004; Saundry *et al.*, 2008;2011).

As noted earlier, the importance of representation was recognised in the introduction of the statutory right for all employees to be accompanied by either a work associate or trade union representative at the disciplinary hearing, under the Employment Relations Act, 1999. Analysis of the WERS 2004 by Saundry and Antcliff, (2006) identified that 27% of managers had permitted a full-time officer to accompany an employee in a grievance hearing, and 31.5% had allowed the presence of a union representative. In disciplinary hearings, the proportions were lower, at 19.9% for full-time union officers and 30.4% for union representatives. In providing a broader picture of this, table 5. below provides analysis of WERS (2011) in relation to accompaniment at discipline and grievance meetings and the type of companion allowed.

Table 5. – Type of companion allowed at grievance and disciplinary hearings

Type of companion allowed	Disciplinary meeting	Grievance meeting
	%	%
friend or family member	20	23
trade union representative/shop steward	41	42
full-time union official	20	19
other employee representative	26	29
a work colleague	63	66
supervisor/line manager/foreman	21	25
solicitor or other legal representative	9	11
someone else	4	4
anyone they choose	34	31
no accompaniment allowed	0	1
Total	236	251

Source: WERS 2011 MEQ; Results weighted by establishment; N=2595

It is important to note that a right to be accompanied at a disciplinary applies to all workers regardless of union membership or union recognition. Overall within WERS (2011) the data reveals that all workplaces allowed some kind of accompaniment at disciplinary meetings. Only one per cent of workplaces did not afford companion representation at formal meetings to discuss individual matters. What was evident was the exact nature of the accompaniment and how this appeared to vary.

Around one in three workplaces allowed anyone chosen by the employee and around one in ten were prepared to allow legal representatives to accompany employees. Furthermore, approximately one in five workplaces allowed accompaniment from friends or families. According to statute, all workplaces should allow accompaniment by a work colleague, however, only two-thirds of respondents did so. Similarly, just four in ten respondents said that employees were allowed to be accompanied by a trade union representative and about one-fifth reported that accompaniment by a full time union official was permitted.

Potentially, one could argue the shifting political landscape shapes the nature of union involvement within the context of workplace disciplinary handling. The constant attrition of trade union organisations over the last three decades may have significant consequences for the pattern of individual employment disputes and the way in which organisations look to manage and address such issues (Saundry and Wibberley 2012). Noticeably Pollert and Charlwood (2009) argue that workers who are not supported find it particularly more

difficult to get resolution to employment problems through workplace procedures. Recent evidence indicates that in 2014 the amount of employees who were members of a trade union reduced marginally to 25 percent which was down 0.6 of a percent from 2013. What is significant in the data is that that this is the lowest recorded figures of trade union membership between 1995 and 2014 (BIS, 2015).

It could be further argued that without the counter acting influence offered by effective union representation, workplace discipline may simply be reduced to a blatant exercise of managerial discretion. Charlwood and Terry (2007) cited in Saundry *et al.*, (2011) highlight that this is progressively relevant given the growing diversity of representational forms now apparent within contemporary workplaces, and the absence of any form of indirect representation in the majority of workplaces. Crucially, one could argue that there is now increasing evidence that workers are more vulnerable, mainly through the steady growth of non-unionism due to an increase of de-collectivism (Smith and Morton, 1993), leading to a decline in collective bargaining coverage, both in depth and scope (Brown *et al.*, 1998), and, therefore, weak labour market bargaining power (Pollert and Charlwood 2009). The report by the TUC's 2007 Commission Vulnerable Employment (CoVE) supported this and found that few workers knew their employment rights in detail. Pollert and Charlwood (2008) identified how non-unionised, low paid workers respond to individual problems at work, in particular, the small proportion of these who used official grievance procedures, which raises questions about accessibility and how far they are viewed as fair and effective by workers. An area in which there appears to be a particular lack of consistency regarding discipline and grievance is discrimination and those being discriminated against often find it difficult to complain when they already feel victimised. Research from the United States suggests that taking a complaint through a formal procedure can lead to employees feeling doubly victimised. One reason for this may be the victim's lack of awareness of the procedures (Bumiller 1988 cited in Kritzer *et al.*, 1991).

According to Wanrooy *et al.*, (2011) when present, employee representatives, particularly union representatives, tend to have a role in individual disputes within the workplace. In 2011 almost two thirds, 66 per cent of all representatives in the survey said that they had spent time on disciplinary matters and grievances in the 12 months prior to the survey. This represents an increase since 2004 where the figure stood at 59 per cent. Furthermore,

where representation was enacted 47 per cent of all employees in workplaces who had some form of representation chose to have a union or non-union representative to represent them at a disciplinary hearing. In particular, those who were members of a recognised trade union were more likely to choose representation with 73 per cent agreeing that a trade union representative would ideally represent them in a disciplinary matter. This however had not changed significantly since the 2004 survey.

Overall, there is evidence within the research literature to date to suggest that employee representation may play a significant role in the influence of disciplinary outcomes. Research findings conducted by Saundry *et al.*, (2011) reveal that strong structures of trade union organisation are imperative in the assistance of informal resolution, which can help to avoid unnecessary disciplinary sanctions. Additionally within unionised settings representatives provide an opportunity for early warnings, a conduit of communication and play a key role in encouraging self-discipline amongst the workforce. Furthermore within the actual process of formal disciplinary hearings representatives are able to affect disciplinary decisions and are generally perceived by management to play a helpful role within proceedings. In a study of tribunal decisions, Earnshaw *et al.*, (1998) found evidence of numerous procedural irregularities in the way in which firms had dismissed employees, not least a reluctance to give them a chance to voice their side of the story, in advance of the decision to dismiss.

Further questions still continue in respect of how employee representatives and employee companions interrelate with formal and informal disciplinary processes in contemporary workplaces. This is very much reliant on the ability of representatives which in turn will be somewhat dependant on the level of training and experience they possess in carrying out their duties. Additionally consideration must also be given to the positive relationship that representatives have with the other key actors involved within the disciplinary process, such as employees, operational management and HR professionals, and the level of trust afforded to them. Finally their role is reliant on the strength of the union organisation within the workplace.

The role of operational managers

Fundamentally front-line managers have the primary responsibility for the day-to-day management of the employees within their teams in relation to workforce performance and this is maintained by implementing the range of people management practices that govern this arena. A significant responsibility for operational managers is the management of discipline which is, to all intents and purposes, a management procedure (Clegg, 1979; Dickens *et al.*; Earnshaw *et al.*; Evans, Goodman and Hargreaves, 1985) and therefore they are explicitly considered as an essential management tool.

By following formal procedures it could be argued that workers will accept disciplinary decisions more readily since they are accorded added legitimacy. Moreover, by giving legitimacy to disciplinary and dismissal decisions, their existence buttresses managerial authority rather than erodes it (Williams and Adam-Smith 2006:247). They essentially help to define managerial authority in the area of discipline, and enable workers to understand more clearly the boundary between appropriate and inappropriate standards of behaviour (Goodman *et al.*, 1998). Equally, as noted by Jones and Saundry (2011) if operational managers see that an issue has the potential to challenge their authority, they may use an autocratic approach, through the threat of discipline, to reassert control and send a clear signal to others that challenges will not be tolerated (Hook *et al.*, 1996; Rollinson *et al.*, 1996). This is similar to the use of coercive power as a threat that can be identified in the earlier work of French and Raven (1958).

Generally there is the underlying assumption that management is a unified group sharing common interests and perspectives when deciding workplace rules. Research conducted by Hutchinson and Purcell, (2003) acknowledged that front line managers play a vital role in applying and delivering HR and people management policies. However this may be contingent upon how well relationships are developed over time within the workplace. In reality there may well be conflict between perspectives held by HR specialists and line managers (Marchington and Wilkinson (2008:444). The recent policy agenda around dispute resolution has focused on providing managers with greater flexibility in the way that they handle individual disputes (Gibbons, 2007). This is endorsed by Jones and Saundry (2011)

who rightfully point out that this very much reflects the pragmatic approach that is traditionally favoured by many operational managers when handling discipline.

Furthermore, the management of disciplinary issues is played out between different functions and levels of management. For example, operational objectives set by senior managers may often take priority over HR advice aimed at consistency and compliance. This may explain to some extent why operational managers are often hostile to any rules that may emanate from the HR specialists who are often castigated for 'not living in the real world'.

Organisations therefore often struggle to create disciplinary systems that are used by their supervisors (Franklin and Pagan 2006). Besides it is widely understood that operational managers have an aversion to dealing with aspects of discipline through standardised, prescribed procedures often preferring approaches based on 'gut feeling' (Rollinson *et al.*, 1996: 51) and 'intuitions' (Cooke, 2006:699). Operational managers' preference for informality in policy handling can often be seen to come into play within disciplinary procedures where they might consider making a judgement based on their own assumptions rather than follow the disciplinary procedure laid down. Alternatively, it might occur when operational managers take the decision not to conform to over burdening policy and procedural requirements. Leopold and Harris (2009:88) contend that through increased proceduralisation the emphasis is placed on systematic employment practises, which in turn creates resistance from line managers who complain about bureaucracy, inflexibility and a lack of appreciation from HR staff of operational issues. This then presents challenges for the HR specialists who have to persuade managers that laid down procedures are valuable tools rather than 'millstones' (Marchington and Wilkinson 2008).

It could be said that contemporary approaches to workplace conflict resolution constitute a return to a voluntaristic or de-regulated tradition. This is underpinned by the implication illuminated by Gibbons (2007) in that formality is seen to be problematic - in that it is normally applied in a technical linear process - whereas informality is often equated with resolution. The reality is that informality and formality in the handling of discipline are critically intertwined in two main aspects; firstly, the exercise of formally laid down procedures tends to be accompanied or shadowed by informal processes, particularly in

unionised workplaces and by operational managers. For example without formal procedure employers and managers will simply just hire and fire. And secondly, this is reinforced by a need for the use of informality in disciplinary practice which can be seen in response to recent policy debates as a means of seeking effective resolution to individual employment disputes (Gibbons report, 2007) with the proposal of greater flexibility and scope for early informal resolutions.

This change however has important consequences for the way that conflict within the workplace is now managed because it highlights an extensive allocation of people management “accountability” to operational managers, within a relatively short period of time, the consequences being that inexperienced managers not only lack the necessary skills and confidence to deal with disciplinary matters but they are also unwilling to confront ‘difficult issues’ because they fear both internal criticism and the possibility of litigation if the situation worsens (Harris, 2009). This change places significant emphasis on the self-confidence and capability of operational managers when dealing with difficult issues and when working within the emotional contexts of workplace conflict. However, a recent survey conducted by the (CIPD, 2013:17) exposed that the ‘management of conflict’ and ‘managing difficult conversations’ were the two most quoted skills that operational managers found the most difficult to apply. The government has also recognised the need for improved dispute handling skills arguing that *‘it is clear that many more problems could be prevented from escalating into disputes if line managers were better able to manage conflict’* (BIS, 2011:17). Jones and Saundry (2011:12) also acknowledged within their research that sometimes HR practitioners were required to step into a breach that was left by reluctant or less capable managers within the disciplinary processes.

Importantly it is operational managers that largely determine the rules, and their attitudes and ideologies can play a part in how these rules are framed. For example, some operational managers can jealously guard what they perceive to be their legitimate prerogatives (Klass and Wheeler, 1990 cited in Rollinson 2007). According to Dundon and Rollinson (2011:222) a problem that can occur is where operational managers use the process to create a new rule that supports his or her power. A further concern is that operational managers have a propensity to connect an employee’s adherence to formal rules with vaguer expectations such as having a willing and co-operative attitude. Employees who are found guilty of

flouting trivial rules can sometimes be subject to a disproportionate sanction simply because they are judged guilty of noncompliance with managers' expectations.

Problems can also originate from the use of informal custom and practice activities, these often play a part in influencing whether or not formal rules are observed in practice (Terry, 1977). As acknowledged by Jones and Saundry, (2011:3) for many operational managers, *'the rigid application of formal procedure does not provide the flexibility required to balance disciplinary considerations against the operational requirements of the immediate work context'*. Consequently, ideas of 'custom and practice' and a requirement to preserve good working relationships can be used by managers to make disciplinary decisions even where the behaviour concerned appears to challenge substantive rules. (Dunn and Wilkinson, 2002; Cole, 2008).

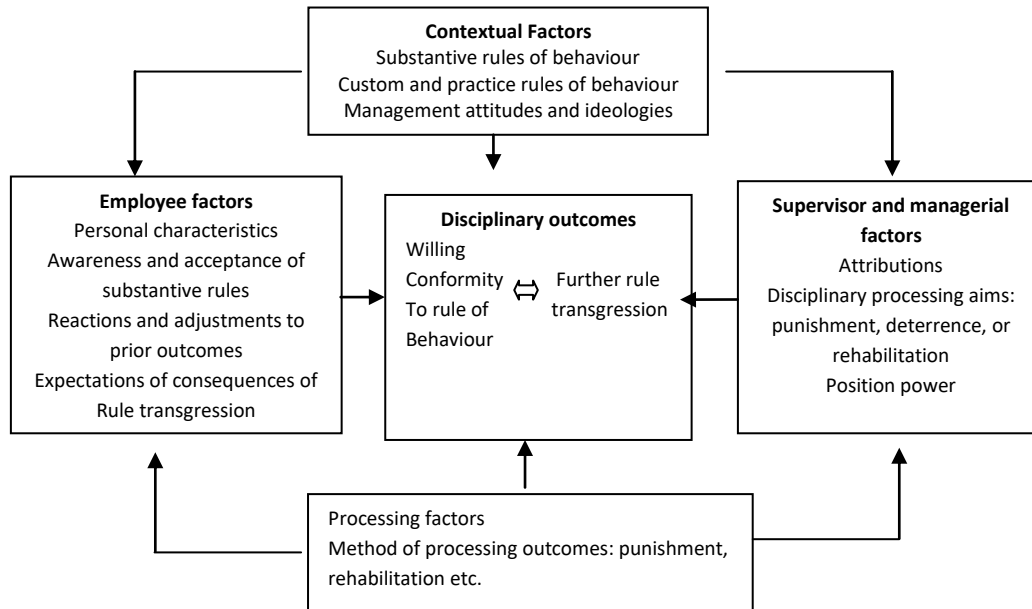
Informality within disciplinary handling is underpinned by pragmatic approaches taken by operational managers for example where they chose to ignore misbehaviour or misconduct by valuable, creative, team members (Dunn and Wilkinson, 2002; Cole, 2008). Similarly, some operational managers may be more accommodating when dealing with staff who have worked for a considerable amount of time (Rollinson, 2000). Alternatively informality of disciplinary handling can be played out in order to avoid unnecessary bureaucratic processes. Franklin and Pagan (2006) identified that in actual terms of handling discipline, line managers and supervisors often take an inconsistent approach with a tendency to use informal strategies. Although these can sometimes be positive, especially in cases used to prevent the need to enter formal disciplinary procedures.

Earnshaw *et al.*, (1998) identified in their survey on tribunal decisions that managers frequently fail to follow their own procedures. The evidence indicated numerous procedural irregularities in the way that firms had dismissed neither employees, nor least a reluctance to give them a chance to voice their side of the story in advance of the decision to dismiss. Furthermore, case study evidence collected by Earnshaw, Marchington and Goodman (2000) suggests that managers often make up their mind to dismiss before the discipline hearing. Similarly, within disciplinary processes Rollinson *et al.*, (1997) explored the experiences of workers and found that respondents within the survey evidenced a strong

sense that managers had assumed their guilt even before the hearing had commenced, and paid little attention to anything they said in mitigation.

Rollinson, (1992) provides a useful conceptual map of discipline and factors at work (Fig 1.) that sets out the key factors that can affect disciplinary outcomes.

Fig 1.



With specific reference to the role of manager, Dundon and Rollinson (2011:222) provide a useful explanation of the attribution factors that often occur during operational managers' involvement in disciplinary handling. Firstly they identify what is technically referred to as 'causal attribution', this is where an operational manager perceives that a rule has been broken and the perception is inevitably accompanied by an explanatory judgement (attribution). This kind of attribution bias was identified in the earlier research carried out by Rollinson *et al.*, (1997) and Earnshaw, Marchington and Goodman (2000). They discovered that when an internal attribution is made, the employee's inner emotional characteristics such as ability, effort or aptitude, are attributed as being the cause. Equally the blame of external factors in the employee's environment can also be seen to be responsible. Regrettably, individuals are too ready to assume that internal factors have provoked specific behaviour, and therefore external factors are often overlooked (Mitchell and Wood, 1980). Plainly, this problem is much more likely where unclear expectations about the right attitudes are connected to overt behaviours, the important point here is that internal attributions have been shown to be much more likely to attract severe disciplinary actions (Bemmels, 1991).

During the handling of discipline, McGregor (1987: 142) argues that *“some personalities are simply incompatible for reasons which neither party can do much about...and that under such conditions, it is nonsense to talk about creating positive expectations, mutual confidence and a healthy climate. The only real solution therefore is to end the relationship, by transfer under some circumstances, or by termination of employment under others”*.

This has now positioned managers on the front line in handling the disciplinary process because they must understand the varying degrees of formality and informality to be applied in any given disciplinary situation. At the same time the degree of autonomy they have to implement their own decisions remains dependent on the extent to which they can be trusted, by the HR function, to make decisions that would meet with HR's approval. This dichotomy can provide some explanation for the current preference for formal procedures. (Jones and Saundry, 2011).

The findings from the Industrial Relations Survey (2001) that looked at managing discipline discovered that operational managers were more involved than before in conducting disciplinary procedures, however they were still less involved than their HR counterparts. According to Renwick, (2003) the potential explanations for operational managers' lack of enthusiasm for grievance and disciplinary responsibilities may be attributed to the complexity of work involved, the fact that they can be burdensome and/or the fear of their own technical shortcomings being exposed.

Although there is a requirement by HR for a literal interpretation of disciplinary procedures operational managers may want to take a more relaxed approach. Especially when considering the potential operational ramifications of an unfavourable disciplinary outcome affecting a valued employee. Thus operational managers can allow the notions of 'custom and practice' and concern for maintaining harmonious working conditions to inform disciplinary decisions even where the behaviour concerned appears to conflict with substantive rules within the wider workplace (Dunn and Wilkinson, 2002; Cole 2008). Rules, according to Edwards (2005:384) are therefore interpreted in context in that any senior HR manager *'sticking to the letter of the rule book might well be surprised not merely by the workers' reactions but also by line managers, who have negotiated a form of workplace equilibrium that turns rules into practice'*. This is reinforced by the findings of a CIPD (2007)

survey that claimed that most operational managers are less accountable for people management than was intended largely because they are lacking in both the right attitude and ability (2007:21). In attempting to standardise disciplinary practice Human Resources are seen to direct 'rogue' or non-compliant managers towards maintaining organisational integrity by ensuring that disciplinary rules are applied consistently (Cooke, 2006) in order to come in line with current legislation. In this way, the HR function can be seen to control managerial behaviour in order to curtail potentially damaging effects for the organisation (Cunningham and Hyman, 1999; Hunter and Renwick, 2009). Importantly, this runs counter to the emphasis on devolving disciplinary handling responsibility down the line. In fact it can be argued that the combination of inexperienced operational managers coupled with an increasingly complex legal environment goes some way to strengthen the position of Human Resources within the arena of conflict management (Caldwell, 2003; Saundry and Wibberley, 2014). This has the potential to be in conflict with the informal agenda as proposed in government interventions regarding workplace conflict resolution.

As previously identified current agendas on conflict resolution suggest the notion of trust and informality within the workplace, especially post Gibbons (2007) where the implicit message is greater 'flexibility' in discipline handling to facilitate 'nipping' issues in the bud.

This places significant emphasis on the self-confidence and capability of operational managers in order to deal with difficult, emotional, issues that sometimes arise within the context of workplace conflict. Within the BIS, (2011:17) consultation it is suggested that, *'it is clear that many more problems could be prevented from escalating into disputes if line managers were able to manage conflict'*. This is reinforced by both Renwick (2003) and Maxwell and Watson (2006) who identified that operational managers' do not have the skills and competencies needed to perform the HR aspects of their jobs successfully without specialist support and involvement.

It can be further argued that operational managers lack of confidence within workplace disciplinary handling can be attributed to lack of support from senior management (Teague and Roche, 2011; BIS, 2011; CIPD, 2007). This concurs with similar research findings which suggest that operational managers find it problematic to persuade their own superiors of the importance of conflict management (Hales, 2005; Harris, 2001; Wright *et al.*, 2001) and

therefore receive inadequate support which in turn makes the balancing of conflict resolution with other organisational responsibilities a challenge (Hutchinson and Purcell, 2010; McGovern *et al.*, 1997; Renwick, 2003). The underlying effect of this can be twofold in that initially, operational managers do not have adequate time and space to devote to dealing with conflict, which is seen as secondary to immediate operational considerations. Secondly, key performance indicators, against which managerial performance is judged, rarely contain any reference to workplace conflict (Acas positioning paper, March 2013).

There are difficulties in any attempt to categorise management styles in disciplinary standards within organisations because of the complexities in defining these as they change from one situation to another (Goodman, Earnshaw, Marchington and Harrison, 1998). The problem in any attempt at linking management styles to discipline is that there is very little known about the internal dynamics that are in operation. Moreover recognised models of punitive and corrective approaches do not deliver the relevant framework for understanding the way in which disciplinary circumstances are managed (Fenley, *ibid.*).

Wilson, (2004) suggests that disciplinary procedures that are used by management (both HR and operational) are the micro-techniques of power within the organisation. This proposes that management has overall power because its control and disciplinary procedures are the processes used at the most basic level in order to exercise power. The main objective of the disciplinary procedure is to all intents and purposes to use managerial power to ensure that all employees conform to the rules of the organisation. Discipline within the workplace is therefore more than just a combination of the content of formal disciplinary procedures and the sanctions applying to breaches of organisational rules. It also refers to the way in which workplace behaviour is governed by the micro relationship of management and workers and the informal rules that are generated by the day-to-day understandings arising from their relationship. As such, operational managers may develop a specific notion of 'fairness' that is closely connected to social and control relations within their working area. In doing so, managers have been noted to 'frame (and use) disciplinary rules for their own convenience' (Rollinson, 2000: 746-747).

The complexity and tensions introduced by HR professionals' desire to intervene in workplace discipline to regulate compliance and consistency are compounded further by the

notion of devolvement of disciplinary handling to the operational line. This, coupled with prescription by government (Gibbons, 2007) providing employers with greater opportunity of flexibility in the way they handle individual disputes, is somewhat congruent with approaches that are preferred by operational managers (Edwards, 2000; Rollinson, 2000). Contradictions are that HR's desire for conformity with formal procedures and operational managers' preference for flexibility and this is somewhat incongruent. Further fractures appear as the pragmatic approaches that are often preferred by operational managers when handling disciplinary issues are sometimes diametrically opposed to more formal approaches.

Huberman, (1964:63) study 'Discipline without punishment' cited in the work of Edwards (1989) notes that *'the people who had been disciplined were generally among the poorest workers; their attitude was sulky, if not openly hostile, and they seemed to be spreading this feeling among the rest of the crew. Some were known to play little games to frustrate the foreman, but were taking increasing care not to be caught'*. The customary view in the literature according to Edwards and Whiston, (1989) is that there has been a shift from intimidating or punitive discipline to a corrective approach.

In evolutionary terms, the nature of discipline within the workplace is more than just the application of formal disciplinary procedures to workplace behaviour and a prescribed approach to dealing with non-conformity. Historically the notion is that forms of worker regulation tend to sit broadly within punitive and correctional methods and these are underpinned by continually changing regulation which may at times drive intervention within proceedings. It could be argued that increasing or changing regulation often triggers a review of disciplinary policy and practice and in doing so presents challenges to how these are communicated and understood by the end user, especially for small businesses. Perhaps the most notable aspect of changes to workplace disciplinary handling was the commissioning by the Labour government of Michael Gibbons (2007) whose review presented options for simplifying and improving labour dispute resolution placing importance specifically on early informal resolution.

Although the post-Gibbons policy agenda has focused attention on the positive dimensions of informal processes for dispute resolution, questions remain in respect of whether these

proposed recommendations have actually led to greater informality. Contemporary approaches suggest that operational managers need to take greater responsibility for disciplinary issues within their workplaces. This raises the ongoing question of management capability and competence and this has been highlighted in recent Government report that identifies the need for improved dispute handling skills (BIS, 2011:17).

Findings by Harris *et al.*, (2008) and Saundry *et al.*, (2008) suggest that the introduction of statutory formalisation has been driven by the introduction of statutory dismissal and grievance procedures, and that managers may be inclined to withdraw to the security of formalised procedure. Formalisation is further supported by debates in which operational managers, who are required to espouse HR practices, lack ownership and gaps often can be attributed to a lack of training, work overload, conflicting priorities and selfish behaviour (Grint, 1993; McGovern *et al.*, 1997; Fenton O’Creevey, 2001; Harris, 2001; Whittaker and Marchinton, 2003). Furthermore this can be compounded by the ever changing nature of the HR function which is linked to a more process driven approach to disciplinary handling (*ibid*).

The chapter has provided a review of the role that each of the main actors play within the discipline process as interpreted in the mainstream literature. By providing an examination of the evolving role that HR professionals have played in disciplinary processes, from early personnel departments through to HRM, it assesses how the handling of discipline has developed and how changing interventionist and devolved forms have been applied. On reviewing the changed role that trade unions and representation now play within the discipline process it charts the continued marginalisation of this function, especially given the continued growth of non-unionised private sector workplaces and it assesses the importance of the role that unions have to play in facilitating resolution of disciplinary disputes. Finally it provides scrutiny of the crucial role that operational managers play, with specific reference to their approach and acceptance of procedures.

Chapter five: The issue of formality versus informality in the disciplinary processes

The contested nature of formal and informal approaches that can be seen to occur throughout the handling of workplace discipline is conceivably the least understood area within the subject. Debatably it can be dependent upon a series of complex factors:

- i) Arguably the choice between a formal or informal approach to the discipline process can simply be reliant on the degree of intervention affected by one of the key actors within or outside the discipline procedure.
- ii) Additionally it will also be dependent upon the extent of power and control being exercised within the procedure by a dominant actor.
- iii) Furthermore it could also be explained by the degree of devolution from the HR function afforded to operational managers as well as factors such as their own acceptance of this and their subsequent decision making.

Interestingly, Jones and Saundry (2011) underline that while conventional literature has been inclined to concentrate upon the way in which the application of discipline shapes, and is shaped by, management-labour relations less deliberation has been given to intra-management relations. Noticeably as to what decides the choice between the enactment of formal and informal approaches in respect of the intra-relationships between the various key stakeholders involved in this very process.

The rise of Human Resource Management over the last quarter of a century has intensified the focus on the relationship between differing approaches to the organisation of people and the performance of the organisations in which they work (Sengupta and Whitfield, 2011). According to Gennard and Kelly, (1997) the requirement of the 'HRM' paradigm is the importance of operational managers' delivery of HRM. David Guest's (1987) initial restoration of the core beliefs of HRM within the British context recognised the role of operational managers at heart of HRM devolved practice. One of the characteristic features in HRM literature, as emphasised by McGovern (1997: 1999) is the devolution of people management activities and the critical role which has been afforded to operational managers as a delivery point of the various work policies that are intended to raise the performance of the labour force. Across the literature there appears no scarcity of debates

that crystallise around the subject of returning of HRM activities back to the line (Cunningham and Hyman, 1995; Hutchinson and Wood, 1995; Harris, 2001) and that responsibility for managing people in organisations now being passed back down to where it belongs, with the operational manager (Renwick, 2003; Guest, 1987; Hall and Torrington, 1998). Also this move affords greater flexibility that empowers line managers to take on new HRM responsibilities (Larsen and Brewster, 2003) including the responsibility of handling of discipline (Cunningham and Hyman, 1995).

Normally the handling of discipline can be categorised within the raft of HR policies and procedures which are seen both to govern aspects of fairness at work and cover the safeguarding of discrimination. Essentially policies and procedures are defined as 'formal mindful statements' that support organisational goals and expectations. They are the official way organisations broadcast the leitmotifs of acceptable practice (Sisson and Storey, 2000). Importantly, when viewed in context, HR policies and procedures can be used as a proxy for management style (Marchington and Wilkinson, 2008) and therefore can ensure formality of operational managements' approach to procedural situations. John Storey's (1992: 178) classical research however illuminates the condemnation of procedures, noticeably in response of the hard side of HRM (Storey, 1989; Legge, 1995) which links business and HR strategies and the resource aspect of HR in that it often facilitates a protracted process of appeals and referral. He further argues that these are often simply inappropriate when applied in the context of a fiercely competitive and fast-changing climate from the soft side, the management of 'resourceful humans' (Marchington and Wilkinson, 2008). The regulator's arguments about due process and about honouring agreements and observing custom and practice are anathema. Nonetheless the belief of uniformity and objectivity is considered to be central to gaining employees' commitment (Bott, 2003).

On reviewing the use of procedures by operational managers the evidence of operational managers working in tandem with HRM or administering people practices can be somewhat 'blurred' (Hutchinson and Wood 1995, McGovern *et al.*, 1997). This brings into question the actual extent that HR practice has been devolved to operational managers? As acknowledged by Harris *et al.*, (2003) HRM essentially retain a key role in providing the formal discipline policy, besides which they also provide expertise and assistance during the handling of disciplinary cases to ensure that operational managers are compliant which in

turn can avoid potentially damaging and costly litigation. Noticeably, one of the primary reasons for this is the consequences of getting decisions wrong can often lead to operational managers, already hesitant about their HR responsibilities, abdicating their responsibilities by referring problems back to the 'experts' in Personnel (Cunningham and Hyman, 1999; Whittaker and Marchington, 2003). Additionally any scope for managerial discretion, particularly where it is subject to new law, has encouraged an emphasis by the HR function on developing central HR policies to support a consistent and formalised approach (Harris, 2008). Findings by Hope Hailey *et al.*, (1997) and Guest and King (2004) exposed unwillingness among operational managers to take on personnel accountabilities in light of their increasing legal complexities and that they are heavily reliant on colleagues in HR which in turn indicates that increased regulation is likely to constrain the extent of devolution of HR responsibility back to the line. Furthermore despite operational managers' acquisition of HR responsibilities within the role, there is a shared acceptance of the worth of the HR functions of: acting as a third-party go-between, ensuring workplace fairness and monitoring consistency in decision-making (Renwick, 2003; Harris 2002).

Caldwell, (2003) has recognised that the shift towards HRM taking a less vocal, more advisory, role has weakened its standing within the disciplinary process leaving HR professionals as simply internal consultants '*stranded without real influence, administrative resources or power.*'

However the degree to which this has occurred is questionable and there is substantive evidence to suggest that devolved disciplinary practice to operational management has not occurred to the extent the literature would have us believe. Primarily, as identified by Torrington and Hall, (1998:53) HR professionals remain highly visible and can be seen to regulate operational manager behaviour by defining '*tight procedures and manuals for line managers to follow.*' Later research corroborates that operational managers can be greatly prohibited in the processes taken within a disciplinary situation (Whittaker and Marchington, 2003; Hales, 2005; Kersley *et al.*, 2006). Questionably this indicates that although the mainstream academic literature indicates some devolution of HR practice back to the line the extent to which this has occurred is debatable, specifically within disciplinary handling, and therefore the HR function still maintains a degree of control in deciding the degree of formality within the disciplinary process as they are perceived as guardians of the

rule book. Furthermore this does not concur with recent policy agenda that stressed the need for more flexibility and informality in workplace dispute resolution as advocated by the Gibbons Review (Gibbons, 2007).

Greater formality can also be seen to operate wherever trade unions are involved with the process of discipline handling, which can lead to protracted settlements. Edwards *et al.*, (2004) recognised claims that the introduction of unfair dismissal and discrimination legislation and the subsequent threat of defending decisions at employment tribunals have provided employers with a significant incentive to assume more formal methods. Indisputably, the presence of unions within disciplinary processes does go some way to ensuring that employers are more likely to be held to account for disciplinary outcomes and therefore to ensure that procedure is followed carefully. All of which provides greater assurance of natural and fair justice within the process and procedure. However, the demands, on all Parties, for greater input to, and more time spent on, the process can lead to its increased formality. Equally whilst the presence of unions within the discipline process can increase formality by having a positive impact in terms of fairness and equity it can also squeeze out the potential for less formal resolution, particularly where relationships between managers and unions are poor.

Attempting to apply uniformity in discipline can be problematic in practice, both with operational managers and even more so among managers (Tyler and Bies, 1989). Early studies conducted in the 1970s and 1980s discovered that managers or supervisors can often be unpredictable in applying discipline when it comes to individual employees. Often inconsistencies related to the different attributions made by the supervisor (Rosen and Jerdee, 1974), this is technically referred to as causal attributions which was defined in the previous chapter (Dundon and Rollinson, 2011). Noticeably this can be observed where operational managers lack consideration of external factors (Mitchell and Wood, 1980) or internal attributions (Bemmel, 1991) which can present the possibility of a bias decision being applied in relation to disciplinary outcomes. As discussed earlier, operational managers have some propensity to interpret and apply disciplinary rules for their own advantage, for example what they see as their genuine choices (Fox, 1974). Research by Jones and Saundry (2011) suggests that managerial decision making with regard to whether

or not to apply formality in disciplinary situations is often founded on an intricate range of issues and is not simply performance based.

Debates continue as to how much HRM roles have been accepted by operational managers and responsiveness to the rules does not necessarily signify approval (Dundon and Rollinson 2011). There is widespread condemnation from operational managers of the contribution HR make to within organisations. Research by Bevan and Hayday (1994) established that operational managers were not always sufficiently consulted about the transfer of responsibilities of certain people management issues and were, as a result, often vague about their roles. This in turn, meant that HR was often hesitant to devolve responsibilities to the operational manager, which could go some way to explaining why the HR function is still reluctant to relinquish governance of the process. Furthermore criticism from operational managers includes that HR managers are indifferent and slow to act, always wanting to check choices meticulously rather than taking action immediately (Cunningham and Hyman, 1999). It is widely accepted that operational managers have an aversion to dealing with discipline through standardised procedures, often preferring to adopt a pragmatic approach which is based on 'gut feeling' and operational 'instincts' (Rollinson *et al.*, 1996:51; Cooke, 2006: 699). For the majority of operational managers, the application of rigid formal procedures does not afford them enough of the flexibility that is essential to balance disciplinary considerations against operational needs within the immediate work context (Jones and Saundry, 2011:3). The perception is that HR often restricts the independence of operational managers in order to make decisions that HR may feel are in the best interest for the business (Marchington and Wilkinson, 2008). Often devolution to line management can be severely constrained by short-term business pressures (Kirkpatrick *et al.*, 1992; Lowe, 1992). The immediate concern for operational managers is to foster and maintain good working relations with their subordinates in order to achieve production targets even to the extent that individual behaviours might be allowed to run counter to substantive rules within the wider workplace (Dunn and Wilkinson, 2002; Cole, 2008).

The ability and competencies of operational managers applied when taking on HR responsibilities are also questionable which attribute to formality of the process and this will often shape their approach to disciplinary handling and choice As previously identified there is significant evidence to suggest that operational managers do not have the essential skills

and capabilities to accomplish the HR features of their jobs effectively without the assistance of specialist involvement (IRS Employment Review 698, 2000; Renwick, 2003; Maxwell and Watson, 2006). The findings of McGovern *et al.*, (1997:14) indicate that poor education and the low technical base of operational managers in Britain is a significant restraint on the effective transference of HRM practice in Britain. This problem is further exaggerated in that there has been a distinct lack of training and competence among operational managers in key areas meaning they are not satisfied with the amount of training provided and so unwilling to take on the new roles (Cunningham, 1995). This is reinforced by the findings of the 2007 CIPD survey where it was claimed that most operational managers take on less responsibility for people management because of their attitudes and abilities (2007:21). Noticeably a study by Harris *et al.*, (2002) revealed that disdain for formal procedures may, in truth, cover a lack of confidence in dealing with disciplinary issues due to insufficient training, inexperience and also fears that their decisions may be legally challenged.

Debatably the development of disciplinary policy and procedure has been underpinned by a desire on the part of organisations, mainly instigated through the HR function, to achieve greater standardisation and accountability of practice. This, in turn, has tended to place a significant reliance on procedural adherence. However, this contradicts approaches that are favoured by operational managers who often preferred to implement informal and pragmatic approaches to the handling of discipline.

Much disapproval of the HR function manifests itself where there is promotion of policies seen as being tolerable in theory but difficult to put into actual practice, as well as inappropriate for their specific workplace. Marchington and Wilkinson, (2008) contend that the HR function can therefore be seen to be '*caught in a cleft stick, criticised for being too interventionist and too remote*'. Legge, (2005) terms this problem as being the '*vicious circle in personnel management*'. Watson (1986) provides further clarification of this in that '*if personnel specialists are not passive administrative nobodies who pursue their social work, go-between and firefighting vocations with little care for business decisions and leadership, then they are clever, ambitious power-seekers who want to run organisations as a kind for self-indulgent personnel playground*'. Nonetheless, it could be argued that without the HR function's provision of support to organisations, by providing clear procedures to follow,

inconsistencies are likely to arise. Research that was conducted by Earnshaw *et al.*, (2000) on discipline and dismissal clearly demonstrates that potential problems can occur. Dismissals often arose after 'heated rows' in the workplace due to personality clashes, without following any procedure whatsoever.

As revealed, a myriad of reasons can affect the choice between formal and informal approaches to discipline handling within the workplace rendering the decision highly complex. Arguably Legge's (2005) 'vicious circle' metaphor goes some way in providing understanding of this in that if operational managers do not involve the HR function at the early stage of discipline 'people' and 'legal' issues can be downplayed and informal practices can take over. This in turn can bring problems due to managers' lack of understanding or reluctance to involve HR. Often when HR are requested to intervene in the process the damage accruing from strict adherence to procedure might already have been done leaving HR to take the blame for being unable to resolve the problem, forcing a formal approach, and completing the vicious circle in so doing. More nuanced approaches can also be seen to complicate this further. The choice between informal and formal practice can be very much reliant on the issue of power and control exerted within disciplinary handling. Where operational; managers are seen to have the locus of control then informality can be seen to operate in order to get timely solutions. Furthermore, and typically, they believe their 'solutions' to be in line with business realities, and therefore contributing more obviously to improved performance (Marchington and Wilkinson, 2008). Conversely where HR play a dominant role in the organisation then the likelihood of a formal process will be driven to ensure procedural adherence and conformity. Although, when looking at the power bases of operational managers and HR practitioners, Lupton's (2000) study recognises that the extent of devolution of decision making does not solely rest with HRM and that there was evidence to suggest that managers (consultants) on occasions will short-circuit formal procedures. From a broader perspective, the choice of whether to enact formal or informal approaches in disciplinary handling will very much depend upon the level of skill, confidence and competence that operational managers possess. In addition it will be dependent on the level of inconsistency in which in turn will decide the level of support that is required from HR. This is further compounded by the degree of distain that they have for HR work, especially when faced with competing priorities.

A review of the literature has revealed that work rules have historically developed over time as a result of negotiated order and, similarly, that this has evolved, over time, from voluntary to interventional forms. It is evident that the growth of formal rules has developed as a result of organisations becoming too large requiring them to adopt more bureaucratic forms to handle discipline and in doing forging the structure used today. The literature argues that a variety of approaches are adopted by managers when confronted by disciplinary issues and it would be too simplistic to contend that one dominant form prevails. Disciplinary procedures are affected by continuously evolving legislation and Codes of Practice which influence both their content and operation and, in so doing, constantly challenge the nature of the process. Difficulties, usually centred around aspects of: power, control and consent can arise when the actors that play out the role of disciplinary handling are themselves involved in deciding the formal or informal application of the process resulting in this activity being highly contested.

This supports the view that the handling of discipline is an ongoing process of contested terrains (Op.cit) continually - often simultaneously - undermined, reinforced and fought over by its actors whilst also subject to the stresses and strains of the power dynamics inherent within it. As a consequence its handling is reinforced and challenged by the process and therefore should be understood as much more than just the application of simple procedures.

Chapter six: Methodology

This chapter provides detail of the methodology used for the research thesis. Initially it will consider the philosophical perspective that was adopted for the study which will predominantly use qualitative approaches. This will be supported by secondary data which will include examination of each case organisation's disciplinary and related documentation that relates to conflict resolution as well as compare analysis with the Workplace Employment Relations Surveys. It will then provide detail of the research design and approach used for this study. In this aspect the research sample consists of eight multiple case study analysis that is taken across a range of organisations and sectors within the North West of England. Within each case organisation careful consideration was taken by the researcher to ensure that there was adequate representation of the key staff (actors) that play and act out a role within their disciplinary processes and practices. In collecting the data the author adopted a reflexive critique throughout the discourses to avoid against assuming the 'norm' against what is being measured (Butler, 1999). The following section then provides a summary of the data collection method which consists of semi-structured interviews and organisational documentation, namely the discipline policy and relevant supportive policies. Additionally detail will outline the practical issues such as to how access to the selected case organisations was negotiation and agreed and ethical considerations. The methods of data analysis are then detailed within the final section which also considers aspects of validity and reliability and reflection on the strengths and limitations of the methods.

Philosophical position

In considering the research paradigm Tadajewski (2004:314) observes that *"Scholars need to be aware of the philosophical assumptions embedded in their research output because all research is underpinned and delimited by a particular stance towards the world they study (ontology) and how this is investigated (epistemology) which, in turn, influences the methodology used to seek knowledge"*.

In the social sciences, theories which challenge our understanding of the social world and the systematic gathering of data are part of its everyday practice (May, 1993:4). Therefore the use of different methods and theories frequently provide us with understanding and

explanation of social phenomena, in particular when challenging conventionally held beliefs about the social and natural worlds. Scientific work depends upon a mixture of boldly innovative thought and careful marshalling of evidence to support or disconfirm hypotheses and theories. Information and insights accumulated through scientific study and debate are always to some degree *tentative* - open to being revised, or even completely discarded in the light of new evidence or argument (Giddens 1989:21).

Therefore before embarking on this research it was necessary to understand my own personal philosophy in order to recognise the impact it has on the research project (Collis and Hussey, 2003) thus a range of ontological and epistemological positions was carefully considered before undertaking this enquiry.

All science involves an attempt to define and explain some aspect of the world or reality. It could be considered that there are two fundamental aspects of science, first, the 'reality' being studied (ontology or being). Here ontology or being is concerned with the nature of reality (Collis and Hussey, 2009; Tadajewski, 2004: 314), and the ideas and theories about this reality (epistemology or knowledge). Epistemology is considered as the branch of philosophy that is concerned with the nature of knowledge, specifically how knowledge about knowledge is possible and concerns the study of the criteria that delimit what does and does not constitute warranted knowledge (Tadajewski, 2004: 312). Within the field of sociology, the question raised is whether the nature of society has the same type of ontology as the material universe. Also can the methodology of the sciences be used in a similar way in sociology to provide epistemology? (Bilton, 1981).

While there are a variety of ontological paradigms or philosophies presented to the researcher, (Collis and Hussey, 2003) there is an inclination to view these from two contrasting perspectives? There is however considerable blurring in terms of accuracy nonetheless these can be generally labelled as the positivistic and the phenomenological paradigm. Creswell (1994) provides a useful summary of the philosophical assumptions that underpin ontological aspects of these. Positivism acknowledges that reality is objective and singular and is separate from the researcher, existing independently of social actors (Bryman and Bell, 2011) and that knowledge is derived from 'positive information' because 'every rationality justifiable assertion can be scientifically verified or is capable of logical or

mathematical proof' (Walliman, 2001:15). In contrast, phenomenology or interpretivism claims that reality is subjective and multiple and is seen by participants. Therefore phenomenology maintains that all social actors work within a set of preconceptions about that world and these must be uncovered in order to understand their actions (Davies, 1999). Here subjectivist ontology considers that reality is constructed by patterns of human behaviour (Maylor and Blackmon, 2005). The nature of symbolic interactionism, as developed by Blumer (1969) emphasised that social researchers must get at the meanings behind social actions – that is, the symbolic content of interaction.

Epistemology is concerned with the study of knowledge and what we accept as being valid knowledge. This involves an examination of the relationship between the research and that which is being researched (Hussey and Hussey, 1997:49). Again here a range of perspectives can be acknowledged with opposing positions being quoted. Positivists believe that the only phenomena that are observable and measurable can be validly regarded as knowledge (Hussey and Collis, 2009:56). Objectivity is therefore defined by positivism as being the same as that of natural science and social life may be the same way as natural phenomena. (May, 1996:5). Conversely, interpretive approaches reject what they perceive as the positivist's over deterministic orientation towards an understanding of human action and behaviour (Gill and Johnson, 1997:139).

Because of the social nature of this type of enquiry into the nature of disciplinary processes the research method considered most suited was the interpretivist paradigm. Interpretivism is a term given to a contrasting epistemology to positivism (Bryman and Bell 2011:16) which is underpinned by the belief that social reality is not objective but highly subjective because it is shaped by our perceptions. Here the study of the social world is fundamentally different from that of the natural sciences and therefore requires a different logic of research procedure, one that reflects the distinctiveness of humans as against the natural order (ibid). Wright (1971) has portrayed the epistemological clash as being between positivism and hermeneutics. Bhaskar (1989) argues that the debate between positivist and hermeneutic perspectives has tended to concentrate on epistemology, on ways of knowing, in that it has been centred on the distinction between the objects of natural and human subjects. Thus both sides have accepted the self-conscious nature of human subjects as providing the main difficulty in the study of human society, with positivists attempting to

reduce the resulting reflexive effects while interpretivists have argued that the understandings of their human subjects are their proper, and only, subject matter. Bhaskar's realism in contrast concentrates 'first on the ontological question of the properties that societies possess, before shifting to the epistemological question of how these properties make them possible objects of knowledge for us' (1989:25). He argues that both perspectives have over-simplified and misunderstood the nature of the social, with positivists taking it to be 'merely empirically real', that only exists in observable behavioural responses of humans. Alternatively interpretivists treat it as 'transcendentally ideal' in their insistence that society exists only in the ideas that social actors hold about it (Davies 1999:18).

This clash reflects a division between an emphasis on the explanation between human behaviour that is the chief ingredient of the positivist approach to the social sciences and the understanding of human behaviour (Bryman and Bell 2011:16). The researcher interacts with that being researched because it is impossible to separate what is in the researcher's mind (Smith 1983; Creswell 1994) consequently the act of investigating social reality has an effect on it. Interpretivism focuses on exploring the complexity of social phenomena with a view to gaining interpretive understanding. Therefore, the act of investigating social reality has an effect on it. By using interpretivist methods, the researcher can 'seek to seek to describe, translate and otherwise come to terms with the meaning, not the frequency of certain more or less naturally occurring phenomena in the social world' (Van Maanen, 1983:9).

Careful reflection of my own philosophical position required consideration of a number of factors. From the outset there was the need to remove the effects that I had on the research data. The objective of this according to Gill and Johnson (1997:115) has two important dimensions: first to eliminate reactivity by subjects to my own personal qualities and research techniques; and secondly to eschew the idiosyncratic imposition of my own frame of reference upon the data. In adopting a reflexive role it allowed me to understand the effects of the field role upon the participants in the research setting. As recognised by Bolton (2006:10) being a reflexive thinker allowed me to stand back from belief and value systems, habitual ways of thinking and relating to others, structures of understanding themselves and their relationship with the world, and their assumptions about the way that

the world impinges on them. Hence in throughout the fieldwork I consciously attempted to maintain objectivity by controlling the effect I had on the research situation. Academically being positioned in the humanities, enables the viewing of reality as concrete and accustomed with the use of hypothesis and deduction from emerging changing patterns. As a practising academic my world is viewed through a constructivist lens which asserts that social phenomena and their meanings are continually being accomplished by social actors. The research of Strauss *et al.*, (1973) drawing on insights from symbolic interactionism argues that a preoccupation with the formal properties of organisations tends to neglect the degree to which order in organisations has to be accomplished in everyday interaction. Additionally Becker (1982:521) suggests that 'people create culture continuously and that no set of cultural understandings provides a perfectly applicable solution to any problem people have to solve in the course of their day, and they therefore must remake those solutions, adapt their understandings to the new situation in the light of what is different about it'. Here, like Strauss *et al.*, (1973) Becker argues that it is necessary to appreciate that culture has a reality that 'persists and antedates the participation of particular people' and shapes their perspectives, but it is not an inert objective reality that possesses only a sense of constraint: it acts as a point of reference but is always in the process of being formed.

Hence the authors overall position is that ontologically the world is regarded as real and concrete but acknowledges that due to the nature of my role as a social science academic it might position me to perceive a relativist stance. The subjective nature of my enquiry is suited to this viewpoint. According to Dickens *et al.*, (2005); and Hyman, (1994) in order for us to understand the complex reality of conflict management and workplace dispute resolution, it is important to explore the social processes on which this rests. Methodologically the inclination towards ideographic approaches and critical realism allows the author to take the view that reality exists, but it is not possible to capture this in full (Guba 1990) and that a single reality will instead be subject to multiple perceptions (Healy and Perry, 2000).

Methods

The purpose of this thesis is to provide in-depth investigation into the contested nature of the practices and processes of workplace discipline procedures. Discipline is regarded as a central function within the management of UK workplaces therefore the relative absence of recent qualitative research is somewhat surprising. According to Fenley (1986) workplace discipline has always been a somewhat neglected area in studies of employment relations. Yet an appreciation of the dynamics of workplace discipline is crucial to developing an understanding of contemporary employment relations. The rationale of this study is to gain in-depth insight into the micro dynamics that occur between the key actors that are involved in the disciplinary process. In reviewing the full range of methods that was available to me to conduct this type of research it was considered that a qualitative method of enquiry would be best suited to provide deeper insight into the practices of the social actors world by examining how they carry out this process in order to identify patterns and nuances that emerge from the findings. Qualitative approaches allow the researcher to explore and better understand the complexity of a phenomenon of this nature (Williams, 2007:70). In comparison the results of quantitative research *“may be statistically significant but are often humanly insignificant”* (Reason and Rowan, 1981). Furthermore a qualitative approach will aid understanding of the research questions from multiple perspectives and therefore gain deep understanding of people’s experiences, feelings and belief (Gill *et al.*, 2008) whereas quantitative methods might provide objectivity and accuracy of results (Westmarland 2001) but would be an inflexible process of discovery (Robson, 2002).

Positivist or quantitative methods seek correlations (Silverman, 2008) by examining how variables relate to each other in order to then test out theories (Creswell, 2009). Positivist approaches were rejected for this enquiry because it is impossible to separate people (the actors) from the social contexts in which they exist and people cannot be fully understood without examining their own perceptions of their activities. Furthermore a highly structured design would impose constraints on the research and possibly ignore other relevant findings. Capturing complex phenomena in a single measure is misleading as it is not possible to capture a person’s intelligence and understanding by assigning numerical values (Collis and Hussey 2009).

The cases and respondents were selected using a purposive sample method (Robson 1993) and was guided by deductive theory emerging from the findings. The use of case methods was elected over other methods because of the nature of this kind of enquiry. That is that the researcher wanted to explore a single phenomenon in a natural setting in order to obtain in-depth knowledge. The importance of context is essential especially in a study of this kind (Collis and Hussey, 2009:82). This is further supported by Gummerson (1988) who argues that the case study method allows in-depth and holistic understanding of multiple aspects of a phenomenon, and the interrelationships between different aspects.

Holism may be viewed as the opposite of reductionism. The latter consists of breaking down the object of the study into small, well-defined parts. This approach goes all the way back to the 17th – century and the view of Descartes and Newton that the whole is the sum of its parts. This leads to a large number of fragmented, well-defined studies of parts in the belief that they can be fitted together, like a jigsaw puzzle, to form a picture. According to the holistic view, however, the whole is not identical with the sum of its parts. Consequently the whole can be understood only by treating it as the central object of study (Gummerson 1988:76)

Furthermore, case study analysis recognises the critical importance of context. Eisenhardt (1989:543) refers to the case study as a research study which focuses on ‘understanding the dynamics present within a single setting’, while Bonoma (1985:204) notes it must be ‘constructed to be sensitive to the context in which management behaviour takes place’. Yin (2003) suggests that case studies are used in two situations: firstly, where the research aims not just to explore certain phenomena, but also to understand them within a particular context; and secondly, where the research does not commence with a set of questions and notions about the limits within which the study will take place.

Case study enquiry is useful and important when seeking to develop theory inductively through description and analysis of new and emerging phenomena such as the relationship between people. As noted by Baker and Foy (2012:184) it differs from ‘pure’ grounded theory in that one does not start from a position that one has no prior assumptions about the phenomena to be studied. Rather, case study research admits that the researcher brings

prior knowledge and understanding to their observations and so combines induction and deduction in selecting and interpreting information.

Careful consideration was given by the researcher into how this research will provide depth of examination of the contested nature that occurs between the axis of formal and informal processes that operate across the organisations within the sample that was selected. The methods employed within the research required the capturing of experiences, views and perceptions of the key actors being studied, namely a range of management, HR professionals and union involvement. Therefore the research was carried out using interviews as this method of examination was preferred because of the nature of this type of enquiry. In this type of investigation where great depths of understanding of people's attitudes are required, the use of quantitative methods would have been restrictive in relation to reliability and validity of their findings.

Data collection

In regards to data collection, the aim of the research was to gain real depth of insight into the attitudes and understanding of actors that play a part in executing discipline procedures and processes. Qualitative data is normally transient, understood only within context and is associated with an interpretive methodology that usually results in findings with a high degree of validity. It contrasts with quantitative data, which are normally precise and can only be captured at various points of time and in different contexts, and are associated with a positivist methodology that usually results in findings with a high degree of reliability (Collis and Hussey, 2009:143). The challenges facing the researcher adopting an interpretive paradigm is to apply methods that will retain the integrity of the data (ibid). Consideration was given to observational method enquiry as the author had previously used this method as an undergraduate. Participant observation that is observing directly the process of the key actors within their role does present a problem in that ethnographers tend to gather data by their active participation in the social world. They enter a social universe in which people are already busy interpreting and understanding their environments. The condition of 'entry' to this field is getting to know what actors already know, and have to 'go on' in the daily activities of social life (Giddens 1984:284). It does not then follow that researchers comprehend the situation as though it were 'uncontaminated' by their social presence and

for this reason, naturalism, in the literal sense, is regarded as 'dishonesty' by denying the effect of the researcher on the social scene (Stanley and Wise 1983:160). Nonetheless participant observation is considered to lead us to deep understanding, in that it involves both directly observing and listening to what has been said and done in a particular situation (Taylor and Bogden, 1998). In accepting this, it could be suggested that enquiry by observation methods would illuminate detailed data in terms of the actors underlying conceptualisation of disciplinary practices. However this method of enquiry can sometimes force a false representation leading to participants presenting their handling of discipline in an unnatural setting although care was taken to avoid this occurring.

Interviews are associated with both positivist and phenomenological methodologies. They are a method of collecting data in which selected participants are asked questions in order to find out what they do, think or feel (Hussey and Hussey, 1997) and how they understand their world. Under an interpretive paradigm, interviews are concerned with exploring 'data on understandings, opinions, what people remember doing, attitudes, feelings and the like, that people have in common' (Arksey and Knight, 1999:2) Given the purpose of this study, the use of interviewing offered this enquiry a logical and appropriate method for data collection. Although interviewing is often claimed to be the best method of gathering information, its complexity can sometimes be underestimated (Easterby-Smith *et al.*, 2006). In conducting interviews the traditional assumption is that those being interviewed have access to knowledge that they can share with the researcher when they are asked to do so in ways that help them to organise the presentation of their knowledge. In this view, what the respondent says is a representation of their social and cultural realities. The data gathered is indirect, filtered by the interviewees (Creswell, 2009), representing what the individual has chosen to offer as their thoughts, which may reflect how they seek to be seen, or what they think is wanted (Silverman, 2006). In this research, consideration was given to direct revelations to discipline policy, procedure and handling to avoid unduly influencing the respondents' narrative. By adopting a neutral position throughout and refraining from expressing opinion or assisting any interpretation facilitated this. The main difficulties faced by the interviewer are conceived, in this view of interviewing, as either incomplete and/or correct knowledge or deliberate deception on the part of the respondents. This potential problem was addressed by comparing what a number of

informants said on the same topic or question (Davies 1999). Overall interviews were primarily used for this study and great care was taken to ensure that this was a valid method for the research to be gathered. As a researcher I was aware that critical realism rejects both the purely representational and the totally constructive models of the interview process however Davies (1999:98) contests this rejection and argues that while interviews cannot be taken as a straightforward reflection of the level of the social, as opposed to individual interaction, there is a connection, an interdependency between the two levels that allows interviewing to provide access to the social world beyond the individual. This can be achieved by ensuring that the analytical process takes into account the nature of the links and the inherently reflexive character of knowledge. Conversely, the author does recognise the limitations that this approach brings.

Easterby-Smith, Thorpe and Lowe (1991) suggest that the unstructured or semi-structured interviews are deemed appropriate when it is necessary to understand the construct that the interviewee uses as a basis for his or her opinions and beliefs about a particular matter or situation. Jones (1985) highlights a number of issues that researchers need to consider in order for interviews to be successful. She points out that there is no such thing as presuppositionless research. In preparing for interviews researchers will have, or should have, some broad questions in mind, and the more interviews that they do and the more patterns they see in the data, the more likely they are to use this grounded understanding to want to explore in certain directions rather than others (1985:47). The use of semi-structured interviews were adopted for collection of the primary data to explore respondents' understanding and application of their disciplinary process and procedures and this was carried out over a period of three years. The use of semi structured interviews are considered appropriate when what are sought are the views of the interviewees on specific topics, compared to unstructured interviews which can focus on the agenda of the interviewee (Arksey and Knights, 1999). Questions are normally specified, but the interviewer is free to probe beyond the answers in a manner which would often seem prejudicial to the aims of standardisation and comparability (May, 1996:93), and this approach was adopted for the data collection. Fielding, (1988:212) noted that by allowing the interviewer to seek both clarification and elaboration the semi-structured method enables the interviewer to have more latitude to probe beyond the answers. In taking this

approach it was recognised that interview data could be seen as either positivist or emotionalist (Silverman, 2006). Positivist data would be focusing on accessing facts about the world, including beliefs about facts, feelings and motives, standards of actions, past and present behaviours and conscious reasons. Emotionalist data is focused more on lived experiences and the emotions that are central to those experiences (ibid). It was the intention that each interview would take 40 minutes to one hour however this was not restricted in any way so as to allow respondents as much time as necessary to respond to the questions posed. The reasoning for this was that people would be more inclined to volunteer information freely if they were not compromised by a 'forced' situation. All of the interviews were conducted in person by the author of the research and carried out in the respondent's workplace. Key issues under discussion followed a broad format but respondents were given freedom to discuss their experiences beyond this schedule, for example:

- Closed questions were used to elicit biological data to include background information- job title and nature of workplace, number employed, union or non-unionised.
- Understanding of the respondents experience in handling or taking place in a disciplinary, their age and their time in current role was elicited.
- Their own understanding and perception of their disciplinary procedures.
- The nature and extent of discipline disputes that occur within their workplace.
- Their views in the operation and effectiveness of existing disciplinary procedures.
- The degree of formality and informality taken when applying the disciplinary procedures.
- The extent of informal resolution adopted by managers in the handling of disciplinary disputes.
- The role that is played by HR professionals within the disciplinary process.
- The amount of related disciplinary training undertaken within organisations.
- The role played by senior/operational managers within disciplinary processes.
- The role played by companions and/or employee representation.
- The role played by unions

Throughout each of the interviews I was conscious of ensuring an objective and consistent approach was maintained throughout each of these by being critically engaged with my own thinking, particularly during my speech and action. Derrida (1997) indicates that we need to decentre ourselves in promoting participative discourses. Reliability is concerned with whether alternative interviews would reveal similar information (Easterby-Smith *et al.*, 1991; Healey and Rawlinson, 1994). Another concern in relation to reliability in interviews is the issue of bias. This can be interview bias where comments, tone or non-verbal behaviour of the interviewer creates bias in the way that interviewees respond to questions being asked (Saunders, Lewis and Thornhill, 2000). This may occur when the interviewer attempts to impose his or her beliefs and frame of reference through the questions being asked. It is also possible that bias can occur when responses are interpreted (Easterby-Smith *et al.*, 1991). Interviews are seen as dependent upon who interviewees are talking to (Miller and Glassner, 2004) where you are able to develop the trust of the interviewee or where your credibility is lacking, the value of the information given may also be limited raising doubts about its validity and reliability. Conducting an interview is an intrusive process, this is especially the case during in-depth or semi-structured interviews where the aim is to explore events or seek explanations. The approach was to maintain objectivity throughout the interviews and be guided by the respondent's response to the questions. Interviews lasted between 40 minutes to one hour and were taped and analysed using Nvivo software to assist codification of the raw data. In total there was approximately 46 hours of interview data recorded and analysed. In addition statistical data was gathered in respect of the number of disciplinary cases on average each year. This provided meaning and insight into the mechanism of workplace disciplinary procedures and processes and this was used to assist in formalising the process of category construction and theory building within the research (Glaser and Strauss, 1967).

The sample selected provided consideration of the organisational type, workplace size and sector across a range of private, public and voluntary organisations to ensure that representation was captured of a wide variety of settings. This included representation of large and medium scale private manufacturing, large scale retail, large scale public authority organisation, third sector, leisure, and small food retail. It was considered that large and medium organisations within the sample were more likely to have well embedded formal

disciplinary procedures in place when dealing with discipline. Also they were more likely to have a wider range of the required personnel involved such as Human Resource Professionals, Operational Managers, and Union or Employee Representatives.

The sample for human resources across the case organisations was somewhat dictated by the size of the function. Generally all the organisations had a HR lead and this varied from Director through to a HR leader. The sample ensured that each respondent had full involvement in their discipline policy and process. The largest sample group that was taken was across the management function and this was to ensure that there was full representation across the case organisations from a wide range of management levels that carry out the discipline process. This included capturing Directors, Operational Managers, Team Leaders and Supervisors. The sample for Trade Union or Employee Involvement representation was relatively small (two organisations) and this echoed the marginalisation of this function across the workplace.

Across the whole sample the author was mindful that there was an imbalance of respondents taken and that it consisted of a high proportion of managers. The rationale for this was that managers are the main actors in the handling of discipline and therefore this group warranted the largest sample. The sample for representation for human resources was dictated by the fact that in most cases these were a small function and therefore required one respondent who implemented policy and supported the disciplinary process and procedure. For union representation this mirrored the marginalisation of this function within the workplace and therefore representation of only two case organisations that recognised unions was captured.

Nonetheless consideration was given to ensure general representation was adequate across the spectrum to give wholesome data. Given the size of sample and methods adopted the research does not claim to be totally representative. Nevertheless, the eight case organisations were selected with reference to key contextual factors that shape workplace discipline and provide a diverse range of contexts and environments in relation to workplace size; industrial sector; workforce composition; and trade union representation.

Sample frame

	Case A	Case B	Case C	Case D	Case E	Case F	Case G	Case H
Sector	Private/ manufacturing	Private/retail	Public	Voluntary	Private	Public	Public	Private
Workplace size	200	122	200	480-550	55	170	158	25
Unionisation	Non-union	Unionised	Unionised	Non-union	Non-union	Non-union	Non-union	Non-union
Interviews Conducted								
HR or Personnel Manager	1	2	1	1	1	1	1	1
Line Manager/senior manager	4	4	5	5	4	5	5	5
Union Convenor		1	1					
Employee Representative			1					

Interview schedule– refer to appendix 1

Sample statistics

37% of sample is female and 63% is male, therefore the mode is male.

Age central tendency and dispersion

Mean	Standard Deviation
39 years 3 months	10 years 4 months

Years in service

Mean	Standard Deviation
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8 years 9 months	8 years 10 months
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In dealing with the practical administration prior to any collection of the data all the case organisations were contacted through the identified gatekeeper mainly the HR manager firstly to obtain a copy of their disciplinary policy and procedure for scrutiny, additionally related policies such as absence and performance management were also requested. Once these had been received negotiation took place to identify the names of respondents that were selected for the interviews. Dates and times for these interviews were also agreed.

In total 49 semi-structure interviews were conducted with key organisational actors that took part in their disciplinary process. Hence the research utilised in-depth largely qualitative techniques (Van Maanen, 1983). The interview sample of respondents as previously identified was made up to ensure that there was adequate representation of key actors involved within the management of discipline in each organisation. This captured the involvement of HR or personnel professionals, operational and senior management and union or employee representation. All respondents were provided with a written explanation of the authors intended research in advance of any fieldwork and that full anonymity would be assured. At the start of the interview this was reiterated verbally and respondents were free to abort the interview at any time in adopting this approach it was considered that all reasonable requirements for consent had been met (Creswell, 2009).

According to management and organisational researchers (Buchanan, *et al.*, 1998; Easterby-Smith *et al.*, 2002; Johnson, 1975) you are more likely to gain access to organisations when you are able to use existing contacts. Additionally as highlighted by Saunders *et al.*, (2003:119) their knowledge of us means that they should be able to trust our stated intentions and the assurances given about the use of any data provided. Therefore access to the case organisations was not seen as being a problem as the researcher has worked for over 33 years in the further and higher educational sector and during this time has developed and taught on a range of human resource management, management and trade union related degrees and professional courses. This relationship was also strengthened by being an active Chartered member and examiner of the Chartered Institute of Personnel and Development and BUIRA. During this time this has enabled the forging of a strong

network of HRM practitioners, operational managers and employment representatives that allowed the author to negotiate entry to the targeted organisations through this relationship. All case organisations and interviewees were provided with a detailed letter explaining the purpose of the research and fully explained that organisational and personal anonymity would be maintained prior to entry. Homan (1991) recommends informing participants of the nature and likely consequences of their participation in the research in a way that is comprehensible to them. In addition, consent should be obtained that is based on their understanding of this explanation and free of any coercion or undue influences.

Once access was granted to each case organisation the author was conscious that each of the respondents scheduled to be interviewed would need to be open and confident to cooperate fully with the requirements of the research. As noted by Robson (2002) gaining cooperation from intended participants is a matter of developing relationships. Therefore the author prior to each interview openly discussed the purpose of the research and detailed how it will contribute to both academic and practitioner knowledge as well as assured each participant full confidentiality and anonymity.

When undertaking the research fieldwork, a range of values and ethical issues were fully considered. Wells (1994:284) defines 'ethics in terms of a code of behaviour appropriate to academics and the conduct of research'. According to Saunders *et al.*, (2003:131) a number of key ethical issues arise across the stages of a research project and these can relate to issues around privacy of the participants, their voluntary nature and consent in the process, confidentiality of the data elicited and anonymity and the behaviour of the researcher.

May (1993) notes that in everyday conversations and judgements, we make statements of two kinds, these are positive and normative. One idea of science prides itself on the ability to separate statements of what does happen (positive) and what scientists would like to happen (normative). Positive statements are about what is, was or will be; they assert alleged facts about the universe in which we live. Normative statements are about what we ought to be. They depend on judgements about what is good or bad, and they are this inexorably bound up with our philosophical, cultural and religious positions (Lipsky, 1982:5). Therefore we must present our research in such a way that we strip 'ourselves' from descriptions, or describe our involvements in particular kinds of ways as somehow

'removed' rather than full-blown members of the events and processes we describe (Stanley and Wise 1983;155).The researcher ensured throughout the data collection that objectivity was maintained and all data that was collected was reported accurately and fully and subject selectivity was avoided to ensure that the research remained valid and reliable. Compliance of ethical issues during data collection was fully considered. The research was monitored and passed by the relevant ethics committee within the supervising university. Ethics refers to rules of conduct, typically to conformity to a code or set of principles (Reynolds, 1979). In designing the research informed consent was considered as this type of social research may be said to involve relationships among a variety of individuals and collectivities between researcher and sponsor; researcher and various gatekeepers; researchers and their colleagues and the discipline more broadly; researcher and the general public; and researcher and research participants (Barnes 1979:14). The requirement to inform participants of the nature and likely consequences of their participation in the research in a way that is comprehensible to them, and, second, obtaining consent that is based on their understanding of this explanation and free of any coercion or undue influence (Homan 1991:71). Confidentially according to Davies (1999:51) essentially concerns the treatment of information gained about individuals (and organisations) in the course of the research. It overlaps with consideration of privacy and assurances of anonymity (cf.Sieber 1992:44), people will feel that their personal privacy has been invaded when information about them is obtained or used without their knowledge and consent is used in ways of which they disapprove. They were assured that no references to names or organisations would be referred to within the research.

In terms of other ethical issues such as the gathering, storing and sharing of confidential data the author ensured that this remained compliant with the Data Protection Act 1998 in order to ensure that all sensitive documentation such as organisational disciplinary policies and related policies as well as participant transcripts were adequately stored and protected from access by other parties. All organisations that agreed to take part in this study were fully informed that the research would be used towards a PhD thesis and any subsequent research papers, which they fully agreed to accept.

Data analysis

Analysing qualitative data presents both positivists and interpretivists with a number of challenges. (Collis and Hussey, 2009). One of these problems is there is 'no clear and accepted set of conventions for analysis corresponding to those observed with quantitative data' (Robson, 1993:370). Another problem is that the data collection method can also incorporate the basis of the analysis. This makes it difficult to distinguish methods by purpose. Morse (1994:23) laments that 'despite the proliferation of qualitative methodology texts detailing techniques for conducting a quantitative project, the actual process of data analysis remains poorly described'. In deciphering field research, Rose (1982) suggests researchers should consider how the data was collected and by what methods; how the sampling was done; how should the data be analysed and results presented in relation to theory building. For the purposes of this research, initially, each disciplinary policy was reviewed from each case organisation within the intended sample in order to familiarise myself with their procedure and processes. In addition to this other discipline related policies such as performance and absence were also scrutinised. Content analysis was then applied and is an approach used for analysis of documents and texts that seek to quantify content in terms of predetermined categories and in a systematic and replicable manner (Bryman and Bell (2011:289). The object of the analysis was to move into a deeper understanding of the data, analysing themes and perspectives (Creswell, 2009), in order to provide a process of inductive reasoning. Morse (1994) suggests that all the different approaches to analysing qualitative data are based on three key elements in the process; these are to comprehend the setting, culture and topic before research commences, synthesising different themes and concepts from the research and forming them into new, integrated patterns, and theorising. Theorising is the 'constant development and manipulation of malleable theoretical schemes until the best theoretical scheme is developed' (1994:32).

The structure taken for the analysis of the data was first to develop the content analysis from the discipline procedures from each case organisation. The use of Nvivo software facilitated the codification of the raw data into meaningful themes. Interviews were then placed into groups consisting of human resource or personnel managers, senior and operational managers, union or employee representatives. The rationale for dividing the

respondents into these groups was to facilitate analysis of their role within the disciplinary process and identify nuances.

The next step was to code the data elicited from the framework of the semi structured interview. Each of the interviews was recorded and then transcribed. From the outset these were codified using Nvivo software. As the analysis proceeded the patterns of data were broken down into sub themes that emerged from the data.

Reliability, validity and generalisation

Much of the past thinking about the validity of research designs in the social sciences comes from thinking about the validity of experimental research in chemistry and biology (Quinton and Smallbone, 2005:126). Four tests or types of validity are commonly used (Yin, 2003), these are internal validity, construct validity, external validity and reliability. The methodological roots in the experimental sciences helps to explain why a commonly given explanation of the term internal validity is whether what you actually measured was what you intended to measure, when the research was designed (ibid). In approaching the issue of validity a number of approaches might be considered such as data triangulation where the data is collected at different times or from different sources in the study of a phenomenon (Easterby-Smith, Thorpe and Lowe, 1991). The use of triangulation through multiple data sources within case study enquiry (Gill and Johnson, 2010) also provided what Denzin (1970:297) defines as 'the combination of methodologies in the study of the same phenomenon'. The use of semi-structured interviews is seen as providing a high degree of validity as this provides the opportunity to clarify responses through the use of further questions, delving more deeply into responses and their meanings (Saunders *et al.*, 2012). As the research was deductive the author was not overly concerned with internal validity as the purpose was to keep the research as open as possible. Reliability is seen as an assessment of whether the same findings would be obtained if the research was repeated or if someone else conducted it. This can be problematic in business and management research, as any social context involving people makes replication of the research very difficult (LeCompte and Goetz, 1982). In qualitative studies, the main concern is about the consistency of the results, the robustness of the measure and whether it is free of random or unstable error (Quinton and Smallbone, 2005). According to Cooper and Schindler (2003)

they state that stability, equivalence and internal consistency are the key concerns. Reliability for this research considered the use of different data sources and collection tools. By applying established theory from one area to another and collecting the data at different time points. While the use of case studies are open to disapproval in that they cannot be credibly used for generalisation (Desncombe, 2009), external validity is not a problem with case studies because generalisability is not an objective of qualitative research (Stake, 1978), it is argued that they can produce generalisation by the development of new concepts in regard to what is being studied (Punch, 2005). Yin (2003) further argues that replication of case study methods can achieve greater generalizability of theory while Schofield (1990) argues that qualitative researcher can make informed judgements about the match between the single situation being studied and the others to which one might be interested in applying the concept and conclusions of that study. This she suggests, is what enables researchers to make informed judgements about where and to what extent they can generalise the results of their qualitative studies. Gummerson (1991) goes further by proposing that rich, deep data from a single case may enable generalisability to other cases to be appropriate.

Strengths and limitations of methods adopted

The most valuable aspects of the research methods adopted for this thesis was the depth of enquiry that is afforded by using an interpretative approach. Merriam (1988) identifies the following assumptions as a platform for this approach where the researcher is concerned primarily with the process, rather than the outcome or product. The intention was to explore how respondents made sense of their experiences of disciplinary processes in the context of their workplace. Another important factor was when conducting research of this type is that the setting was natural and carried out in the respondents' place of work. Although the research is mainly inductive it gave the opportunity to construct abstractions, concepts, hypotheses and theories from abstractions. Where the use of quantitative methods would have been limited in eliciting the depth of enquiry required for this type of study.

The use of case study research methods were particularly well suited to an enquiry of this kind where the interest lies in organisational issues such as environmental factors and

people's feelings towards discipline. Although the case study approach is considered an appropriate method to adopt there are some limitations. The fact is that this type of method was very time consuming and therefore took a considerable amount of time to conduct and analyse the data. Therefore the author was conscious that it was critical to adhere to a clear and well defined schedule resulting in the fieldwork being completed in the first three years of this thesis. A significant strength was the range of contacts available to the researcher forged through professional relationships. This facilitated both access and professional confidence during the research process and great care was taken to ensure that this relationship remained professional throughout the enquiry. Considering the methods adopted for this enquiry the question of reflexivity was given some degree of consideration. The author was conscious about his role at all times within the research proceedings and throughout the process of this enquiry and great care was taken to remain objective throughout.

Perhaps the most challenging aspect of completing the thesis was the allotment of time. As a full-time working professional it was difficult to find a balance between increasing workload necessity against the requirements of part-time PhD study that requires high levels of quality time.

Chapter seven: Findings

This chapter sets out the findings from the eight case study organisations. Initially, it will provide understanding of the way in which disciplinary policy and content is formulated over time within the organisations and how it is communicated to the end user. It will then go on to identify the process of disciplinary handling practices that occur within the management of disciplinary issues. Moreover it will recognise and evaluate the contested roles that are played out during the disciplinary process by the key organisational actors namely: operational managers, HR professionals and union or employee representatives, as well as how these affect decisions. In particular it will look at how formal and informal approaches are taken to inform disciplinary outcomes. Finally it will review the role that the HR function takes within discipline proceedings in order to examine the extent of devolution of HR practices in relation to disciplinary handling.

Policy and Procedure

i) Policy evolution and process

The section of the findings provides understanding of how the case organisations within the sample have shaped and formed their disciplinary policy and procedure over time in response to changing needs that are instigated by internal and external regulatory requirements.

Firstly it is worth highlighting that within the United Kingdom, under section 1 of the Employment Rights Act 1996 there is a legal requirement that all employees receive a written statement of their terms and conditions of employment. Such statements must specify any disciplinary rules applicable to them and indicate to the person that they should appeal if they are dissatisfied with any disciplinary decision (Burchell, 2008:86). Furthermore according to Burchell is that formal disciplinary procedures normally contain a number of sub processes which inform:

1. The establishment of the rules themselves
2. The establishment of sanctions
3. The identification of the breaches of such rules and
4. The application of the appropriate sanctions

As explained in chapter three the Employment Act 2002 (Dispute Resolution) Regulations 2004 essentially introduced statutory minimum discipline and grievance procedures. These were repealed in 2008, however the three key stages still form the basis of the revised Acas Code of Practice on Disciplinary and Grievance procedures.

According to Dundon and Rollinson (2011:214) where possible, it is prudent that the discipline procedure should conform as closely as possible to the Acas code. The fact being is that the code can be cited as evidence in a case to an employment tribunal, and recommends the use of a rehabilitation approach. Fundamentally, it sets out the principles that should be observed by sound procedures.

The law affords most employees a statutory right not to be unfairly dismissed and as such fair and effective disciplinary procedures are as vital to management as they are to employees. Having sound procedures in place and following the basic guidance within the Acas code is generally viewed by employment tribunals as a basic requirement in demonstrating procedural fairness and thus successfully defending claims of unfair dismissal

It was no surprise therefore that throughout the sample all of the organisations had developed, or were currently re-developing written procedures approaches for dealing with workplace disciplinary matters (Refer to fig.2.) on what each of the sample case organisations laid out in their disciplinary policy and subsequent processes. This was seen as essential to comply with regulation and prevent litigation. This is also in keeping with the recent findings of the Work Employment Relations Survey (Wanrooy *et al.*, 2011) in that the proportion of workplaces that have procedures in place for handling discipline or dismissal has increased since 2004, so too has the number of employees that these procedures cover. In 2011, 97 per cent of all employees worked in an establishment with formal disciplinary procedures.

Fig 2. Disciplinary policy and guidance

Case	Organisation	Scope- proves the term of reference	Indicates the type of disciplinary issue and possible sanction	Legal issues and standards required	Provides stages to be taken	What is the process to be used taken	What are the potential outcomes	Potential reasons for dismissal	Timescales	Examples scenarios Letters for managers to use in disciplinary	Life of warnings	Includes reference to equal opportunities policy and harassment
1	✓	✓	✓	✓	4	✓	✓			✓		
2.	✓	✓	✓	✓	3	✓	✓	✓	✓		✓	
3	✓			✓	4	✓	✓	✓	✓	✓	✓	✓
4.	✓	✓	✓	✓	3	✓		✓	✓			
5.	✓	✓	✓	✓	4	✓		✓				
6.	✓	✓	✓	✓	4			✓	✓			
7.	✓	✓	✓	✓	3							
8.	✓	✓	✓	✓	3			✓				

Generally the formation of the disciplinary policy across the organisations within the sample was primarily aimed to adjust or correct miscreant employee behaviour. The policies were written in a formulaic manner describing to the user the necessary process to be taken when a transgression has occurred. Routinely this was seen to communicate to employees that any deviation from the prescribed rules and standards laid out is unacceptable. The aim, as with most discipline procedures are that employees will voluntarily adopt laid down patterns of behaviour that are deemed acceptable to the organisation. This is often labelled as the rehabilitation approach (Rollinson *et al.*, 1997) and can be seen operating in contemporary approaches in handling workplace discipline within the UK.

All the disciplinary procedures were fully compliant with legislation and broadly followed the guidance laid down by the Acas Code. Significantly, many of the HR managers interviewed saw their policy as not only mitigating organisational risk in relation to employment litigation but also saw it as a vital policy in regulating the necessary standards of behaviour of employees as well as operational managers. Essentially, the disciplinary policy was linked to issues of workplace performance such as absence, redundancy and performance and appeared to be a desire on the part of HR and senior management to foster what was seen to be a positive workplace culture.

It was apparent throughout the interviews that the organisations within the sample had a wish to put into place robust sound disciplinary procedures for operational managers to adopt and use. In all cases, with the exception of one, the Human Resources (HR) or Personnel Manager (PM) was the overall creator of the disciplinary policy which is very much in line with a unitary approach that is often taken by this function. When I questioned HR professional on why this was the case they saw this as a main responsibility of the role, especially where legal aspects of policy were concerned. What was debatably is that this was questionable in that an HR practitioner was the organisation's only 'legal' expert on matters related to employment law.

There was evidence in one organisation that the discipline policy and procedure was created by a legal firm specialising in employment law matters. This was because this policy was in place before the HR function. In this organisation, prior to the recruitment of the HR function, the discipline policy and procedure was overseen by the finance director because of a perception that the function possessed some degree of legal understanding and expertise.

There was little doubt that all the HR managers interviewed fully accepted that, despite attempts to devolve responsibility of the handling of discipline down to operational management, they were still seen in their organisation as 'guardians' of the disciplinary policy responsible for ensuring procedural compliance. They accepted that the operational managers were the end-user and therefore responsible, essentially, for policy implementation within their respective organisations but they had some reservations regarding the extent to which this was afforded. This was explained by one HR manager as follows:

"We write the policy in order to provide a framework in which to operate, it's the manager that use it and that's often where the problems occur" (HR Manager).

A key area of tension from the HR perspective was the extent to which operational managers adhered to the procedure laid down throughout the process of disciplinary handling. Their understanding was that they produced and implemented the policy and operational managers were the end users of it. The frustration at this point was often that

operational managers tended to deviate away from the set procedure requiring HR to intervene or pick up the pieces as it was sometimes interpreted.

The evidence provided suggested that another key role of HR managers was to amend existing disciplinary policy and procedure, as and when required, in order to keep pace with changes to employment legislation and the ACAS Code. This reflected an attempt by the HR function to address the ongoing challenge of ensuring that staff within their organisations were operating in a standardised and consistent way that remained compliant with both procedure and legislation.

A common concern in reaction to this was that operational managers often found it difficult to provide a clear response when asked how they gained full understanding of their disciplinary process. In some cases the operational managers revealed that:

“We have training plans in operation, performance reviews, and regular meetings I think as a manager I know if one of my team is struggling to why they might need a change in their behaviour or address the quality of their work. There is always a reason for that so we are very quick to respond if they have gone to disciplinary. We try to manage this informally very quickly on certain issues because in many cases you don’t need a formal route. We know the warning signs unless it’s severe enough to go to a formal. I believe in that case you have exhausted every opportunity so if it goes this far we should get rid of them” (Line Manager, retail).

This confusion was not uncommon across all organisations within the sample in that there was a fundamental disparity between HR intentions and everyday practice as interpreted by operational managers.

Enshrined within the policy was the understanding that organisations follow the statutory stages of disciplinary procedures. Common practice amongst organisations is to indicate that the following stages are applied in disciplinary handling following the ACAS framework:

- (i) Setting out the issue of concern in writing
- (ii) Holding a meeting to discuss the matter
- (iii) Providing employees with an opportunity to appeal the decision

Across the sample all organisations adopted this minimum requirement and this was comparable with the findings of the WERS (2011) that identified that 81% of workplaces, within their study, carried out all three elements of the process. (fig.3)

Fig 3. Practice of the three principles for handling individual disputes 2004 and 2011, in per cent. 2011 Workplace Employment Relations Study.

Discipline or dismissal		
	2004	2011
All three, all of the time	69	81
All three, but not all of the time	15	11
One or two, all or some of the time	15	5
None of the principles	2	2

Across the sample there appeared to be some confusion over the way in which the disciplinary procedure should be applied. In some cases this seemed to be caused by the size and complexity of the procedure and, equally, the extent to which it had changed and been amended over time. There appeared to be a general confusion and lack of clarity as indicated by one operational manager:

“Because of the three stages, if there was an incident of any kind, even a minor one, they would automatically get a letter, fully detailed which would explain the investigatory side. It doesn’t always mean that they are going down the investigation side and these are the procedures we will look into... OK, so I’m not aware of it and I’ve done some misdemeanour that invokes this policy, what would be the process for me? Depends what it was, it could be suspended there and then. The nature of the incident, gross misconduct, they may get suspended on full-pay until the hearing takes place. I think we have to give three days’ notice otherwise twenty four hour notice to hold a meeting and the letter they would get” (Line manager large public sector employer).

In two organisations where employees were offered a review of the changes made to the disciplinary policy, the evidence suggested that there was little or no uptake of the invitation. According to both organisations HR often communicate changes to policies to offer and solicit staff opinions, but virtually no feedback is received.

Interestingly, the presence of unions appeared to lead to much greater consultation and negotiation over disciplinary processes. In two of the case organisations within the sample where unions were recognised they were consulted on the development of disciplinary policy. As one union representative from USDAW, operating in the retail sector commented:

“The actual drawing up of the disciplinary policy was done and agreed at national level agreement before I took up the role of union rep at this store. It is quite effective to be honest, it has worked well. The union is invited to any meetings that involve the negotiation of changes to policy” (Union Representative Retail).

Consultation over disciplinary policy between the organisation and the union was evident in the other unionised organisation within the sample:

“The trade unions were involved it’s a company procedure in that the company writes it but they run it past us” (Union Official).

For some union respondents, however, their involvement had not necessarily removed concerns about its application and interpretation: For example, a union official, when asked about the last time discipline policy had been reviewed, explained that:

“We last reviewed it in October 2010 when we transferred to the private sector. It was reviewed then, to be honest it’s a procedure that I have many concerns with. One concern being it is open to interpretation sometimes” (Union Official Manufacturing).

Despite these concerns, the union respondents suggested that their contribution to policy formation helped to ensure that the policy was implemented and complied with effectively. Furthermore, where the organisation recognised unions the policy was developed

collaboratively and then ratified through national agreement. This appeared to generate and foster a more positive culture of acceptance and ownership of the policy.

It could be argued that where unions were involved in proceedings their involvement may also ensure that procedures offer 'belt and braces' protection for employees. This, in a sense, helped to ensure comprehensive application of procedures because it allowed union representatives to cross examine both managers and the HR professional at each stage of the disciplinary process. Arguably, the robustness of procedures commonly found in public sector organisations has allowed them to develop an almost quasi-judicial process.

Nevertheless there was a requirement for conformity and compliance across all sectors when applying disciplinary procedures and this appears to be the dominant the thinking of HR managers. This was particularly apparent within the public sector precisely because it is highly unionised and therefore this often ensures a tradition of procedural fairness at the heart of the process. There was a requirement in this sector for HR to consult with trade unions representatives at all stages of the disciplinary process irrespective of the level of rule transgression. Disciplinary handling across private sectors was managed without union involvement and, here, the absence of any consultation allowed the process to be speeded up. In both sectors procedural fairness seems to have been driven by the potential threat of litigation although this was more so noticeable in public sector organisations within the case sample. However, the level of detail in formal procedure could sometimes be a source of confusion for managers, inhibiting their response to disciplinary issues.

This suggests that where there is union involvement within disciplinary processes it underpins informal processes of resolution. Furthermore it also uses trade unions as an informal source of evidence and investigation.

There appeared to be some variance within the sample in relation to who (other than HR professionals) contributed or had input to the formation and/or development of the disciplinary policy. It was evident within private sector organisations that the policy tended to be developed or amended by HR or law professionals in isolation with no input from others staff and little consultation. Organisations represented within the sample that did not recognise unions were asked if they involved employees in the development of the disciplinary policy and process. Significantly there was little involvement offered around this

issue, although one organisation did post amended policies on their staff net to invite employee comments. This was explained as follows

“Yes whenever we come up with a new part in the handbook we have an employee consultation process so any new or changes to existing policies is placed on a group information folder. People can then read it and then if they have particular concerns they have the right to put that forward however it may or may not change the process” (Production Manager - Non-union organisation).

There was also evidence within the sample of external legal advice playing an increasingly influential role in shaping the disciplinary policy and this was especially the case within organisations where there had previously been no function. In one case, the procedure had been developed and formulated entirely by legal advisers, however the company had grown significantly from being a small entrepreneurial organisation and was now in the Times 100 companies. The company had a fairly small but growing HR department and was in the process of attempting to review its policies at the time this research was being carried out. The HR manager commented that the disciplinary policy was problematic and did not correspond with changes and processes that were now in place within the company.

She argued that outsourcing policy and procedure development in this way meant that the resulting procedures did not reflect the needs and realities of the organisation. Principally both the policy and its recommended procedures had not kept pace with recent changes to law relating to this area of practice. Consequently it also now breached the relevant employment legislation and Acas code the discipline procedures in who is authorised to oversee a final appeal hearings. In addition it didn't reflect the desire of the organisation to promote a less formal approach to handling disciplinary nor did it allow for any clarity to managers in applying the disciplinary proceedings consistently:

“In my previous HR roles I would never outsource such an important policy I have always developed them in-house. This policy is now not fit-for-purpose, as it stands it is too narrow which constrains managers, directors and supervisors. There is in some recent cases evidence that our company is not carrying out its own procedures where supervisors were doing final hearings.

It's a real pain for HR because there is a clear gap and this is causing lack of awareness, especially in managers applying it. It also causes ambiguity and therefore allows a great deal of difference in its interpretation. I've been here for three years now and have been asking the director to let me review it as this, and other policies have never been reviewed. As we speak we are currently selecting a range of policies that are now considered urgent to review and the discipline policy is one of them" (HR Manager).

It was also evident within other organisations that they had had used legal professionals to develop the disciplinary policy. The following case was typical:

"The policy itself was in place before I took over the role so all I would say is we have added the revisions for the 2004 dispute resolution regulations. At the time our whole employee handbook went under construction and review and it was at that time any tweaks were made but they were made for us externally" (HR Manager Engineering).

The perception was that HR managers often felt that they were not comfortable with external involvement in the development of the disciplinary policy as it did not acknowledge the unique culture of their organisations. Furthermore, as they considered themselves as expert advisors on disciplinary matters, there was a sense that deferral to outside bodies' undermined their authority and influence. Additionally the use of external legal advice can serve to over formalise the disciplinary process.

In some instances it was not unusual for amendments to be made to the existing disciplinary policy in response to correct procedural inaccuracies and in some instances problems of consistency and application. This was evident in one of the workplaces where the existing policy was subject to potential flaws:

"We have had to make an amendment to include a reference within the policy that said only a manager or a director could give the disciplinary sanction in it. We found out that within our current practice that in some areas of the factory that some of our supervisors were holding hearings and thereby giving sanctions. So that meant that we were actually operating

outside of our own procedures because we were allowing supervisors to carry out hearings and we should only allow managers and directors so this amended quickly and stipulated within the policy. To communicate this we had to send a memo round to all employees to explain this change. This is really the only major change to the policy” (HR Advisor).

All of the procedures across the sample provided users with a linear framework for handling disciplinary issues. Each began with an introduction that set out the purpose and scope of the procedure and underlined the importance of company rules and the way in which the procedure could be seen as an interpretation mechanism. Routinely they all applied the three key principles as laid down by the Code of Practice to provide: Information regarding the nature of the allegations or issue; the opportunity to meet to discuss those allegations; the potential to appeal against decisions made.

Operational managers were asked about the procedure and approach in a typical disciplinary investigation within their organisation in determining what constituted a typical disciplinary panel hearing once it had been made formal. In particular, in order to determine if there were different approaches being taken throughout the sample, its enactment, the documents and processes to be used and how the panel was selected

“It starts initially with the investigation. This investigation is just purely to get background on what the incident or issues are and this would be conducted by the line manager. At this point it would be decided if it’s to go through to a disciplinary. All the background information is noted, and in essence this bit is like a disciplinary. It is to find out the ins and outs and to decide if it to go on to the next level. If it does have to go to a disciplinary then the person involved is given a certain amount of time to clarify the information so that they can come to the hearing in preparation of the allegation and as to why it has happened. The first stage is purely the investigation to let them know if the offence warrants a disciplinary. If it’s trivial then we use the interview to give them their last warning. They realise then whatever the issue is that they cannot get away with it anymore and that they have to adhere to such and such a policy etc. the ones who have

been in this situation before will know it is purely an investigation and if they do it again then it might go to a full disciplinary hearing” (Operational Manager Retail).

In addition they were asked to reflect on the extent of standardisation within their disciplinary processes. An operational manager explained:

“It depends on what it was it could be a suspension there and then. It depends on the nature of the incident, if its gross misconduct then they might get suspended on full pay until the hearing takes place and then we take it from there. Otherwise they would receive a letter from us. If its gross misconduct I think we have to give them three day notice otherwise it 24 hours’ notice before we hold the meeting and the letter they would get would have an attachment with it explaining their values on it, why we are bringing them there, for what reason and who they can bring a representative which could be a work colleague or legal rep. We have really standardised the process now even down to the pre-prepared letters” (Plant Manager Processing).

The procedures included a broad description of the potential requirement for operational managers to deal informally with lesser or minor infringements. The evidence suggested that this was the area of disciplinary policy that operational managers found particularly ambiguous and was therefore some inconsistently applied and was a potential source of inconsistency. Managers appear to be confused as and when to apply the policy in respect of what should be regarded as minor or major infringement. Many of the managers felt a lack of support and understanding in interpreting the disciplinary policy when determining the boundary lines between those incidents necessitating a formal approach and those requiring only informal intervention.

In all the procedures, there were stages: verbal warning; written warning; final warning and eventually dismissal. The formation of the disciplinary panel often consisted of departmental manager, whose member of staff was involved in the disciplinary incident, an independent, usually a manager from another department, and HR or personnel

department representation. Further stages of the investigation, such as appeal, were conducted by a senior manager within the organisation.

Within two of the procedures the approach to be taken by managers was prescribed by a formulaic checklist as well as appendices that included pro-forma letters to be used at each of the required stages with timelines. Others merely presented fairly succinct bullet points for each of the three stages along with a list of examples of what constituted each of level of offence. This was, in some cases, accompanied by an overarching disclaimer at the end of the policy typical of which is 'this list is not exhaustive or inclusive'.

The disciplinary procedure tended to vary in length and complexity across the various organisations within the sample. This seemed to depend mainly on sector as opposed to organisational size. In the private sector, procedures were relatively brief and tended to meet both legal and the ACAS Code of Practice's minimum standards these were often no more than four pages long, sometimes in small booklet form. It is conceivable that these could present operational managers with the opportunity exercise their own interpretation and discretion of the procedure.

Those organisations operating within the public or voluntary third sector tended to have much more comprehensive disciplinary policies in place. Incidentally, one case organisation within the voluntary sector was, at the time of this research, subject to transfer of undertakings (TUPE) with employees that were previously under public sector control.

One specific example was 82 pages in length and covered the full gamut of legal and procedural approaches that managers may need to consider. Paradoxically, the assistance intended to be provided by the additional detail actually made it more difficult to use and interpret, according to end-users. This might suggest that procedures within these sectors have a greater preoccupation with procedural compliance and the avoidance of 'rule violation' (Bieroff *et al.*, 1986) in an attempt to prevent potential litigation. This in turn often led to criticism about increased bureaucracy and raised concerns about inflexibility of interpretation by operational managers. This relates to issues raised by (Leopold and Harris, 2009) in that the relationship between levels of regulation and the HR function's organisational role goes to the heart of some of the tensions and ambiguities long identified as inherent in professional personnel management.

Furthermore, some of the disciplinary procedures within the sample tended to be presented using highly formal and legalistic language. For HR professionals, this was seen important in order to emphasise the significance of such a procedure in ensuring legal compliance as a means of minimising the threat of litigation. However, this often meant little to operational managers charged with putting procedures into practice.

“I’m can generally get my round it, (the policy) but I suspect it’s difficult for younger managers who have just started because it can be a challenge deciphering some of the jargon” (Operational manager, Public sector).

In some cases within the sample the procedures contained a section that provided frequently asked questions on disciplinary matters to aid or assist operational managers on its use. Although operational managers often found this added a further hindrance to the process of disciplinary handling as it could be used to force their choice guiding their hand in decision outcomes.

When questioned further about what seemed to be excessive detail within the disciplinary policy in public and voluntary sector organisations, one of the HR managers commented that this was due to the fact that:

“We are bound by compliance and regulations in this sector, particularly from our own internal practice. I would love to thin it down but my hands are tied” (HR Manager Public Sector).

What appeared to be important in relation to this point was that the respondent felt that the prevailing governance of the sector demanded “across the board” compliance with policies and procedures rather than allowing for discretion at local level. Here this could suggest that by failing to afford any level of discretion regulation may shape the process subjecting any deviance to external scrutiny.

(ii) Communicating the disciplinary policy

This section of the findings chapter describes the different approaches used by each sample organisation in communicating their discipline policy. The means of communication of the disciplinary policy and procedure across the sample organisations tended to vary across the

sector depending on size. The majority of the organisations' use their induction process to introduce and explain the disciplinary policy to new staff. It was common for organisations to use a checklist in order to ratify acknowledgement by their staff and managers of the existence of key policies used in their workplaces. The disciplinary policy was also increasingly promoted through staff intranet systems as identified in the previous section. However, a number of respondents argued that this was not the ideal way of communicating the disciplinary policy as often staff did not have time to read and familiarise themselves with its contents. Furthermore they were not able to get an explanation of any misunderstanding that they might have in relation to the policy.

As one operational manager stated:

"They [HR] drop loads of policies on the [staff net], where do I find the time to read them, or even find them" (Operations Manager - Public sector).

Within one organisation, HR practitioners had sought to have quarterly meetings to discuss various aspects of the policy in detail. This was seen as particularly important given a lack of faith in their line managers' interpretive abilities. The intention was to ensure that they were aware of their role and fully appreciated their involvement in the operation of disciplinary procedures as well as to clarify their understanding. As one HR manager explains:

"Historically what has happened is our people are provided with a copy of the employee handbook when they joined us. So we expect them to some degree to understand its provisions and what it means. It is the case that over the last year we have had quarterly management meetings with them and what we have done is actually gone through the procedure and this went quite well. We place the managers into work groups so that they could go through the specifics of the discipline policy. This explained legally why we have them in the first place, we involved our legal team and they did a session on the benefits of the procedures as well. We also explained the practical implications that could occur and how you actually go about enacting the procedures. So we have had quite a hand on involvement session with management to make sure that they understand the

procedures. With employees we also explain this to some extent” (HR Manager).

The induction process was seen by HR managers within the organisations as an ideal opportunity to communicate the disciplinary policy and its procedure but also it provides them with the chance to develop the awareness of new employees. When asked what, specifically, was covered within the induction procedure one of the HR managers explained:

“All new staff, including managers within their first week with us has to attend a full induction which covers our disciplinary procedure, the type of training what we are going to offer you and what we expect from you in return. It’s a full comprehensive training package that provides support on what you are expected to abide by the policies and procedures of xxxx. It explains and communicates that you are working for an organisation and not yourself or for me, if there are concerns it will be dealt with. I go down the training and support route so that if it ever comes down to a disciplinary I know personally that we have tried everything. Managers are told at the induction that if ever there are concerns regarding any disciplinary issues that you bring it to me in your supervisions-we have monthly supervisory meetings and that’s our time for sorting out any concerns or problems that they have relating to our policies as well as any other workplace concerns” (HR Manager Voluntary Organisation).

According to HR practitioners the importance of managing the disciplinary process was initially covered during the induction process and articulated in the employee handbook. This was seen as having a twofold benefit in that the induction process was seen by HR as an opportunity to provide clarity and respond to questions from operational managers on their understanding of the disciplinary policy as well as provide some initial disciplinary training as explained by on HR manager:

“All our new managers have three hour induction and can ask questions or expand on anything to do with the disciplinary policy during this time, it is their bible. We also have CBT training so if they say they did not know about something like discipline we can refer back to their CBT score – say 85 per

cent and we can then say to them well you scored 85 per cent so how can you say you didn't know"?

Furthermore:

"If it came to a disciplinary and them, (the line managers) had not completed the CBT then the line manager would be at fault for not ensuring it was completed. It is part of their development. You have a training card which is reviewed every four weeks to see what they have achieved. What CBT training has been completed, it also gives them a chance for feedback, it's a two-way street and after the twelve week review if you feel that a person has not learnt enough or is not up to standard you can extend the review period before you sign them off. You have to be confident that they are fully compliant before they are signed off" (HR Officer Retail).

Throughout the sample all but one of the HR professionals were actively involved in the formation of the discipline policy and they agreed that this was an important part in their considered role as legal experts. Essentially they saw this policy as a means of setting the standards required by their organisations and the processes that need to be followed should employee fail to meet those standards. At the time of this research many of the HR managers were in the process of reviewing and updating their existing disciplinary policies. This was seen by HR as an attempt to ensure that operational managers adopted a standard approach to the process. Additionally, updating the policy was seen as necessary in order to maintain currency on all levels, both internal and external, but particularly in response to legal updates. Importantly this was seen by the HR practitioners as cementing their position as guardians and owners of the disciplinary policy and its procedure.

Moreover, the refinement of the disciplinary policy, procedure, and supporting documentation was seen as the main tool for ensuring that operational managers were consistent in applying disciplinary standards and following processes in order to ensure that the organisation was legally compliant. For example, one HR manager commented:

"Yeah we are good with this, not just managers, every employee during the induction is given a handbook and they have to adhere to it. They have to

sign to say they have received it. There is a range of various other paperwork that we provide during induction to all attendees such as absence reporting procedures, failure to adhere to procedures could result in disciplinary action” (HR manager).

This also might be driven by a need for HR to communicate details of the disciplinary procedure in response to the expansion of employment rights which then demands the constant review and amendment of their existing policies in an attempt to maintain compliance and thereby avoid potentially costly, litigation.

Some HR respondents argue that using electronic means was a means of providing distribution of the disciplinary policy quickly and efficiently. It also was an attempt to overcome previous problems and difficulties involving staff and managers claiming to be unaware of the policy and procedure. In this way it provided a further means of ensuring standardisation and consistency of approach, as well as being less intrusive.

As one HR manager stated:

“Using the staff net was a means of not only communicating the discipline policy and procedure across the organisation but it also allows for HR to clarify its intent. It also prevents litigation” (HR Manager Private Sector).

Further clarity was sought regarding what she meant by this:

“This approach allows for us to ratify acceptance of the policy” (HR Manager Private Sector).

Nonetheless it was acknowledged that using electronic methods often challenged accepted practice and culture:

“This was dependant on the staff in question. We have an old and new culture here and the managers and staff that have been here for a long time are often reluctant to accept change, but we’re working on that” (HR Manager Private Sector).

Unfortunately, irrespective of the means adopted updating of the disciplinary policy was not always communicated effectively. This often resulted in resentment and confusion within the organisation. This posed the problem, especially for operational managers, of knowing what version of the disciplinary policy was the most up-to-date. For example, as one respondent argued:

“We often don’t know which version to use, they (HR) keep adding new sections, or amending the damn policy without telling us clearly” (Line Manager Private Sector Manufacturing).

When questioned further on this issue, operational managers commented that disciplinary policy and associated guidance was now mainly accessed via the staff intranet and that often there was limited or no communication from HR regarding the uploading of updated versions and, consequently, updates often sat alongside older versions of the policy causing confusion.

The variety of approaches taken by case organisations to communicate the disciplinary policy appeared to result in poor communication of the discipline policy to operational managers. Significantly operational managers are not comfortable with accessing electronic copies or amendments to the previous existing discipline policy to support or update their understanding. It was apparent that many of the operational managers within the sample had not engaged sufficiently with - sometimes even read - the latest version in order to be competent enough to undertake a successful workplace disciplinary. This suggests that there is a degree of laxity on the part of operational managers towards disciplinary understanding. The use of electronic policy repositories appears to be the approach taken by organisations to communicate with operational managers and staff. Arguably this approach does appear to confuse the lines of communication especially in the adoption and use of important policies.

This raises the issue of piecemeal acceptance and application of changes to the discipline policy and procedure, especially in those workplaces that had mature long serving workforces. The evidence of which suggests a lack of conformity and standardisation of the operational manager’s practice within the organisation due to a reluctance to engage in

change relating to matters on discipline. A consequence of this could be the potential for cases of misconduct that might invoke employment tribunal claims against the company.

There was a clear distinction between HR managers and operational managers over what was the best means of communicating the discipline policy. HR practitioners argued that using electronic means provided a degree of assurance that all managers and employees had access to disciplinary policies. Alternatively, the operational managers considered that this was not a suitable way of communicating such an important policy. They pointed out that they have very little time to sift through a mountain of policies in order to achieve full understanding of them. They voiced, quite strongly, that their role was one of ensuring the smooth running of day-to-day operations in pursuit of associated operational targets and that they were consistently firefighting to achieve these goals, which allowed little time to read policies on-line.

This appears to signify a clear difference of opinion over the approaches to communicating the disciplinary policy. Arguably a move towards standardised communication forces formality in its use. Additionally it questions a growing fissure in the relationship between HR and the line.

The perception of operational managers in relation to the consistency of understanding of the discipline policy was evident within the sample when asked about their awareness of their disciplinary policy. As one line manager of 37 years in post commented when asked if he was aware of the organisation's discipline policy he replied:

"I hope so. I think I know it and follow it religiously, mind you I haven't looked at for some years" (Production Manager Manufacturing).

This attitude to the policy was not uncommon, particularly amongst long-serving operational managers. The assumption was that their experience counted for more than the text of any policy. The obvious concern here any changes in relation to law would not find their way into actual practice.

ii) Training and development in relation to discipline

This section was to discover the amount of training and development that was afforded to operational managers in relation to disciplinary handling in their respective workplaces. According to Trehan and Shelton, (2007), management development is considered to be highly complex and problematic, in other words, investment in management development can be undertaken to serve different, and sometimes competing, purposes (Hirsh and Carter, 2002). For example, Mabey and Salaman, (1995) suggest four possible purposes, each with distinct characteristics and problems and these derive from different assumptions. Refer to fig 4.

Fig 4. Management Development (source Maybe and Salamon 1995)

Type	Description
Functional performance	Focuses on knowledge, skills and attitudes of individual managers. Assumes unproblematic link between management development and performance.
Political reinforcement	Focuses on reinforcing and propagating skills and attitude valued by top managers. Assumes top managers are correct in their diagnosis and prescription.
Compensation	Management development is seen as part of the reward system for managers. Assumes development is motivational and encourages commitment.
Psychic defence	Management development provides a 'safety valve' for managerial anxieties. Assumes careers and associated anxieties.

When applying the findings to Mabey and Salaman's model the two most common approaches taken by HR to address operational managers' competence within the handling of discipline was to support functional performance in order to equip them with the necessary knowledge and skills to manage successful disciplinary handling. In addition the HR departments sometimes see management development and training activities as an

opportunity to reinforce their own, particular, vision of how disciplinary policy should be interpreted and applied?

It was identified within the research that the key themes deriving from the findings relating to operational managers' training and development, in relation to workplace discipline, are as follows:

1. Inadequate functional performance and training for operational managers.
2. Operational managers are inclined to make the assumption that they are correct in their diagnosis and prescription on discipline related matters.
3. Trade union representatives often possess superior skills in dealing with matters relating to workplace discipline than that of operational managers.
4. A lack of appetite for discipline related training by operational managers.

Both HR and operational managers were also asked about the extent to which they implemented or received training and development in relation to managing workplace discipline. Particularly as the disciplinary policy was often portrayed by the operational managers as a top-down process and therefore perceived, essentially, as being HR driven.

Historically training and development for operational managers within the UK has tended to be conducted on a voluntary basis with the UK spending less on management training than their European counterparts (Leitch 2006). Patterns of management development (Thompson *et al.*, 2001) have been thoroughly expounded in analyses of managerial learning however managers, in the U.K. practical experience remains just as much, if not even more of, a factor in determining levels of management performance as formal training and development, and that this is certainly evident in the context of the application of disciplinary procedures.

HR respondents clearly had a desire to engage more with operational managers on all matters relating to workplace discipline. The importance of training and development initiatives associated to discipline handling was essentially to encourage greater understanding of the disciplinary policy and to develop essential people skills and competencies. As articulated by one HR manager:

“This is a massive concern for us we have been quite proactive recently in attempting to address the problems that managers have when dealing with even quite elementary discipline issues within their area of responsibility. We have developed some mandatory training events that managers have to attend that includes understanding that they mustn’t jump to conclusions, how to avoid not getting into a mess and how to follow guidelines” (HR Manager, Engineering).

There is suggestion within the findings that organisations were attempting to promote training and development culture for the operational managers on discipline handling and this was apparent in two of the case organisations sampled.

This however was mainly limited in application and tended to focus on familiarity with, and the application of, disciplinary policy and its process. There was little evidence of the development of skills designed to handle and resolve difficult issues in less formal ways. Nevertheless, the focus on compliance was driven by HR in an attempt to ensure consistency and therefore there was limited support from operational managers for such initiatives.

Across the other cases any training initiatives on discipline handling were not seen as a priority by senior management and HR and therefore any development other than beyond their own approach to the discipline procedure or see not to be a problem.

Alternatively, operational managers that were interviewed appeared to be somewhat sceptical about the value of such training initiatives in assisting their development of disciplinary handling and conflict management skills. For example, when questioned about the effectiveness of this within their organisations, after attending a training event, one operational manager commented that:

“All we did was observe two role plays and take part in a question and answer session about carrying out a disciplinary interview. I came out of the session knowing no more than I did before I went in”. (Line manager, Public Sector).

Experienced operational managers were in some instances quite derogatory about training opportunities that were offered via the HR department in their organisations. As one long serving operational manager puts it:

“They are, (HR) implementing a lot of training events now in regard to performance. I heard it all before and they give us nothing new. I’ve been doing this job for bloody years they are not going to give me anything new I don’t know about doing this job” (Line manager, Engineering Sector).

This exposes a general paradox in that whilst HR practitioners wanted to position themselves as experts in conflict management this brought them into conflict with more experienced line managers.

This view was echoed by other mature operational managers within the sample who felt that they were equipped with sufficient related knowledge and skills to undertake workplace disciplinary matters. They resented the fact that HR had a controlling overseeing role within discipline proceedings.

In some organisations training in disciplinary handling also focused on the legal aspects of discipline and particular the risk of litigation. As revealed by one manager:

“We have had some training, but this is only what we have done internally – in-house. We actually brought people in from our legal team. They came in and did the training. I have actually been involved in a workshop on the actual disciplinary procedure so I’ve been involved in understanding what it’s about, how it’s carried out and presenting that to others in my peer group and also at managers’ meetings” (Production Manager, Manufacturing).

Likewise:

“Yeh, we have had a one day session with employment law specialists. The HR reps have in-depth knowledge and we have a company solicitor on site if necessary to bounce thing off. You know, don’t jump to conclusions, how to avoid getting yourself into a mess and generally being quite sharp, learning to follow the guidelines (Production Manager).

It could be argued that a focus on the consequences of managing discipline, and the threat of litigation, might reinforce a fear of addressing disciplinary issues and therefore could make more formal and cautious approaches to these issues more likely:

“I’ll be honest with you three weeks after I started here I went on a one day effort at HQ where I got taught the process and procedures. In my previous employment I was what was called a licenced employee relations manager where I had three days to learn it. Our policy which is in the handbook is quite a weighty document to absorb so it’s hard to take it all in in one day. It’s just them taking you through what you should and shouldn’t say. What questions you might ask and the rest of it, it’s far too short a day to get it all in - Personally I go off my previous experience” (Store manager).

Not all operational managers’ views of discipline related training was negative. There were some positive aspects identified by some of the operational managers within the sample in respect of the value that they gained from training events to assist in their development in conducting a workplace disciplinary. As one manager identifies:

“Yes, the managers go on a development programme. All new managers and all managers who have progressed from supervisors go away for training session on how to conduct disciplinary hearings. They also sit in on a hearing as an observer only” (Line Manager).

They indicated that the observation was the most valuable part of this development although it was dependant on the ability and experience of the people conducting the disciplinary hearing. As one operational manager puts it:

‘Sometimes this could be quickly put together and delivered in a hurried way by someone from HR’ (Operational Manager Retail Sector).

There is an indication here that even where organisations are attempting to provide some formalised training and development for operational managers there is still a human factor

at play when applying the actual process, often related to the individual personality or degree of willingness to accept cultural change exhibited by individual operational managers. For example, older operational managers appeared more reluctant to take on new training and development related initiatives, particularly where this was driven by HR.

However this was very much dependant on the operational managers' acceptance of their own development in the job, the evidence suggests that they will sometimes take responsibility for their own development in training initiatives being offered:

“You get in-house training and advice from colleagues and you also go on a course with other managers across the company. Up to now I have not been on one related to discipline with this company however I have with other companies I have worked for where the region HR will conduct one-to-one to instruct you on new procedures etc. In my own experience this has been a useful experience as it prevents the cutting of corners so that you follow procedure correctly. Disciplinary procedures themselves well they never change very much only in the fact that you become more procedural wise. I have always talked to the individuals first as much as I can and because I am so old they seem to take it from me- they tend to believe me. This normally prevents it going to the next stage” (Production Manager).

Operational managers accept that some training was deemed necessary in order to up-date them with legislative changes. However, among operational managers in the sample there was still a view that they must be able to, depart from procedure in some cases, in order to manage issues effectively. One operational manager explained this as follows:

“I think changes are due in April, we had a training session at the beginning of March on staff development and informal discussions and personal improvement plans rather than go straight to disciplinary. I think it is bad practice to say because you are not doing your job get out or you are going to be disciplined because there are factors to consider why staff are not performing at certain times so only I would only understand this, no one else in the organisation and therefore no amount of training gives you this

insight and therefore I would act accordingly even if it means not following our policy” (Section Manager Public Sector).

The HR professionals were asked how they support the operational managers in reducing their lack of understanding and improving their skills within the disciplinary process. Across the sample there appeared to be two approaches taken by HR to address this. Firstly it can be seen as being proactive, where the HR function is initiating learning and development to assist the operational managers in handling disciplinary matters, or, alternatively, it can be reactionary where HR feels the need to take charge themselves. Secondly the catalyst for training can be driven by a requirement of change. For example, it can be used to equip line managers to work more effectively especially in a union environment. According to one HR Manager:

“We are contemplating the introduction of a management development programme on how to conduct disciplinary hearings. We have had so many new staff via TUPE recently this has presented us with some real issues in that we have been a non-unionised organisation but some of these are in unions” (HR Manager Voluntary Sector).

Where there was operational manager turnover, or periods where new managers had joined the organisation, a need for training became apparent. As one operational manager puts it:

“We are just in the process of designing some discipline training for our production managers following our recent review because it’s apparent that the managers have never been aware of how they might approach this” (HR Manager Production Company).

It also could be prompted in reaction to events or where a new HR manager was introduced.

“Yes, had one a couple of weeks ago on conflict management and concerns of going to tribunal and when Ms X first started (HR Manager) we had disciplinary training, before that it was suck it and see” (Line Manager).

Across the sample, it appeared that union representatives appeared to be afforded better training in order to prepare them for dealing with disciplinary issues than their managerial counterparts. While operational managers received sporadic or fairly basic training, trade union representatives were trained through TUC accredited courses and/or their own union. One representative of USDAW, the shop workers union explained that:

“I think managers are trained in it, but they just get basic training, we tend to do this through TUC courses” (Union Representative Retail).

The level and quality of training in relation to workplace discipline was endorsed by another trade union representative who commented:

“As reps we have to undertake employment law and discipline training through the union. We also attend refresher courses to keep up-to-date” (Union Representative, Manufacturing).

This suggests that union representatives appear to have greater opportunity to undertake training and development opportunities in order to prepare them for discipline handling and as a result they appear to have superior knowledge and skills than operational managers. Furthermore they agree that this is an essential part of their role development and need no coercion to undertake such development initiatives. This was in contrast to operational managers who generally appeared to adopt a more “laissez-faire” attitude regarding discipline related training opportunities.

HR practitioners working in the remaining organisations within the sample suggested that there was little time or strategic focus to initiate any future training and development initiatives in relation to disciplinary policy and processes. However, some of the practitioners did not appear to consider that this was problematic and appeared to be confident in their application of the policy, given the experience that already existed within their organisations.

Interestingly, in a number of organisations, there was a move towards a business partner model of HR management. Within this, HR practitioners saw themselves as providing expert advice to the line managers with whom they were partnered. They claimed that this helped to ensure that policy and practice was applied consistently and fairly.

It appears that changes to the form and content of disciplinary procedures are predominately instigated by the HR function with limited or no involvement from any of the other management functions. HR professionals indicated that they were continually required to update disciplinary policy in response to changes in the law.

However there appears to be concerns regarding how the disciplinary policy is communicated to end users as well as the level of involvement afforded to other stakeholders.

Chapter eight: Informal versus formal disciplinary handling

The choice between formal and informal approaches taken when dealing with discipline in the findings was somewhat dependent on the degree of intervention that was seen to operate between the HR function, trade union involvement and operational managers. This was underpinned by the degree of power and control they enjoyed within their respective organisations. Essentially the human resource function saw its role as one of monitoring the disciplinary policy in a perceived role as 'custodian' of fair procedures, however this was dependant on the level of power and respect that was afforded the role in relation to other actors within organisation. For example:

- (i) It very much depended on whether HR saw themselves in the role of a strategically placed 'change maker' or as a non-interventionist 'handmaiden', providing a service to operational managers (Storey, 1992)
- (ii) The end user understanding of their own formal and informal proceedings whilst conducting discipline investigations.
- (iii) The end users perception of the HR role within disciplinary matters, for example the HR function is seen as dilettante, just a note taker or, conversely, is accepted as overseer.

Within the sample, the disciplinary process reflected a complex mix of formal and informal practice taking place. As recognised earlier, the evolution of disciplinary policy and procedure has been driven by a desire on the part of organisations, initiated through the HR function, to achieve greater standardisation and accountability of practice. This, in turn, has tended to rely significantly on procedural adherence. However, this contradicts the approach of many operational managers within the sample who often preferred, wherever possible, to rely on informal and pragmatic approaches to resolving disciplinary issues.

For example, formality can be seen to operate where trade unions were involved and this had two potential outcomes. Union presence meant that employers were more likely to be held to account and therefore ensured that they followed procedure carefully. This had a positive impact of assuring degrees of fairness and equity within the process and

procedures. However it can also be seen to minimize potential for less formal resolutions, particularly where relationships between managers and unions are poor.

What was apparent was, the age and experience of the manager appeared to be an important factor in defining their approach to workplace discipline. Older, traditional, operational managers preferred pragmatic methods, often interpreted as “gut feeling” which in some cases might involve “turning a blind eye” in order to avoid the initiation of disciplinary processes. These managers generally saw formal processes as restricting and time consuming but also felt that they did not accommodate the requirement to respond flexibly to the “real-world” requirements of production. Looking at things from this perspective, operational managers may decide not to apply disciplinary sanctions, in a belief that this might assist in maintaining team morale. Similarly, managers might treat staff differently depending on personal assessments of differing contribution and performance on the part of the staff in question. These attitudes were also common in traditional manufacturing or unionised workplaces where they had experience in dealing with conflict resolution. Alternatively young, often inexperienced, managers appeared to prefer more formal guided approaches when handling discipline which meant that they often required HR support throughout the process.

As already elaborated responsibility for disciplinary handling lies predominantly within the hands of the operational manager and this is where a great deal of confusion can occur. In reviewing the role of operational managers within disciplinary process and procedure, the following themes were seen to emerge:

- (i) A fragmented awareness and application by operational managers of their own disciplinary policy.
- (ii) Some operational managers lack basic, but essential knowledge of the law that underpins workplace discipline processes. Specifically, relating to the understanding of the different types of offences that might invoke disciplinary action from their perspective; the understanding of the legislation that underpins this area and their own views of training and development opportunities that their workplaces deliver in relation to the management of discipline.

- (iii) Continued reliance on HR's supporting role in the disciplinary process.

In explaining the purpose of their disciplinary procedures, a significant majority of operational managers felt that some kind of internal regulation was deemed necessary in order to standardise the handling of disciplinary issues within their organisations. They were broadly aware of the legal implications that are associated with the area of conflict resolution, largely due to a concern about the implications for their own careers as managers, but they were less aware of the employee's statutory rights underpinned by the relevant legislation such as changes to codes of practice, and updates on legislation.

Across the sample many of the operational managers indicated that the detailed understanding of employment law was the domain of the HR department and any lack of legal knowledge relating to the disciplinary procedure on their part could be remedied by the same HR or personnel function. This appeared to be especially the case where organisations were using HR as a business partner and where the actions of new or younger operational managers when carrying out disciplinary procedures were being overseen by the HR professional.

One particular area of concern for HR within the findings was how operational managers dealt with employees' under performance through the disciplinary policy. This varied across the sample: in public sector workplaces, there was evidence of highly supportive practices, for example coaching and mentoring to address performance shortfall or assist in rehabilitation of the employee in a post disciplinary period. Conversely private sector workplaces appeared to have little appetite for remedying employee poor performance through the disciplinary process, which was attributed to the potential financial cost and business slowdown that might result from resourcing the process. Where this was evident they removed under performance through compromise agreements.

Increasingly, such arrangements were supplanting the use of procedure and due process and being used as a short-cut to avoid the potential cost and delay of applying disciplinary policy. This was explained by a senior HR manager in a private sector organisation:

"It's cheaper to pay off rather than us to manage this" (Senior HR Manager Private sector manufacturing).

This approach appeared to be particularly prevalent within the private sector organisations sampled. The use of compromise agreements was seen as a useful and quick way of removing issues from the system as well as ensuring that productivity was maintained irrespective of adherence to the law that underpins disciplinary practice.

Operational managers, from businesses irrespective of sector or size, identified the main reasons for initiating disciplinary action as issues relating to absence, poor timekeeping, failing performance, and capability within the role. The latter included a lack of comprehension of current and changing working practices and conflict related matters. It is worth noting that managing absence through disciplinary processes was linked by organisations to their performance management systems. Triggers and metrics were often used within employee appraisals to deal with capability and performance failings.

This generally reflects the 2011 Workplace Employment Relations Survey which found that the most common reason for taking disciplinary action was poor performance - this was mentioned by 59 per cent of workplaces in which sanctions were applied, which reflected increase from 2004. In 2004 the most common sanctions were concerned with poor timekeeping or unauthorised absence, cited in 53 per cent of workplaces taking disciplinary action and decreasing to 44 per cent in 2011. The other change was a decline to 6 per cent in workplaces taking disciplinary action for alcohol or drug use. Other reasons for applying a disciplinary sanction were theft or dishonesty (which was at least one of the reasons in 24 per cent of the workplaces applying sanctions in 2011), abusive behaviour or bullying and harassment (21 per cent), disobedience (18 per cent) or health and safety breaches (13 per cent). (Wanrooy *et al.*, 2011)

The importance of performance and absence management as a trigger for disciplinary action was reflected in the following quote from an operational manager working in retail:

“The main one is absence for our disciplinary. A lot of students work here and we can tell when its exam time as absence does increase which can result in disciplinary action. Ninety per cent of disciplinary are regarded absence. Next would be general conduct and behaviour, for example, not following orders from supervisors. That could be regarding standards of dress or conduct on the shop floor. Another would be standards of

performance maybe not merchandising correctly or not stock rotating correctly” (Operations Manager Retail).

Importantly, even where operational managers were fully aware of the importance of their role in handling disciplinary issues and making consequent decisions they were equally aware that disciplinary decisions could have far reaching implications:

“The disciplinary policy is a rigid framework but adds flexibility. It’s important to get the full facts; I could change someone’s life here. I’ve been involved in a disciplinary where someone was dismissed. He could end up not being able to pay his mortgage or lose his house- serious implications” (Line manager Retail).

When questioned about the effectiveness of the disciplinary procedure within their organisations many of the operational managers felt that their workplaces provided a framework that set out the process to be taken and this was in place to support and guide their practice. However operational managers were concerned that the procedure could at times lead to broad interpretation. As one operational manager succinctly puts it:

“Yes I feel the disciplinary policy is effective as long as people are aware that beforehand you do not have to follow it to the line. You have got to make sure evidence is assembled. I think the whole process sets up a framework lying down a procedure to achieve an end result. The only thing I would change would be more of a prompt to make sure all the evidence is available before you act” (Line manager large manufacturing).

Discipline policy: size, complexity and method of communication varied across the sample so in order to clarify the extent to which operational managers were aware of and/or understood their own policy, they were first asked if they had read it.

For example, it appeared that the more comprehensive the policy and supporting documents the greater the likelihood of confusion among the operational managers regarding what steps should be taken, which pro-forma’s should to be used, and at what stage. As one operational manager within an organisation operating a large disciplinary policy argued, there was a need and a desire for greater clarity from a user perspective:

“HR is working on this at the moment to try and get the basics out, you know, the procedure we go down. She (HR) is going to do a wall chart which everyone will get on their induction day and there will be one up in every staff room to say how the three stages would go. I often get confused to what stage goes formal from informal as it’s not clear on our documentation” (Line manager large public sector employer).

There appeared some confusion in operational managers over how the stages of the disciplinary process were delimited, which affected their understanding of which approach to take. Their understanding of the first stage was interpreted variously as:

- (i) A ‘quiet chat’ and that is the end of the matter, through to a fairly formal chat with the issue going on record. This could, in some cases relate to three or more conversations at this stage which suggests that in some cases performance related matters are perpetual.
- (ii) The different approaches in recording the detail of the investigation with no written evidence produced through to going on record so that HR can have a detailed auditable trail.
- (iii) The possibility that the investigation stage might be used by operational managers to prevent access to stage two of the process.

In some cases however there was a view taken by the operational managers that the initial investigation is sufficient as it tended to provide the opportunity for early intervention in order to address performance and capability issues. As one operational manager highlights:

“What tends to happen in my experience is that for me it never gets to the last stage. They get the feeling (employees) that they know where its heading and once they realise that they could be dismissed and their chances for re-employment are limited, common sense prevails. Or someone (union or one of their work mates) has a word and says ‘look mate if you carry on this is going to happen’, since I’ve been here only three people have ended up being sacked” (Operations Manager Retail).

This might suggest that in some cases employees do realise that operational managers will be fairly moderate in applying further sanctions in respect of disciplinary procedures and therefore they use the first stage as a process to 'test' or 'challenge' what they can or cannot get away with. However this was dependant on the operational managers own interpretation and application of their own discipline procedures. For example:

"As plant manager I would speak to the local trade union rep and explain the issue to talk about it in a constructive way. They may have different opinions to me. My local union guy knows about issues that are going on in the plant that I'm not aware of. I don't want to jump in feet first conducting a disciplinary and then other evidence comes to light and I've been too hard or need to retract what I've done. We need all investigations to be done first" (Plant Manager Large Manufacturing).

This variance of different approaches suggests their understanding and application of the disciplinary process can be somewhat dependent upon the level of confidence that they have. This therefore might force their choice of formal and informal its usage and subject to factors such as: (a) a lack of detailed knowledge by operational managers on what constituted enactment of the various stages of the disciplinary process. (b) a reluctance on their part to process the next stage of the proceeding in that it added additional pressure to their workload. (c) a preference to deal with disciplinary related aspects by means of clandestine processes.

Operational managers were asked what process was taken when they first enact the disciplinary procedure. There was a mixed view provided on this and not all the operational managers interviewed appeared to be fully comfortable on what constitutes initial enactment of the disciplinary policy. There seemed to be some confusion as to what level warranted a possible disciplinary sanction, especially the differentiation between informal, formal verbal warnings and when to issue the written warnings however this was dependant on the experience of the manager: A production manager explained their process that was taken prior to enactment:

"If someone commits a misdemeanour we as plant managers generally do a balance of error. We sit down with HR to find out if any culpability is with

the individual or is it a genuine mistake. We look at their progress to date and or performance. If there is evidence of culpability, which depends on the level of discretion – verbal warning territory we go through the evidence with the allocated HR advisor to decide if there is a need to involve anybody else or just issue a verbal warning by his supervisor we would also consider if it goes on record. If it's a more serious offence, misconduct up to gross misconduct or sacking. For example, something has happened on the plant such as broken procedure, not major implications just behavioural” (Plant Manager Manufacturing).

The findings illuminate that understanding of the handling of discipline when using the organisational policy and procedure often equates to a lack of understanding of each stage by operational managers. It is evident suggest that they can elect to operate either formal enactment where the stages will be followed or alternatively chose to enact their own informal practice.

Essentially the principles set out in the newly revised 2009 Acas Code largely mirror the statutory three steps of the procedures that were laid out in the previous Code of Practice regarding workplace disciplinary handling and operational managers generally understood this was the process to be taken in disciplinary matters. The disjunction appears to be interpretation between these three stages, for instance as one operational manager highlights:

“Normally with any particular staff issue we would always try to take the informal route and would start off with maybe an informal discussion and monitor progress. If we felt for whatever reason that progress wasn't being met then we would probably go to the disciplinary process. That process would involve inviting the employee to the hearing explaining to them the time, the venue and the place of where that will be. We also outline the legal, how can I put it...the right to be accompanied. So we would then go through the process, then we would err, hopefully by that stage have carried out an investigation as to the reason why we want to do the disciplinary procedure with somebody. We would then go through the procedure (at the

hearing) and the outcome of that would be debated and not necessarily on the day would an outcome decision be made. We'd then go and (adjourn) and look at what we thought would be an appropriate sanction, whether that's good or bad or even just knocking the grievance or disciplinary on its head. Obviously each disciplinary case has to be dealt with on its own particular merits so depending on the severity of that particular issue would determine the sanction applied" (Operation Manager Engineering).

The interpretation of what constituted moving from stages of the discipline procedure appeared to be a concern for managers within the sample. They saw it as a fluid process and this was determined by different sets of circumstances that often underplayed the disciplinary investigation. This confusion could sometime lead to frustration:

"I'm sometimes not really sure what to do so I either just give the person a verbal warning or let it go" (Retail Supervisor).

Once a disciplinary interview was deemed merited the operational managers outlined the procedure that might take place in regard to the information that was provided to the employee, who might attend the interview and what pre-preparation was considered prior to the interview:

"Before entering a disciplinary interview we provide them (the person under investigation) with any evidence that we were bringing to that particular disciplinary. This gives them an opportunity in the disciplinary hearing to be able to put their argument forward, to say, well, OK I know you feel this but I can explain this, this and this. So we would always make it very transparent to what the process was about, who was going to be there, where it was and a clear idea of the time and agenda" (Retail Manager).

Generally the operational managers assisted the employee throughout and during the process and appeared quite supportive to employees under investigation. There was the perception that they had empathy with what they were going through.

The amount of involvement of operational managers at a disciplinary hearing varied considerably according to the level of severity of the incident:

“Obviously the individual who was under investigation, his direct line manager and a HR advisor goes into the investigation. If it went down a formal route then it’s a different line manager and HR advisor. Unions would be involved if the individual wants to be represented by his rep. This is nearly always taken up and only the odd one doesn’t have representation. When the formal interview takes place the line manager who is making a charge against the individual normally chairs it with the HR advisor taking notes and supporting the line manager, you know, giving advice on the outcome or penalty” (Production Manager, Manufacturing).

For minor misconduct the level of management used was a supervisor or operational line manager, in general terms this could be anyone who was available at the time of the interview. If the transgression warranted the need for a formal hearing then a senior manager, an HR practitioner and where relevant trade union representative or companion would be in attendance.

“After investigation it could incur a formal disciplinary interview it depends on who is available at the time. For us it’s not a set thing and it depends on our capacity at the time of the interview. It’s usually the person conducting it and somebody to take notes. Sometimes it can be as much as two managers, a chair and a note taker. HR sometimes sits in on them and these do the notes” (Operational Manager).

When there was a need to convene a disciplinary respondents were questioned to how a formal disciplinary hearing was initiated and how the panel members were chosen:

“In our organisation HR will approach a manager and say you are doing this investigation. A letter will go out to the individual involved asking them if they are happy with the person conducting the interview. This happened recently when an individual said that they did not want to be interviewed by a certain person. I think this was in the case of a personality clash which tends to happen when they have had a run in with the manager in the past. They tend to think that that manager will be biased. If this is highlighted

then HR will select a different manager, it's not a problem" (Operational Manager).

Furthermore, there appeared to be a tension between the written disciplinary procedure and the operational practice of managers and this was further compounded by the variation between the interpretations placed on the policy by different operational managers. This was reinforced by a general manager within one of the organisations when asked about the link between strategic intent of the disciplinary policy:

"Generally it's not something that you would sit down and read from start to finish, it's more of a reference tool as and when certain situations arise. You would always be looking for the most relevant section, in particular circumstances, or if you had knowledge of an employee's previous disciplinary record then you may be looking at a different area of the document down the line to disciplinary action. Obviously if we have a resource as HR and we also use EF for advice as a number of elements we are not just solely relying on this document" (General Manager Public sector).

This apparent lack of consistency by operational managers was seen as a concern in organisations and as a result there was a desire by organisations within the sample to address this problem. As one production manager puts it:

"We started to address this probably about two years ago, it was very disjointed. I would say since I've been here that there was not a consistent approach and some managers carried out a disciplinary maybe unfairly to the employee because there was no consistent approach. Now there is a very clear and consistent procedure that gives us continuity throughout that process by involving HR because they see what goes on in other departments and have experience. They understand the legal requirements so they can guide us and support you through the process. Whereas before you were really on your own trying to muddle your way through it and you'd have maybe a company secretary or a Financial Director purely and simply

because he (the Financial Director) was more up to speed on those processes, so I think it has improved greatly”(Production Manager).

For operational managers this often meant that there was a range of sources of advice that can be sought on disciplinary matters as an alternative to HR practitioners. The problem that this presented was that quite often this advice could be in conflict with that desired and planned by the HR function. For example, other management functions, long-serving colleagues. Furthermore the operational managers are in a difficult position of having to perform for different audiences under production pressure. The paradox might be that as a result, they are under pressure from HR to ensure correct application of the procedures. Alternatively they may be under pressure from senior managers to take prompt corrective action to deal with threats to operational issues. What this presents is that operational managers might use a degree of organisational ‘politicking’ in response to the differing requirements of the audiences that they encounter irrespective of processes.

In one case where HR was a new management function within organisations it was not uncommon for the disciplinary policy to have been historically initiated and controlled by senior operational managers. In organisations where this was evident clarification was sought on what kind of expertise the Financial Director accurately provides:

“I can only speak for our situation, the Financial Director is my boss and I feel that he is very commercially aware of the business. He is also very aware of legal matters and the impact on individuals and the bigger picture of the company. So I think he has a good understanding of where we want to be as a business and how to treat people and what our legal requirement is so I think it always did fit well with him. Even though we have now a HR manager I will still use him for advice on disciplinary matters” (Production Manager).

This suggests that, even where an HR function is established, some managers have a preference to rely on other senior managers which causes disputes over who actually has full ownership of the discipline policy. Furthermore this was a special concern from the HR manager’s perspective as, potentially, it threatened conformity in the practice of discipline procedures in their respective workplaces.

In fact, operational managers usually able to ensure a consistent approach within their unit or area of influence but there was little if any evidence of disciplinary handling experiences or information being shared across organisations:

“It certainly takes place in the production environment. I have three sections that report to me and so these are consistent in applying the disciplinary. I’m not entirely sure what other areas are doing to draw on any comparison, we work independently” (Production Manager).

Moreover, where operational managers were establishing their own processes in respect of the disciplinary processes there was a suggestion that they are often prepared to do this alone without seeking advice from other stakeholders. This was especially evident where the organisation is medium to large and where the size of structure can, unintentionally, encourage ‘silo mentality’ approaches to the disciplinary practice. Additionally this might also occur where there is a reluctance to accept changes instigated by a newly formed HR function .

The evidence therefore suggests that there is a fundamental lack of consistency in the application of discipline procedures by operational managers when applying their own discipline policy. This resulted in unpredictable and random approaches and interpretation by the operational managers across the sample.

A further source of pressure for operational managers was an increased awareness of employees of their ‘rights’ or at least a perception that employees were often better informed and more prepared to challenge managerial decisions over discipline:

“We don’t perhaps tick the box for this, which is why we are in the process of creating a staff handbook. Some of the feedback I’ve had from my duty managers in relation to the whole induction programme is about consistency, especially in conducting a disciplinary. It’s a grey area at the moment where we get by but we would not tick the box if somebody was to really push it and say ‘I wasn’t made aware of that’, so a more ‘turned’ on employee could take advantage of that couldn’t they”? It a concern, we have even found to some extent that when we get to disciplinary matters

sometimes employees have been looking at the internet to find out information. They have picked up on a little bit of information and can tell you by the way they present themselves within an investigation or disciplinary hearing” (General Manager, Leisure).

This indicates that within some of the workplaces within the study there was a degree of uncertainty over the implications of decisions, and managers felt a sense of vulnerability at times during the disciplinary process. This suggests that managers felt threatened by employees who were knowledgeable about their rights and some of the managers were clearly aware of this:

*“I hate doing a disciplinary, I really do not feel confident... it’s not my bag”
(Floor manager Retail).*

Moreover, the threat of a tribunal claim served to emphasise the importance of policy and procedure for some managers, often investing them with the status of talismans, offering protection against legal challenge. Inevitably this meant that, at times, they adopted a fairly rigid and uniform approach to managing discipline as the following illustrates:

“For us everything is in the handbook. It tells you what you can and can’t do. In a nutshell it’s a volume and tells you all the procedures which must be followed. It tells you that if you don’t follow the correct procedure (employees) that disciplinary will follow, not necessarily disciplinary action but we then put them straight and if you (the employee) carry on an investigation will follow” (Operation Manager).

There appeared to be a gulf between the operational managers’ ability to transfer their understanding of discipline procedures and its application in practice and this sometimes caused contradictions as highlighted by operational managers:

“I suppose you can’t be sure of this, it is down to individuals to ask if they don’t understand it. One guy who has worked here for 4-5 years says he has never read it because when he started here his English was not very good. To be honest many of the managers here just go to the parts that they need at the time” (Line Manager).

These contradictions relate to a series of themes that are seen to emerge as a result of this discrepancy:

1. **The theme of how accessible the discipline policy was** and how well it was communicated across the organisation.
2. **The theme of how degree of ownership** that the operational managers have of the discipline policy and procedures
3. **The degree of ability** that the operational managers has in handling disciplinary matters
4. **The level of expectation** that the organisation has of enforcing the disciplinary procedure

Operational managers were asked whether or not they would use HR in support of a disciplinary investigation or were they comfortable enough to follow the outlined procedure themselves.

It was evident that external advice, such as Employment Law On-Line, was available to operational managers in three of the organisations within the research group. One manager commented that:

“I think because I’ve always had to do it (disciplinary investigations) and that especially in our sector because within our management structure, the director has been here 9 years I also been here that same time we’ve pretty much learned from our mistakes as it were. We’ve got a good process that hardly ever comes to a disciplinary and I’ve had one recently that went to investigation and I did use HR and range EEF (Employment Law On-line Advice) as well for confirmation that I was doing everything that I should do but I’m very confident in carrying out investigations and disciplinary meetings” (Operations Manager).

He was asked was he aware that this approach was outside the remit of his organisations disciplinary policy? He stated:

“No, does it really matter so long as the issue is resolved”.

This suggests that in some instances operational managers were comfortable in breaking their own disciplinary procedures in order to solve disciplinary issues, irrespective of formalised systems laid down by their organisations.

In some instances the process is enacted only after seeking advice from HR, for example, as one HR manager explains:

“The line manager will discuss with me whether disciplinary is the way forward. We would record the conversation with the employee for the first offence then send a letter inviting them to attend an investigatory meeting. The direct line manager and myself would make the decision on whether it needs to go full disciplinary or there is no further action to be taken. If we decide it warrants a full disciplinary then they would receive a letter and 24 hours’ notice with when and what time, the name of the line manager and where it will take place. During the hearing it’s always a different manager than the one that did the initial investigation. I will do the note taking and offer advice to decide on what actions are to be taken if any, this could either a verbal, written or final written warning. They would then receive a letter informing them of the outcome of the hearing” (HR Manager Retail).

Similarly the use of HR in deciding what is the next step to be taken was evident from the manager’s perspective, as one manager explains:

“Our HR discusses the issue with the line manager to decide whether or not to go formal or deal with informally. This normally includes the circumstances of the disciplinary regarding the individual case such as is he a good worker, long service, good attendance etc” (Production Manager).

Significantly the operational managers commented that the main reason for using HR within their discipline procedures was that they bring legal knowledge and understanding, and there was a strong opinion by the operational managers that they were only required for this purpose as indicated by one line manager:

“I use HR solely in an advisor capacity on legal matters if we are talking purely within our company. This thing is its very strange that you sort of

adjourn to make a decision or whatever then the person who has been in the room taking notes with you (HR). You then go through the notes and go 'what do you think?' In the past we have had an employee relations hotline which was so much more carefully done if you like. I mean then nobody would ever advise you on what decision to make but they would...if you said I don't know, say a final stage warning, they would say you probably need a bit more time to think about it or you are being too strong on this but they were just there for advice, you made the decision. You got reference numbers and who you spoke to and I think they did it more thoroughly, not like now" (Operational Manager Retail).

Additionally the evidence suggests that this was prevalent across the sample. The reality for HR managers in the sample was very distinct from the, often-quoted, aspiration of strategic and value-added HR. Instead, it could be argued that their role was increasingly administrative. As one HR manager describes:

"My role within the disciplinary has now changed I am now more of an advisor really to line managers and as such I take a less prominent role within the procedures than I use to. The line managers hold the hearings and I stay silent unless I need to give them a kick under the table. Otherwise I note take and send letters, you know the administration side" (HR Manager Production Company).

When asked for greater clarity in what she meant by the 'kick under the table' and whether this implied that line managers were not capable of conducting the disciplinary interview, she replied:

"I think a lot of it is in training, what training they have been given and how they should act upon responses that they are given. A lot of managers stick to procedures, for example they have done this so we should definitely be going to a disciplinary or a verbal warning no matter what is said in the room and they need to understand that each case is different and you can't pre-judge and you need to understand what the individual is saying in the room and then make a decision on that".

There was evidence that the HR function used induction training for new managers as a means of ensuring not only conformity with HR's interpretation of disciplinary procedures. The main concern, and one which the HR function was apparently aware of, is how they might achieve greater conformity of disciplinary approaches from their existing operational managers to ensure consistent application. The order of the last two sentences should be reversed. Many of the HR managers observed that their organisations had a mixture of 'old' and 'new' managerial cultures which often impeded their ability to adopt a consistently fair approach to workplace disciplinary procedures.

Tension between HR and some operational managers appears to arise from the contrast between HR's attempt to ensure legal compliance by imposing consistency of application across their organisation, as opposed to the operational managers' preference for handling disciplinary issues in a way more in line with their own personal requirements. One manager indicated that he felt that some managers followed the discipline procedure and some didn't:

"I believe that there have been some inconsistencies. You'll know that we have only recently had the introduction of a HR department 18 months ago whatever so there was even more inconsistency prior to her, the (HR manager) coming in. What she is trying to do is to bring some consistency because managers interpret things differently and I entirely agree with that"
(Line Manager Private Sector manufacturing 2 years in role current role).

After it was explained to operational managers that the disciplinary policy was essentially a reflection of their own organisation's approach to supporting them in maintaining regulation and compliance they were asked if they were they fully aware of it. One manager commented:

"I have read bits of the policy that I needed to at the time but I've not read all of it" *(Line manager voluntary sector organisation)*

It was apparent that some operational managers, sometimes, had a lack of understanding of what documentation related to the discipline procedure, and that this was usually related to experience:

“I think they should (employees) have a copy of the contract and think they can seek any policy which is allegedly being broken, I don’t know maybe you can tell me? I did a disciplinary the other day and I asked if they had received notes from the investigation. They hadn’t asked for them so they hadn’t received them. I think we could be a bit more transparent and say here are your notes. You know it’s the company policy to do that then maybe it’s something we should be doing. If I’m doing an investigation I always make sure that they get a copy of the notes” (Operational manager Voluntary sector organisation).

On carrying out disciplinary actions, operational managers were asked to consider where they might benefit from further development. It was not surprising that this highlighted their own limitations in respect of more complex cases:

“I think at the end of the day I believe the hardest ones to manage in a disciplinary are two people who have had an argument and that persons so that and this persons said this and you know, there is no real witness. ‘Who do you believe’? It’s just one that is telling the truth and one who is completely lying. The straightforward ones are lateness or performance related ones. Mitigating circumstances might be why the person has done that but it’s dead hard when you get two people who have had row. I don’t think there is much training can help with that, it’s just a life skill” (Production manager Manufacturing).

This also raises wider concerns in that, in certain instances, they don’t like dealing with interpersonal conflict.

Throughout the sample the number of disciplinary cases varied and this was dependent on the organisation’s size and sector. The key players were asked about the amount of time that was allocated to a disciplinary hearing and this varied from 30 minutes for a verbal warning to three hours in one week for something considered more serious and this itself varied through stages. As one manager puts it:

“We don’t apply a time limit to investigations we often time out when it gets to a stage when it is going to get confrontational, if it went that way we just say OK we’ll leave it at that and bring it in again if we have to at another time when they have calmed down or whatever” (Production Supervisor).

One of the key contributory factors for operational managers was the conflict between the amount of time required to maintain their performance output and the amount of time required to handle and manage a disciplinary issue. Many of the managers interviewed made it known that, because of this pressure, they felt too busy to read the disciplinary policy and, in some cases, that reading such documents in full was not considered a high priority as HR would provide any necessary support if managers felt unclear on the process.

Furthermore operational managers felt that having constantly refined standardised, discipline processes added an additional burden to their responsibilities. As one new manager puts it:

“If I need any clarification on the discipline process to be taken I can always ask one of the experienced managers or HR” (Line Manager Manufacturing).

What was noticeable was HR’s response to the difference between experienced and less experienced operational managers in applying disciplinary practice. According to one HR manager:

“Yes, there is a difference, the main difference is that some line managers are more confident, especially the older ones. The younger ones tend not to have come across conflict issues before; the process is a difficult one for less experienced ones” (HR Manager, Voluntary Sector).

The general feeling from the HR managers was that younger, less experienced, managers needed to be more carefully managed yet were far more receptive to HR requirements when undertaking a disciplinary situation than their older more experienced counterparts.

This often resulted in the operational managers being reliant upon HR to ensure that they understood the disciplinary process:

“I would probably say it’s been around for about four to five years but it’s only really now that managers are starting to understand it because of the new legislation and because of the HR role that we now have within the organisation. There is a lot more emphasis on making sure we do the right thing and also the way the country is (regarding ensuring legal compliance). It’s going to be a very legal type situation so you could find yourself in a legal situation more often now because of this particular issue. (Production Manager, Manufacturing)”

This approach taken by HR was evident across the sample, which suggests that there was limited evidence that the handling of discipline was considered by operational managers as a management process. Many of the HR professionals in the sample saw their role as similar to quality assurance, especially in respect of the process of people related policies.

Overall, there was a general perception across operational managers that detailed awareness of the discipline policy was not considered essential to their role. Many felt that HR was the conduit for clarification and therefore detailed understanding of this document was not really necessary. This might suggest a contradiction in that the HR function is often perceived by the operational managers as a ‘nanny’ function when handling various organisational policies, especially discipline, however at the same time they still rely on HR advice and support. In this context, HR practitioners within the sample were frustrated at the reluctance of operational managers to fully own and drive disciplinary policy and procedure.

Although operational managers do fully appreciate the importance of disciplinary handling they felt there was little time available to achieve the level of quality required by HR when applying the disciplinary policy.

Their view was that even though disciplinary handling could involve a legal threat, many had limited legal obligation beyond delivering basic compliance with procedure.

Within many of the organisations there has been a consistent and strategic drive in some of the case organisations to reduce short-time absence with the implementation and enactment of trigger points to monitor absence. Bradford factor measures were used to

provide quantitative data to inform implementation of the discipline policy. Absence appears to be a current disciplinary issue within the sample organisations and this, according to one senior manager, has contributed to a rise in the number of disciplinary hearings that now take place:

“This (absence) is a constant disciplinary issue within our company, I suspect that this is due to the fact that we have only recently included absence as a measure and this has just recently been added to all our performance reviews. Therefore until we get this driven down into our culture this will continue to be a major disciplinary issue”. (Senior Manager National Retail Sector).

Firstly, from an HR perspective the intent of the disciplinary policy was to guide operational managers in achieving a fair and consistent approach across the organisation, especially in respect of how issues of absence can be managed. For example how absence might be identified within the staff appraisal to inform potential concerns about capability. The intention was that this policy should only be invoked once all informal processes had been exhausted however; evidence suggested that operational managers, despite their indicated preference for informal resolution, tended to move quickly towards the full formal process even in the case of minor offences. For example one manager explained his experience of the cost in time, effort, and money, of a formal process when he acted as an independent member of a disciplinary panel:

“There was one time that I acted as an independent on a disciplinary within our company where the employee that was being disciplined had only committed what I considered was a minor infringement of the policy (poor timekeeping), however this had taken a serious amount of time, resources and energy to inform the outcome. There is no doubt that this could have been dealt with informally” (Line manager Public sector).

Another offence that invokes the discipline policy is capability which is often linked to company dissatisfaction with performance in comparison with the standard or quality of work expected. There appeared to be a drive by workplaces within the sample to maintain or improve quality and this was linked to performance management. However, in a number

of workplaces in the sample, the disciplinary policy was generally used to deal with such issues as is demonstrated by the comment below:

“Most of ours (offences) are about capability, I just had one quite recently the investigation started and I rang Acas for advice I had done the majority of the investigation myself the staff member and it was definitely a performance issue so I told him you are not performing to the standards blah, blah, blah and it will lead to a formal hearing” (Departmental Manager).

In specific organisations, especially those that operated within a high risk environment, health and safety was considered paramount and a regular source of disciplinary issues, as indicated by one manager:

“For us its health and safety, you’d expect that given the type of work we do. It’s mainly risks, misuse of equipment, and endangering customers. We also take absence quite seriously. Absence is a ‘biggy’, it’s the one that won’t go away. It’s usually the younger members of staff that succumb to it because they are not conscious to the consequences of it. They treat work the same as when they were at school where they could take time off and it was never a problem. Docking their pay is not a big deal to them but when the absence rate percentage increases here it has a big impact on the business and their colleagues. They don’t understand it till you bring it to their attention. It normally takes an investigation to solve this where you can clarify to them that their work mates is doing their job. This is where they usually toe the line, after this” (Line Manager Manufacturing).

There was evidence to suggest in some cases that enactment of different breaches of the disciplinary standards might force the enactment of the disciplinary proceedings. However there is evidence to suggest that the operational management approach to this was to establish a ‘prevention’ rather than ‘cure’ solution to non-conformity. This was very much dependant on certain of factors, such as their age and experience and for example, the operational managers age. Older operational managers were more inclined to adopt a more informal approach and this usually reflected their experience in the role. The sectors that

they worked in also affect this, with private and manufacturing businesses being more inclined to adopt this approach. Where organisations had union presence this again was likely to be the case:

“In this organisation its gross misconduct which may incorporate inappropriate behaviour with a customer, in the office, abusive behaviour and also a consistent non-performance issue. So I would generally say that I would take performance related, conduct issues are a concern but here you would only get to the disciplinary stage through issues of capability after exhausting every other option. I honestly believe that it’s a relationship issue as well, I think it is really important because as a manager err I feel that it’s important to keep those relationships very strong with the people that you work with. You have to establish a base of trust and honesty and if you cannot be honest with a member of staff to say where you think there is a weakness and help them through that weakness then you are maybe doing them a disservice. Similarly you may be doing yourself and the company a disservice. So I think certainly for me a disciplinary would really be the last resort unless it was a major conduct issue. I would always like to deal with performance related issues, lateness, sickness and the actual ability to do their job hopefully outside of process” (Production Manager, Manufacturing).

Similarly, evidence suggests that some managers want to adopt approaches within the disciplinary process that provide an opportunity to resolve issues informally:

“There are triggers, absolutely that normally takes the process of an informal chat, putting a plan together maybe for additional training or putting a time span or scale to when that rectification is needed to happen or the improvement needs to happen, and reviewing that improvement. Maybe going to the next stage which is sitting down and being more formal and then obviously at this point that I’ve got enough evidence here that improvement isn’t taking place. At the investigation stage I would always like to have a third party, do an investigation purely and simply because I

would carry out the disciplinary and would always like to have an others persons view so that it is impartial. The person is there to purely find out the facts” (Store manager Retail).

Evidence suggests that some managers were comfortable in managing the disciplinary process according to their own rules and in some cases were willing to circumvent their own disciplinary procedure.

Although guidelines and examples of what constituted a potential breach existed in a high proportion of the disciplinary policies across the organisations, it was seen that in some cases operational managers could be sympathetic to their employees in instances that might involve disciplinary proceedings. This was often in recognition of external factors that might impact on workplace conduct or performance, factors such as personal problems. They were fully prepared to manage this covertly, outside of procedure.

“One of my team was going through a painful relationship breakup and it was causing her major distress. She would be late of shifts and not turn in. She was a great worker so I did not want it to be managed through our performance system which would have meant that she would be disciplined. I preferred to resolve it outside this. She’s fine now and no one complained” (Production Manager).

Operational managers in most cases had a personal and empathetic relationship with their teams and in most cases they would be prepared to manage performance related situations in order to maintain team morale and motivation. Essentially they felt that formal processes were often too complex and they preferred the discretion of informal approaches when dealing within disciplinary issues because normally they understood the circumstances that gave rise to the transgression:

“I personally know my team and what motivates them, I know what personal issues affect them and how this impacts how productive they are and in most circumstances I can deal with this without any interference” (Production manager, Private sector).

The concern here was that HR professionals were often frustrated by this type of practice because if these issues escalated into more serious behavioural or performance issues, and were brought to the attention of HR, it was often too late to resolve the situation. For example, one HR manager argued that:

“I do wish that they [operational managers] would manage performance within their teams. This frustrates the hell out of my team as when it becomes a real problem it is often caught too late for us to resolve and we are stuck with the problem” (HR Manager Manufacturing).

The perception of HR was that managers did not also want to manage performance in their teams. Furthermore they also felt that managers were poor when it came to dealing with addressing performance situations.

There was evidence to suggest that this deficiency was being addressed in relation to the necessary competencies required to conduct disciplinary investigations and hearings. As one store manager comments:

“A lot of guys have been on courses – I haven’t because of my experience more than anything. I have spoken to the regional managers and regional HR about how I conduct disciplinary investigations and it falls within the company procedures. The new guys will go away and have some training but we all sing from the same song sheet. We are all human so some of us will be a bit less strict and a bit less give” (Store Manager Retail).

The concern of many managers was that this was a reactive approach and amounting to no more than a tick box exercise by HR to initiate training to familiarise managers with the process.

The evidence suggests that there is some attempt to address a perceived lack of confidence and competence of operational managers on disciplinary handling. The main focus for operational managers essentially is on being able to comply with the discipline procedure. They felt that observation role playing often provided them with some understanding of those aspects of discipline law which managers had questioned because they perceived it to be HR’s responsibility. Essentially, operational managers saw this attempt by their

organisations as a reactive approach, either to update them on policy change or resulting from a review of the discipline policy, in turn leading to a desire to begin putting some systematic training and development processes in place.

Across the sample, generally, when dealing with the process of handling workplace disciplinary issues operational managers' perception was that they felt confident when conducting a disciplinary and this was in contrast to HR's view, as one manager puts it:

"Yes, I think so and whilst I have a very good knowledge and good understanding of the actual process. I also know that I'm in a very good position of having a HR department who can just guide and provide advice on something I'm not so sure about. The main stuff is related to the legislation, I think it has made me more aware as a manager that I may have behaved in a particular way 12 to 18 months ago and now I'm just a little bit...I am actually aware and conscious of saying the right thing according to legislation" (Production Manager).

In some cases the operational managers discussed their own development opportunities and highlighted the limits in this area of their development:

"We have not initiated any training related to discipline however I went on an ILM and also I've done a supervisors course and that included a very small portion of this (handling conflict) area, in fact they just clip it"(Line Manager).

However, as indicated earlier, within the findings there was a level of anxiety among operational managers throughout the sample over their understanding of the law relating to disciplinary practice. Alternatively some of the managers commented that it was the HR function that provided this expertise and therefore it was not a major concern from their perspective.

The argument is that employers do not require managers to have people management competencies therefore a lack of understanding of employment law and of essential people skills will continue to be an issue. This is particularly acute given the progressive devolution of the HR function to the line. Those HR managers that were confident in dealing with such

issues tend to have the support of an active HR function. There was little sense however to suggest that operational managers were in a position to take similar responsibility for potential and actual disciplinary issues.

Furthermore this appeared to be compounded by an actual lack ability to strike a balance between soft and hard people management skills which might otherwise be considered essential in the process of discipline handling.

This emphasises a concern from HR that, at times, “operational managers are often reluctant to enter into conversations with staff” in situations where the lack of a challenge risks escalation into a full blown disciplinary issue. This often resulted in performance capability remaining unaddressed within the organisation.

Procedural enactment within one of the case organisations was decided on an individual basis by operational managers, often when issues were too late to rectify, much to the concern of the HR manager:

“The steps I would do, let me think, let’s assume somebody is being out of hand if you want call it due to sickness or you think there is some mitigating circumstances or something going in the background with your boys then basically what I would do is I would approach them in a sort of friendly chat to see if they’ve got family or personal problems or whatever. Now if they come across to me as if they look a bit stressed and they have got problems outside the realms of work then I would ask them if they would like to tell me in their words if it’s affecting their work in anyway. So that I could take an honest opinion on why their work rate has either dropped or they are taking the piss. Because the last thing you want to do is start jumping to conclusions and then find out that they have got some personal problems which link to the problems at work. Once this has been established I would then review the documentation that I’ve probably logged over a period of time on the individual. I would be thinking ‘oh he’s had two days off here, two days off there then I would start making a record. This evidence would be then put in front of him after we have had a discussion and if there are no related problems then basically I would let him comment on what he sees in

front of him. Once the evidence has been established and it 'erm' gets to the stage that I think that it does not want to continue as a debate I would arrange to see him again at a further time and give him the opportunity to fetch representation for himself, a colleague or whatever he wants to fetch in. At this I would inform HR that there is going to be a hearing and explain to them basically what is going on in the background. That's the sort of procedure I would generally go through with each individual" (Electrical Maintenance Supervisor).

This illustrates the point that operational managers are sometimes affected by a range of factors when deciding how to handle a potential disciplinary situation and therefore are more inclined to adopt a pragmatic and contingent approaches that take into account the situational and personal circumstances before deciding how to deal with the situation.

Circumstances would, at times, arise when operational managers were prepared to use their discipline procedure to manage employees out of the organisation. For example, in the case of an employee or team member who consistently demonstrated under performance. It was surprising that many of the managers agreed that the discipline process was an appropriate conduit to remove unwanted staff when other processes have failed. They also agreed that if there had been a poor appointment this was the only way to go. As indicated by one operational manager:

"Absolutely I think that's the only way you can" (Production manager Retail).

This highlights that to some degree organisations can be seen to operate a system or adopt an approach, but not operate an approach that tries to achieve a balance between formal and informal disciplinary procedures by ensuring compliance with statute law and associated codes of practice whilst also accommodating a more laissez-faire stance that might better assist the achievement of business and performance imperatives. However this also may be explained by some confusion among managers as to the dividing line between informal and formal stages of the disciplinary process. For example, the issuing of verbal warnings was, in some cases, seen as a procedural stage while in others it was deemed to be

informal. From the HR perspective this was seen as remnant of the old discipline policy in that the language had changed from 'verbal' warnings to 'stages'.

Interestingly this confusion and inconsistency over what form of misconduct warranted enactment of a disciplinary proceedings indicates that operational managers are prone to make preconceived judgements in relation to disciplinary transgressions as one manager highlights:

"He (Michael) is to waste of time I have never liked this guy and I'm trying to get rid of him, he also upsets the team" (Line Supervisor).

This suggests that operational managers can often apply psychological factors when attributing cause to a disciplinary issue. This resulted in patterns of inconsistency resulting in some of the managers being inclined to apply sanctions for trivial breaches if they disliked an employee. Alternatively if they had a positive view for an employee in their team's operational managers would let them get away with it.

Within the operational managers role within the disciplinary interviews there was evidence to suggest that they relied on the HR manager or advisor and in some cases often stopped proceedings to discuss the progress or potential outcome.

Post the disciplinary interview, the decision outcomes by panels varied. These ranged from supportive action being afforded to employees through means of personal development planning, coaching, and periodic review meetings, to allow an improvement on workplace and wider contextual issues which were predominately evident within public sector organisations, through to dismissal via compromise agreement, which was especially the case within private sector workplaces where the priority was to maintain a drive for high performance working practices. Under performing employees in such cases were considered irremediable where both managers and HR saw little alternative to dismissal and often saw compromised agreements as a way of avoiding the delay and cost of a lengthy development process. This practice was seen by the HR manager as ethically wrong, but they didn't feel they had the power to challenge such practices.

The findings would appear to suggest that there is a tension between the HR function - conscious that any deviation from a standardised and consistent approach to procedures

might demand their intervention - and operational managers who appear to prefer a less formal approach - often based on intuition - which they feel is more responsive to the needs of the job. There was little evidence to suggest that HR were prepared to allow operational managers scope to make informal decisions and so the prospect of devolution of disciplinary handling to the management function appears for removed.

Chapter nine: The role of Human Resource Managers

This chapter explores the changing and developing role that human resource professionals played within their disciplinary process and practice. The HR role has traditionally been seen as interventionist, however recent approaches by the function to devolve people management practices for operational management to deliver has, in theory, arguably seen them adopt an arm's length, more advisory role within the process of workplace disciplinary handling.

This appears to be a logical approach for HR to take considering that the handling of disciplinary matters contributes to a significant portion of HR's workload. For example, 91 per cent of HR managers spend time on workplace disciplinary matters or procedures according to the 2011 Workplace Employment Relations Study (Wanrooy *et al.*, 2011).

Across the sample, the role of HR within the management of discipline remained a crucial part of their workload. In particular, they were regarded by other management functions as being their organisation's employee relations specialist or 'legal' expert. When questioned about their role in relation to discipline most of the HR professionals expressed that they were instrumental in the design of the disciplinary policy and procedures and they usually had an influence over which stage they involved themselves. Specifically, HR practitioners primarily saw their role as ensuring compliance of the procedure and responsible for investigating disciplinary cases on behalf of their organisations. This placed them in the position to protect their organisations and its operational managers from any threat of litigation.

In addition to this, they also considered as part of their role to devise and implement training and development events to assist operational managers on the handling of disciplinary matters. There were examples across the sample where HR professionals did facilitated basic training intervention in order to equip or update operational managers with basic skills on disciplinary handling. They often felt that this was done as a reaction in an attempt to address inconsistency of the disciplinary handling by operational managers. This approach was also supported by them using a 'business' partner approach as advocated by Ulrich (1997) in an attempt to address ongoing disciplinary concerns by working closely with operational managers.

Approaches such as piecemeal training and induction by the HR professionals appear to be being used in an attempt to satisfy them that operational managers were fully conforming with laid down procedures as well as update them on any recent changes that they made. Contrary to this, it appeared that where this training was taking place it was seen primarily by HR professionals as an essential process in order to gain approval and acknowledgement of the importance of handling disciplinary outcomes. When asked the success of this they felt that their organisations afforded them limited time for what they perceived as crucial development. They also commented that there was no real buy-in of the operational managers' in order to gain full understanding of the policy and its subsequent enactment when they delivered these development events.

The HR professionals were questioned on their position in regard to maintaining neutrality and did this mean that they took a less prominent role within disciplinary proceedings. The evidence suggested however this appeared to be mainly rhetorical when compared with the responses of other respondents who maintained that they controlled the process closely. There was some evidence however to suggest that attempts by HR practitioners to operate an arm's length approach within disciplinary proceedings in one organisation. As the HR manager explains:

"HR's role has changed, we do not have the power or authority as the line managers within this company therefore we will on act in an advisory role within any disciplinary matters" (HR manager Retail).

She explains that:

"HR within this company is marginalised and we do not have the same power or authority as managers therefore we will only operate in an advisory role. The main issues are that managers will not judge each case on its own individual merit and this is evident across all sections within the store"

What was interesting within this organisation was that HR has essentially become more advisory. This could be attributed to the fact that this organisation was unionised therefore HR were seen, working with in partnership with unions to support operational managers in

managing performance and employee conduct. Disapprovingly, HR practitioners claimed that they often had little input into decision making:

“We are there to give advice on the disciplinary process by making sure that the correct channels are in place. This includes advising the line manager during the hearing, advising them on penalty outcomes and mainly to apply support and guidance directly to individuals, line managers and the HR advisors” (HR Manager).

This practice by the HR professionals however was fairly isolated across the sample with most electing to oversee regulation of their disciplinary process and that this was reinforced by the spectre of litigation and the operational managers’ continued dependency upon the function.

Essentially throughout the interviews there was a sense that acknowledgement of the existence of the disciplinary procedure was more important than operational managers deeper understanding of the contents of the disciplinary policy, in particular the law in which they felt was their domain, for example as one HR manager comments:

“They don’t understand the law, or want to understand it. This is why they need HR” (HR manager)

This suggests that operational managers will continue to rely on HR to provide the detail of the process, especially legal understanding therefore blunting the effectiveness of the policy as well as endorse ongoing HR involvement.

Interestingly, despite the HR professionals concern for consistency, some HR respondents within the sample fully accepted that there was a need for more nuanced and context specific responses to disciplinary issues. For example, when asked about how they attempted to achieve a degree of standardisation of the disciplinary policy, one HR manager commented that:

“Standardisation across the company is quite difficult in practice as each case needs to be assessed on its individual basis and you cannot treat like for like. For instance, take our absence management route we have a traffic

light system so if somebody is off for three occasions then they should be disciplined for that. Now I don't agree with that because you obviously have to look at the reasons why they have been off, so we might make one decision at one site within the company and the same outcome would be interpreted differently at another site" (HR Manager Large Retail).

This demonstrates the difficulty faced by HR in standardising their approach to discipline and they were fully aware that each disciplinary was unique and this factor affected how operational managers approached each disciplinary situation. However there were examples within the sample where HR professionals were forced to challenge attempts by operational managers in order to apply procedure in a rigid and inflexible manner. In reality, HR professionals were often aware that their operational managers will sometimes, depending on circumstances confronting them in a disciplinary situation will operate informal custom and practice. Nonetheless this inevitably meant that at some point they were required to intervene.

However, HR professionals were united in that flexible approaches used during disciplinary handling were made more difficult by a lack of confidence and competence of operational managers. Consequently, HR professionals were forced to revert to the use of more prescribed approaches by clarifying the steps to be taken in executing disciplinary procedures as well as always being on hand to support operational managers. One of the key drivers for this was a focus by HR professionals to amend, revise and simplify existing disciplinary documentation and guidance to further support operational managers carrying out this process.

HR professionals commented that revisions to the procedure took up a great deal of time and this was further compounded by the reliance of operational managers of HR throughout the various stages of disciplinary handling. Even when policies had been strengthened and clarified, operational managers still failed to adhere to the laid down procedure as explained by one HR manager:

"We wrote the policy and it's a robust policy actually, it's written in the right terms and is transparent. Historically we provided people with a copy of the employee handbook when they joined us so we expected them to have some

degree of understanding of its provisions and what it means and this did not work. We now have quarterly management meetings to go through the procedures. We have even brought in employment lawyers to do a session on the benefits of the procedures and then put them into workgroups to explore the practical implications of the procedures” (HR Manager Private Sector).

There was frustration from the HR professionals in the sample that although steps had been taken by HR to ensure there was greater standardisation of practice across their workplaces, this still had not prevented gaps in its application by operational managers.

Despite these problems, some of the HR respondents felt that they would prefer to take a less prominent role in disciplinary proceedings than in the past. To some extent, this desire reflected the ongoing tendency to devolve HR processes to the operational line, such as discipline and performance handling. Nevertheless, the findings suggest that this is unlikely to occur and that HR do want to continue to be a prominent regulator in the discipline process.

One area that was a concern for HR professionals was maintaining ethical compliance across their organisations during disciplinary procedures. A significant number of the HR professionals within the sample were studying, or were full members of their professional body, the Chartered Institute of Personnel and Development. This professional body has a set of standards that practitioners are required to adhere to in how they present themselves as ethical practitioners (in part). However, the findings suggested that these ethical standards were often questionable because HR practitioners had limited organisational power and so were simply expected to execute the wishes of senior management.

Disciplinary procedures like other ‘hard’ HR processes can often present HR professionals with a range of ethical dilemmas. Across the sample, HR professionals provided examples of them being asked to carry out or facilitate decisions and actions with which they did not necessarily agree with, and which could undermine basic principles of fairness and consistency in the discipline process. As one HR manager commented:

“We operate within the private sector and therefore conducting a disciplinary is expensive and time consuming. We would normally pay someone off and accept we have recruited badly” (HR Manager Manufacturing).

This was echoed by other HR professionals across the sample as indicated by other another HR manager within a different sector:

“My Director makes the decision, he tells me that we have not got time to manage poor performance through coaching or training, we just pay them out” (HR Manager Engineering)

It was clear that this meant that procedures were not always strictly followed, potentially making organisations vulnerable to litigation. In these circumstances organisations turned to settlement agreements to limit legal exposure. This was highlighted by one senior HR manager as follows:

“Within our sector it was deemed as too costly to rectify performance issues for under performance or capability issues. We have to admit to making mistakes in recruiting the wrong person and therefore it’s cheaper to start again”. (HR manager Private sector manufacturing).

The HR professionals in the organisations that operated this type of practice were asked if this was regular practice:

Yes, too often, as mentioned the reason is to move swiftly to get them out. They get a pay-out above what they would get if they took us to tribunal, it’s good and managers do not want to go down managing performance. A recent example was that we could have had a disciplinary which involved a senior salesman and a secretary which we managed informally through a compromised agreement. It cost the firm £75,000 on pay outs. On incidents like this the owners would prefer to operate outside procedure”.

This inconsistency of HR practice was often dependent on the sector in which they operated in. Within public sector workplaces it was evident that the HR functions were generally able

to achieve a high level of compliance, helped in part, by detailed procedures and where represented, union scrutiny. In contrast, HR managers operating within private sector organisations were seen to apply more pragmatic approaches, and in some cases forced to relax their focus on adherence to procedure. To clarify this point HR professionals operating in the public sector were asked if they provided support to assist development of an underperformer within their organisations: As highlighted by one HR manager:

“Absolutely, it’s in the policy, we do a review for 4-6 weeks which we consider is a relevant time frame to improve. This outlines any training that is required to help them achieve their targets. This is supported by review meetings with their line manager to check if there is improvement” (HR Manager Public Sector).

Conversely, within private sector workplaces it was not unusual for HR to be guided by ‘hard’ business needs of their organisations and therefore the handling of underperformance or misconduct was seen as a costly process and therefore any employee that was considered a risk was removed through settlement agreement with little consideration for rehabilitation. Where this occurred, HR managers were uncomfortable about compromising their professional ethics:

“Of course I’m really uncomfortable with it however I can only advise my superiors that it is morally wrong, what more can I do” (HR Manager Private Manufacturing).

Where unethical practice was known to occur, one approach taken by HR was to inform their superiors that it was morally wrong and therefore they considered any immoral transgression within their role was vindicated. Similarly empirical research identifies forms of ethical inactivity among HR managers (Fisher, 2000). ‘Quietism’ according to Fisher is often imposed where pressure is applied to HR by the organisational decision makers. Additionally it can be seen whereby the HR manager is likely to be punished by termination:

“If my Chief Executive informs us that they want someone managing out through a disciplinary then we are put in an untenable position. I know it’s

morally wrong but this the world we live in. If we didn't obey then we would be looking for work" (HR Director Service Sector).

HR professionals within the sample felt that they often did not have any legitimate authority to challenge untoward practice. This reflected the limited influence of the HR function within the workplaces observed in this sample when business requirements took a priority. An example of this was where one HR manager informed me that his CEO has told him on occasions to use the disciplinary process to get someone out of the system:

"It is not unusual within this company for my CEO to word me that this person (the one who is under investigation) has got to be got rid of". (HR Manager Engineering).

These patterns of unethical practice were clearly a concern for the HR professional. They felt that the tenuous position of HR presents them as practitioners with a real dilemma within the disciplinary process. This caused a tension in that they saw the HR function as being seen to ensure that ethical compliance is be operated in their organisations through their role as 'custodian' of natural justice and fairness. However they also felt that they are consistently up against the pressure placed by the power being exercised by senior managers to circumvent ethical compliance within the process put them at a disadvantage. Paradoxically this appeared to present a clash within human resource management's own perception of themselves as essentially the 'gatekeeper' of fair disciplinary process. However this is diametrically opposed to the exercise of actual legitimate power that is seen being exerted by senior management post holders in ensuring acquiescence. This is not dissimilar to the idea of authority through legitimate power within the workplace as advocated by the early work of French and Raven (1959).

When asked what the most was concerning part of the discipline process HR professionals felt that the initial stages of discipline handing were crucial and these were often the most problematic because these were handled by the operational managers with little or no involvement from HR:

“This is where it can all go wrong as they (managers) will say things that are inappropriate and this inevitably weakens our position when we pick the case up” (HR advisor)

Arguably, although some informal discussion was apparent before and in some cases, during disciplinary proceedings, the need for HR presence was seen as critical by HR professionals and significantly by younger managers within the sample. Conversely they were aware that some older operational managers would at times, circumvent their involvement.

There was little doubt, with a few exceptions that the findings reveal that the majority of HR managers had a strong desire to maintain and enforce formalised proceedings within their organisations in a quest to achieve greater compliance and consistency. Fundamentally however the tenuous balance between ‘formality’ and ‘informality’ of proceedings often produced a degree of subjectivity in disciplinary outcomes which was a concern to HR professionals. Although HR professionals supported the idea of informal resolution, HR’s desire to regulate disciplinary handling coupled with their lack of confidence in the competence of operational managers meant that they tended to want to revert to enforcing compliance.

The emphasis by HR attempting to achieve systematic disciplinary processes undoubtedly leads to an element of criticism from operational managers. It is widely understood by the HR professional that operational managers often had distain of the procedures as being too bureaucratic, inflexible for their own operational needs and this was evident throughout the interviews. Furthermore, HR professionals were fully conscious that managers often lacked understanding of the disciplinary processes, especially where the law is concerned. Noticeably they knew that many of their operational managers preferred degrees of discretion when operating disciplinary processes which caused them ongoing concern. However they felt that what was paramount was that operational managers must understand that consistent application of rules prevents litigious practice. This often meant that operational managers who prefer the autonomy in making individual disciplinary judgements were scrutinised by HR. Essentially as noted by one HR professional:

“The handling of discipline can be a real daunting prospect for our managers, particularly for less experienced ones”

How HR professionals addresses 'generational' issues within their workplaces clearly throws up a raft of complex and contradictory concerns for the function. In the sense that even though younger inexperienced operational managers are often more compliant than their older counterparts when applying key HR processes such as discipline this appears to come at a cost. In that they often lack essential experience to deal with complex people related matters and therefore will continue to be highly dependent on HR. Alternatively older experienced operational managers who prefer pragmatic approaches that often are in conflict with HR processes will continue to challenge the procedure covertly.

On another level these concerns were further exacerbated by the relationship of HR and operational managers. This was dependant on the stage of maturity of HR as a management function within the different organisations. For example, there appears to be more acceptance of the HR role in organisations where they have been long established as a function. This was particularly evident in workplaces that had evolved HR from the traditional personnel department. Other factors that affected this relationship can be attributed to the degree of masculinity that was seen to be operating within certain sectors, especially traditional male dominated industries such as engineering or processing. The HR departments across the workplaces in the sample were essentially female dominated and this often created patterns of stereotypical remarks by some male operational managers on the value of their role within the discipline process. Frequent derogatory remarks were made by operational managers about HR. Moreover these were often gendered:

"She, (HR manager) is just the note taker, what can that slip of a girl ever tells me, I've been doing this job for 35 years" (Production Manager Engineering).

However HR professionals did not appear to be overly concerned and tended to dismiss this as industrial banter and simply part of working in a male dominated environment.

For HR professionals their role within discipline handling was essentially seen as regulation of the procedures and to support operational managers throughout the disciplinary process. There was a strong suggestion that they often felt that there were certain ambiguities that challenged this in that their operational managers often saw them as 'just another management function' which sometimes questioned their authority when applying the

disciplinary policy. Conversely some operational managers were highly reliant on the HR function in assisting them to apply disciplinary outcomes. This is an important point going forward as this might suggest that the cadre of young developing operational managers will continuously rely on the HR functions support when handling disciplinary matters?

Although the HR professional ethical stance was at times, challenged mainly by the position they held within their respective workplaces. Generally HR professionals felt that their overall role was the achievement of procedural compliance and nothing more. The findings provide indication to suggest that there was limited evidence to suggest a move from traditional HR intervention to supportive role although this was in some organisations inconsistent and could see the role adopt both approaches.

Chapter ten: Analysis

Examination of the findings reveals that workplace discipline is subject to an array of underlying contradictory features that affect the nature of disciplinary handling in the contemporary workplace. The findings expose that, despite a gloss of written procedures, decisions about the approach to be taken are, in everyday practice, subject to irregular and unpredictable choices that are themselves formed and shaped in relation to an ongoing contested terrain (Edwards, 1979) between the actors that carry out this role in relation to aspects of power, control and consent. Consequently the decision of whether to adopt a formal or informal approach will often emerge from these deliberations.

The model below: *A continuum of formality and informality of approaches within disciplinary handling* (fig 5.) has been developed in response to the themes that have emerged from the thesis findings. It provides illustration of the reasons for determining the choices to be made between formal and informal approaches to handle disciplinary practice by the stakeholders. It divulges that disciplinary handling is subject to a continuum of practice which is dependent on a range of underlying factors that initiate these two choices. This model will be used as a conceptual framework to assess these developing themes and compare and contrast them against the relevant mainstream academic literature. Furthermore it will allow us to identify the gaps in our understanding currently absent from subject literature. Firstly it considers the extent to which workplace disciplinary policy has evolved and been shaped in response to legal, regulatory and organisational requirements over time. Secondly, it examines the extent to which formal and informal application of the discipline policy, and subsequent procedures have been administered, particularly in response to the relationship between - most significantly - the HR function and operational managers but also addressing how trade unions and employee representation affects the process. It reveals that this relationship may be shaped by the terrain within which these choices that are made. Essentially by exploring the micro dynamics that operate at this level it allows us to understand the triggers and drivers for each of these two contrasting approaches.

Fig 5. A contested continuum of formality and informality approaches within discipline handling.



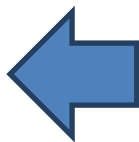
Increases formality in proceedings	Increases informality in proceedings
<p>HR can be seen to increase formality through the strong adherence to the discipline policy and subsequent proceedings. Driven by the need for standardisation and procedural compliancy in order to manage against the threat of litigation.</p> <p>HR enforces increased regulation of operational managers' behaviour within the process through a position of power. In turn this can be seen to inhibit devolvement of disciplinary practice forcing tightly prescribed procedure adherence.</p> <p>Increased reliance on the HR function from operational managers to guide them through the process where they lack essential skills and experience in the handling of discipline.</p> <p>HR 's power position is maintained over other actors when formality is maintained affording the function increased influence on disciplinary outcomes.</p> <p>HR limit devolvement of ownership of discipline to operational managers which contradicts the mainstream agenda and approaches on conflict resolution.</p> <p>The notion that HR is considered the legal expert within discipline handling and maintains ethical stewardship.</p>	<p>HR Does abdicate responsibility and greater amount of autonomy of disciplinary handling to operational managers which can appear to threaten HR's position power.</p> <p>The HR function is marginalised by other actors within the disciplinary process, or are regarded by other functions as 'handmaidens'.</p> <p>HR drives a less prescriptive approach in line with the mainstream agenda on disciplinary handling to allow for greater flexibility to seek early solution.</p> <p>Operational managers prefer to operate with less Formality in proceedings to manage outcomes drawing upon perceived experience in the role. They do not always accept HR position and applies process in a pragmatic manner.</p> <p>Operational managers accept and take full ownership of disciplinary handling.</p> <p>Depending on the experience and approach taken by operational managers this can reduce the level of formality taken in discipline handling.</p>

Managers are highly dependent on the HR function owing to lack of confidence, skills and experience. This increases levels of formality within the handling of discipline, as well as inhibits any devolvement of disciplinary practice. Therefore increases and maintains HR's interference within the discipline process.

Operational managers fully accept HR as the governing role in discipline handling forcing a reliance of the function. This can be seen to foster limited or no ownership of the disciplinary policy or process.

Depending on the operational managers Experience of disciplinary handling and their approach, this can increase the level of formality within the handling of discipline.

Operational managers fear of litigation and legal consequence in disciplinary handling forcing a reliance on HR intervention within the process.



HR's method and choice of communicating the discipline policy can cause confusion within operational managers inadvertently forcing sporadic application of procedures.

HR's attempt to simplify the disciplinary policy and process can also result in confusion by the end user.

Neutrality and ethical practice by HR in the disciplinary procedure is questionable when confronted by business requirements.



Unions/ employee representation involvement

Depending on the degree of involvement can increase the degree of formality by ensuring procedural compliance to ensure natural justice or drive informality by achieving early resolution of discipline outcomes in partnership with HR.

Undoubtedly the presence of evolving law and recent changes on dispute resolution is considered to be a crucial contributory factor in driving the growth of formal discipline procedures over time.

The Donovan Report (1968) started the modern trend for statutory intervention in employment law. The Employment Act 2008 and the Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2008 are amongst its most recent manifestations. It is the need to respond to a now constantly evolving legal situation that is behind the trend for formal rather than informal disciplinary procedures.

The addition of further Acts and Codes of Practice continues to support and affect this development and influence ways in which workplaces approach and handle discipline and conflict resolution. The introduction of the Employment Protection Act 1975 extended protection to employees by placing a statutory duty on employers to set out the details of workplace disciplinary and appeals procedures. Additionally the launch in 1977 of the Acas Code of Practice on Disciplinary Practice and Procedures provided a non-binding guide for employers and employees on the principle of best-practice. Notably, the Employment Act 1989 exempted firms with fewer than twenty employees from having to provide details of disciplinary and grievance procedures within their formal terms and conditions of employment. The subsequent Employment Relations Act 1999 presented a milestone in legally underpinning workplace procedures for dealing with individual disputes until the 2004 Dispute Resolution Regulations were affected following the Employment Act of 2002. The principal function of the 2004 regulations was the promotion of minimum standards in the handling of discipline and grievance at work by encouraging employers and employees to resolve disputes themselves rather than by resorting to the employment tribunal system (DTI, 2001). This required an adjustment in culture for many workplaces regarding how they managed conflict resolution which can be seen to be a double edge sword. It could be said that the organisational drive to develop a culture of greater flexibility in the handling of discipline, post the Gibbons Review (2007) and the Employment Act 2008, can be seen to be impeded by the lack of a high-trust relationship between HR professionals and operational managers and this can encourage an aversion to discipline handling by operational managers as well as prompting the use of the regulated, interventionist, approach taken by HR professionals which can be seen to generate a contested terrain, (op.cit.) during disciplinary handling. This however is very much dependent on the issue of who holds the power and position in the organisation and how this is constantly shaped and contested throughout the disciplinary process. Underpinning this across all workplaces is the innate

fear of litigation, as well as other issues surrounding operational management's commitment to, and ability in, orchestrating the disciplinary handling process.

Arguably, the extension of legal protection can be seen to be behind a trend toward formal disciplinary procedures as a response, and both the literature and research findings confirm this. By 1990, 90 per cent of workplaces employing twenty five or more reported having a formal disciplinary procedure (Millward *et al.*, 1992), and between 2004 and 2011 the proportion of workplaces with written disciplinary procedures increased from 84 to 89 per cent (Wanrooy, *et al.*, 2013). Furthermore it is extensively acknowledged by (Bieroff *et al.*, 1986; Harris, 2009) that the increasing preference for procedural disciplinary handling is driven by organisational worries over aspects of fairness and equity. As demonstrated in Fig 5. for HR practitioners these factors can go some way into strengthening their positional standing as a function as well as being perceived to be a crucial part of their armoury in regulating managerial behaviour and administering compliance (Saundry and Wibberley, 2014). Therefore, and unsurprisingly, all organisations that were sampled had a formal disciplinary policy and procedures in place. Interestingly the trigger for the use of written disciplinary procedures was the introduction of unfair dismissal discrimination legislation and the consequent requirement to defend themselves in the event of employment tribunal applications (Edwards *et al.*, 2004) and this position has not changed at the time of the interviews.

The evidence suggests that operational managers often had an inclination to abrogate their involvement in discipline procedures back to HR (Cunningham and Hyman, 1999; Whittaker and Marchington, 2003). During the time that the fieldwork was being conducted all of the organisations selected for this research were in the process of restructuring, or had restructured as part of downsizing in response to ongoing economic downturn. This was further compounded by increased cost saving initiatives (McCann 2010; McGovern *et al.*, 2007) where a drive to deliver greater productivity using fewer resources provided a challenge for operational managers when it came to matching available labour resources to production demands. This not only appeared to be adding additional stress to their role to achieve the goal of meeting their own performance targets but it also prompted them to adopt more pragmatic, informal, solutions to disciplinary handling outside of the prescribed formal process. These included an inclination to be lenient with consistent offenders

because they were seen by managers as valuable workers. The managers own personal relationship with individual employees can often influence this choice, Rollinson, (2000). Additionally they also empathise with employees' personal circumstances (Cole, 2008).

What was apparent was the degree to which operational management possessing the necessary procedural understanding and had the necessary practical skills to carry out a disciplinary, and this was an underlying factor that often determined whether a formal or informal approach was to be adopted during disciplinary handling. It is widely viewed by government that operational managers need to be better equipped to manage conflict (BIS, 2011). They are often lacking in confidence, as well as the necessary competence and ability, are more inclined to shy away from confronting disputes and, generally, are unable to cope with the stress of managing discipline and grievance procedures or orchestrating settlements on their own (CIPD, 2007, 2008: 2015). This can be attributed to the fact that they have been given insufficient training to handle the legal implications of employment matters (Harris *et al.*, 2002). This issue was seen as an ongoing concern by HR professionals in that they were fully aware that operational managers possessed the necessary skills and competencies to carry out a disciplinary effectively. This is of little surprise and concurs with existing research (Cunningham and Hyman, 1999; Whittaker and Marchington, 2003) who highlight that managers often lack people management skills and competencies and are hesitant when handling people management components of their jobs which results in them relinquishing involvement in favour of HR. Although there appears to be some attempt to address this issue through training intervention by HR this was often stifled by lack of operational managers' appetite for such developmental opportunities – perhaps due to under resourcing and/or work loading issues? The operational managers ability to resolve issues is also somewhat compounded by the complexity of law that governs workplace conflict resolution and by the fact that operational managers regard this as beyond their own remit and more appropriate to the HR domain.

Perhaps this continued lack of essential people management skills by operational managers, which is widely acknowledged (Leitch 2005; BIS 2011) will continue to strengthen HR's role as well as inhibit devolution of discipline handling? Operational managers continue to be ill equipped to prepare and handle a disciplinary case; they often lack essential related training, skills and knowledge for HR driven processes (Cunningham, James and Dibben,

2004) and this, coupled with a reluctance to accept responsibility for the day-to-day people management of their subordinates (CIPD, 2003) appears to perpetuate the requirement for HR intrusion and restrict the ownership of the disciplinary process.

The findings clearly support this, which is somewhat surprising given that recent changes now place operational managers at the hub of resolving workplace conflict. This is compounded by the fact that operational managers are known to be less inclined to attach high importance to disciplinary handling, their main priority being seen to be maintaining output and quality. This echoes research conducted by (Hutchinson and Purcell, 2010; McGovern *et al.*, 1997; Renwick, 2003) who suggest that it is difficult for managers to balance management with the development of essential conflict resolution skills and operational responsibilities and this was the case found by this research. Furthermore there is evidence to suggest that they are inclined to develop close personal relationships with subordinates which can often colour 'objective' decisions made within the disciplinary process. Despite this there was some attempt being taken by HR to genuinely support operational managers by implementing conflict handling training initiatives, although feedback elicited from managers suggested that this was piecemeal and lacked any real buy-in from operational managers themselves. Furthermore there appeared to be limited support from senior management to support operational managers in developing conflict management skills, as highlighted in the findings of (Teague and Roche, 2011).

What was significant in the findings was the key role that Human resources (HR) play throughout the disciplinary process, particularly in promoting greater formality within their proceedings. Within progressive, mainstream, academic literature there is the understanding that HR is moving away from being a regulator (Storey, 1992) to being a business partner (Ulrich, 1997) a role which debatably affords operational managers a degree of autonomy to act with greater 'informality' when resolving disciplinary issues. This also concurs with ongoing debates around the contested role of operational managers and the devolution of HRM practice. For example attempts of returning human resource practices to operational managers' (Cunningham and Hyman, 1995; Hutchinson and Wood, 1995; McGovern *et al.*, 1997) which can be met with indifference due to a range of conflicting priorities such as work overloading, lack of interest and training; and self-serving

behaviour (Fenton O'Creevey, 2001; Harris, 2001; Marchington and Whittaker, 2003; Purcell and Hutchinson, 2007).

Although recent policy agendas has emphasised a need to develop informality within workplace handling of discipline, (Gibbons, 2007), the governments' *'Resolving Workplace Disputes: A Consultation'* (BIS, 2011) paper as well as a revised ACAS (2009) Code which presented organisations a principles-based good practice approach for workplaces to follow rather than detailed procedural requirement. These have had limited impact and workplaces appear to still prefer to adopt the original code and apply the three stage procedure.

Paradoxically, and this is supported by the research findings, questions still remain as to why devolution of disciplinary handling has not occurred to the extent that the related research would have us believe (Cunningham and Hyman, 1995; Hutchinson and Wood, 1995; McGovern *et al.*, 1997; Harris, 2001). Evidence supports the existing theory in that a move to formality can be seen to be in response to a range of factors as to why the HR function are not relinquishing the 'policing' of the discipline procedure which is counter intuitive to the recommendations proposed by Gibbons and subsequent debates. Arguably the relationship between different levels of regulation and the HR function's organisational role goes to the heart of some of the tensions and ambiguities that have long been identified as inherent in professional personnel management, as is recognised in the previous findings by Harris (2009). It can be said that, claims of the HR function being the source of expertise, especially involving the handling of discipline, has gone some way to furthering its development as a distinct profession (Bach 2005; Legge 2005). Allied to its knowledge of legislation it does offer HR a potential source of influence over other functions within the disciplinary process and helps create a power-base (Harris and Bott, 1996) allowing it to then act as a "gamekeeper" (Purcell, 1995) or as an 'industrial relations experts' (Legge, 1988). To some extent this can go some way to explain why the transfer of employment relationship process ownership from line managers to the personnel function, as identified in (Millward and Stevens, 1996) earlier studies. Additionally it can also be seen to reinforce the perception of other organisational members who carry out the disciplinary process that HR's ambition is to use their own function as the source of best-practice (Gilmore and Williams, 2007) in order to legitimise their own attempts to secure professional status

(Legge, 1993; Clark, 1993; Caldwell, 2001). HR's role essentially was understood as being to ensure procedural and legal compliance within disciplinary handling across organisations. This however, does in some way contradict our understanding of mainstream agendas supporting greater informality and less reliance on legal procedures post Gibbons (2007). Furthermore, it questions that the extent to which devolution of disciplinary practice has actually occurred is called into question when compared with the extent purported in mainstream debate.

Crucially within the findings was evidence of the importance HR attached to the amendment of existing disciplinary policy - and where necessary the creation of new policy - as a response to changes to law (post Gibbons) and as a means of ensuring that the necessary safeguards against potentially damaging litigation were in place (Harris *et al.*, 2002). Generally this was done in isolation from other organisational stakeholders within the sample with no involvement from operational managers and employee representatives, with the exception of unionised organisations. For trade unions the use of discipline procedures were essential for them to defend their members and were seen as central in maintaining equity and natural justice (Sanders, 2008; TUC, 2007).

The evidence suggests that HR maintain governance over the disciplinary policy to ensure that the HR function retains control over the disciplinary process, which concurs with our understanding that human resource managers are concerned about consistency and procedural compliance. This was further reinforced by its acceptance by other users - in particular operational managers - in that they perceived the management of discipline to be part of the HR function. In respect of debates concerning the role of operational managers and the use of procedures our current understanding is that management are often regarded as a unified homogenised group, sharing common interests and goals which is not always the case (Reed, 1989). This is in stark contrast during the handling of discipline that indicates there exists to be a plurality of practice and acceptance. The reality is that varying degrees of conflict are reflected in the different perspectives held by HR practitioners and operational managers. The thesis findings recognise that this can be attributed to the fact that hostility to rules emanating from HR, in the form of discipline procedures, often derives from operational managers who consider them to be burdensome rather than essential.

From the HR perspective various attempts had been employed to simplify their existing disciplinary policy, this was being done to achieve greater standardisation and conformity for other stakeholders as well as to make the process more straightforward (Goodman *et al.*, 1998; Cooke, 2006). Although these efforts often had an adverse effect in that it caused a great deal of misunderstanding and duplication. What was clearly apparent was the degree of confusion that could be attributed to failings in the communication of disciplinary policy, failings that today can be significantly exaggerated by the extensive nature of the range of means - particularly electronic means - currently available for the dissemination of company information. Alarming, although strategies were in place to improve both communication and revise existing policies across workplaces, within the sample there was little evidence to suggest that these changes had improved existing processes. Similarly Saundry and Wibberley (2014) found that there was widespread recognition that written procedures appear to do little to help to resolve disciplinary disputes and the findings of this thesis support this. Fundamentally the basic purpose of the disciplinary policy was to give necessary guidance and support to operational managers and navigate them through challenging issues as well as to ensure their compliance with legal and organisational standards. Evidence suggests that workplace disciplinary policies were occasionally over complicated, and in many cases they remained highly prescriptive thereby inhibiting the degree of discretion available to operational managers. Questionably it is likely that the continued omission of any other stakeholder involvement beyond HR in disciplinary policy formation will continue to present ambiguity and promote resentment amongst the various users of the policy and therefore this problem will persist.

Noticeably the perception by HR of operational managers' lack of ability to conduct disciplinary proceedings within their workplaces also appears to strengthen HR's position in formalising the disciplinary processes which in turn appears to intensify HR desire to intervene in order to regulate and guide the process. Generally the research findings suggest that, with some exceptions, whilst operational managers fully accept that the role of HR is to provide them with related legal expertise, advice, and guidance on disciplinary handling and resolution they appear unaware of the degree to which this affords HR the opportunity to closely screen and control the process and the behaviour of their managers (Whittaker and Marchington, 2003; Hales, 2005). Potentially this sees the HR function

reverting back to the role of regulator as identified by Storey's (1992) early work and thus increasing formality of the disciplinary process. Although this close presence of HR does provide operational managers with some security and the opportunity to relinquish some ownership it is evident that the rigorous application of discipline procedures does not always afford them with the opportunity to operate in a flexible manner/act informally within proceedings. What is important here is that when provided with the opportunity operational managers often prefer to handle discipline in an adaptable fashion in order to achieve early resolution. Essentially this approach is taken in order to avoid the loss of time caused by entering into an overly bureaucratic process. This approach was often preferred by more experienced managers who appear to have some disdain for formal disciplinary procedures and consider them to be extremely bureaucratic and time consuming, which supports earlier observations (Edwards, 2005). This is especially the case when faced with the challenges of the modern workplace where precedence may be given to coping with increased workloads and/or meeting demanding performance targets. Evidence suggests that this sometimes results in an inclination on the part of operational managers to work outside of procedure by attempting to skew the outcome in their own favour necessitating the adoption of a the regulator policing role.

Within disciplinary handling there is the notion of HR being seen as a 'neutral' third party (Harris *et al.* 2002) which places them in a position to ensure that employees are treated fairly and therefore act 'ethically' across policy and practice (Liff and Dickens, 2000) thereby ensuring that discipline is exercised with consistency and in adherence to procedure. Alarmingly there was evidence in the findings to suggest that in some instances the disciplinary process was used as a conduit to 'manage out' unwanted employees. Previous research carried out by Earnshaw, Marchington and Goodman (2000) also suggests that managers make up their minds that they would like to dismiss an employee before the disciplinary hearing gets underway. This is contrary to the mainstream understanding where the HR function is regarded as the provider of ethical stewardship (Lowry, 2006) and legal compliance. Interestingly this unethical practice on the part of the HR function concurs with Fisher's (2000) empirical research which found that HR managers might resort to various forms of inactivity when confronted with unethical practice. These can range from quietist compliance with acts of unethical practice, neutrality - where no views are

expressed - and tolerance of unethical acts as a result of manipulation by senior management or simple lack of positioning power.

There has been widespread consideration of the contested role of operational managers in people management issues and HRM processes being relinquished in favour of line management and the discretionary application that this approach can bring all of which is thoroughly covered in the work of (Cunningham and Hyman, 1995; Hutchinson and Wood, 1995; McGovern *et al.*, 1997; Harris, 2001). The findings clearly highlight deep underlying contradictions within the process of workplace disciplinary handling. Undoubtedly the changing legal and regulatory landscape, that saw a repeal of statutory procedures by the Employment Act 2008 and the introduction of a shorter principle-based Acas Code of Practice on Discipline and Grievance Procedure in 2009, has evoked a response from organisations to legal changes resulting in the amendment of existing discipline policy. This, in turn, appears to have had the adverse effect of reducing the understanding and application of proceedings on the part of other workplace users whilst contributing to the increased formalisation of discipline handling.

It is apparent that the handling of discipline is and will remain a highly contentious practice that is constantly being contested by the actors who take part in this process. From a HR viewpoint there is an essential requirement that the procedure is conducted in a standardised prescribed manner in order to comply with the legislative requirement to prevent litigation as well as ensure procedural compliance that comes in line with the organisations' individual policy requirements. This therefore suggests a continued strengthening of HR's authority and position within workplace disciplinary processes, initially from (1.) their overall authority in formation and implementation of the discipline policy which has limited interaction with other parties involved in discipline handling. (2.) a general acceptance by organisational stakeholders of HR's role within conflict resolution processes which is supported by the notion of the function being the 'legal expert' and regulator over and above the management function within the discipline process again directly contradicts mainstream models (Storey, 1992; Hall and Torrington, 1989; Cunningham and Hyman, 1999; Hunter and Renwick, 2009) which show HR progressively moving towards business partnering and devolvement of disciplinary practice down to the operational line.

It seems that as a function HR appears to be seen by operational management both as a 'hero' or a 'villain' in that for lesser experienced managers they are viewed as an essential support throughout the disciplinary process and this goes some way to strengthen their position in the proceedings. Conversely the HR function can be viewed with some distain by more experienced older managers who regard the function as sometimes unnecessary, out of touch with business practice and too inclined to complicate and confuse operations. Often through means of highly bureaucratic procedures and poor communication which can encourage operational managers to take more pragmatic and covert solutions in the handling of discipline. Furthermore a continued lack of stakeholder involvement in the design of the discipline policy and procedure outside of HR goes some way to foster and reinforce a climate of ongoing resentment and a lack of acceptance of the HR function.

The awareness by HR of operational managers' lack of capability in disciplinary matters further contributes to strengthen their continued involvement in the disciplinary process by ensuring they maintain to act the role of regulator to ensure legal compliance and this will continue if operational managers do not receive the necessary support from senior management to develop their conflict management skills. This continued recalcitrance by operational managers in disciplinary handling with regard to owning and managing discipline procedures will no doubt do little to change this position. Furthermore their reluctance to take on perceived 'HR responsibilities' which are perceived by managers as adding further to their existing workload will continue to exasperate the problem. The obvious resolution to this would be for HR to fall into a position of offering arms-length support, as prescribed by our mainstream understanding of the role, which would then afford operational managers a greater degree of control and authority within disciplinary handling. However there appears to be too much tension, conflict and low trust between the two parties for this to be fully realised and tested. Factors such as the need to ensure organisational compliance appear to be given priority in HR's list of responsibilities.

This is in stark contrast with operational managements' preference for a more pragmatic approach when handling discipline. This takes the form of informality of practice and is therefore outside of procedure and so clearly continues to perpetuate HR intervention.

The acceptance that the HR function operates as the custodian of ethical practice and organisational stewardship appears to be seen to elevate them into a position above other

management functions within conflict resolution and this approach is strongly supported by their own professional code of conduct. This however is sometimes challenged by firstly, the accepted level of HR's positional power in relation to other senior management and secondly, by the requirement of their role in fulfilling business requirements to fully ensure that ethical practice exists within disciplinary procedures. The role of HR within disciplinary handling is seen that they maintain a neutral stance throughout proceedings to ensure ethical practice is play out. As was apparent throughout this research many of the organisations had a strong orientation to achieve high financial returns resulting in HR function to take on a market-driven approach to come in line with the business requirements. In relation to the handling of discipline this could be seen to erode certain moral values that are normally expected by the HR professional and there was evidence to suggest that this could at time amount to unequal treatment of employees as their organisations strive to achieve the pressure of high performance returns. There was a prevalent culture specifically in private sector companies that dictated the pursuit of high performance and full utilisation of labour which is tied to financialised practices and any deviance is seen as unwanted therefore HR accept this on a basis of 'economic rationality'. This practice by HR is concurrent in the research of Fisher (2000) who also found that HR managers might resort to inactivity when confronted with unethical practice.

In summary this thesis has revealed that the practice of discipline is, and will continue to be highly contested by the various actors that play out this vital role. For HR professionals it is evident that they play an important role in facilitating the disciplinary process as they possess the necessary skills and expertise that is required. However the function will continue to lack any real credibility from the other management functions unless they are prepared to devolve aspects of disciplinary handling to the operational manager as well as accept and understand that discipline can be resolved or brokered via informal methods outside those laid down by formally prescribed rules. For operational managers a continued lack of development in essential conflict resolution skills to deal effectively with discipline in the workplace or willingness on their part to fully accept this essential practice will continue to invite HR to orchestrate what should management proceedings.

Chapter eleven: Discussion and Conclusion

The findings of this research confirm that developing legislation and regulation continues to shape the UK landscape in relation to conflict and dispute resolution in the workplace. Post the Gibbons Review, (2007) debates continue to be formed around a need for greater informality within disciplinary handling in the UK and this has been placed at the forefront of the national policy agenda. Essentially this can be seen as a response to a growth of individual litigation claims and burgeoning tribunal applications which, it could be argued, have occurred due to increasing formality of practice within proceedings in the workplace and a growth of 'individualised' claims. This is supported by employers' concerns over the spiralling costs of managing workplace conflict and its potential impact on overall organisational performance (CBI, 2011). Recent changes have seen the introduction of employment tribunal procedural rules and fees in July 2013 and Acas early conciliation, building on experience of pre-claim conciliation (2014). It also saw the introduction of settlement agreements and extended 'without prejudice' protection in July 2013 for employers seeking to terminate employment. However whilst this has reduced the volume of claims whether it has had an impact of the underlying nature of workplace discipline is unclear.

What is apparent is that the nature of workplace discipline must be seen as more than just a linear process as prescribed by the Human Resource function by means of the disciplinary policy and procedure. Evidence reveals that the resolution of discipline in the workplace is highly complex and is subject to aspects of power, control and consent and this is constantly being contested by the actors that take part in this activity. What is also important is the nature of the relationship that is established between HR professionals and operational managers which can be seen to guide the range of formal and informal choices that are taken throughout the process.

In observing the critical role that HR plays within the disciplinary process we can see that across the HR and employment relations literature that there are ongoing approaches to the management of the employment relationship. The function has evolved over time from personnel management to what we currently understand as "human resource management". Over time it is understood that the HR function has facilitated the

devolvement of responsibility for managing the employment relationship to operational managers; and this can be identified as one of the defining characteristics of HR (Guest, 1987). Specifically, the relationship and importance on the role of HR within workplace discipline can be seen to place the function very much at the vanguard of workplace conflict resolution. Certainly the increasing marginalisation of a union presence within organisations appears to consolidate this further. Although trade union representation was limited within the scope of this research what was apparent is that their involvement can often protract the disciplinary process thereby promoting the application of a binary approach, including both formal and informal proceedings, which may be considered both a 'blessing and a curse' by the HR function.

On explaining the position of the HR function within the workplace we can see from earlier research a gradual shift from HR operating a regulatory role to that of an advisory or business partner role (Storey, 1992) where HR is seen to work closely with operational managers on the people management aspects of delivering an organisations strategic objectives (Ulrich, 2009). The role can also be seen as operating in the role of 'neutral' third party, with responsibility for ensuring that all employees are fairly treated (Harris *et al.*, 2002) which to some degree still proliferates mainstream academic discourse in regard to what is general HR practice. In addition to this our current understanding is that the handling of workplace discipline is carried out as a jointly regulated activity (Kersley *et al.*, 2006). It is now widely considered that through a business partner role (Ulrich, 1997) HR professionals will gradually decrease their involvement in the day-to-day management of disciplinary issues in order to afford operational managers greater decision making opportunities within the process. Evidence suggests however that this is not the case and this can be attributed to a number of factors which appears to have triggered a reverse, with the HR function heading back to a position of regulator within workplace conflict resolution and therefore maintaining the continuing formality of the discipline process. In viewing this from the HR perspective, as the policy maker the HR function requires a justification to intervene within the disciplinary process in resolving outcomes thus driving and preserving a formal approach being taken as well as ensuring their ongoing role in this activity and this is shaped by a range of factors. Firstly they rightfully see a need on behalf of their organisation to be compliant with the law in order to safeguard against the threat of

litigation. Secondly they require a standard approach to be taken by the end-user to ensure consistency throughout the application of disciplinary handling to achieve fairness of the process. Thirdly there is a need to preserve a semblance of control to retain a degree of organisational influence.

Efforts can be seen that the HR function is trying to simplify their disciplinary policies and subsequent processes in an attempt to make it straightforward for other users. However this appears to have not achieved the desired effect due to policies often becoming over complicated, burdensome, too prescriptive and are often poorly communicated to other users due to a variety of communication approaches that are taken. This in turn often presents degrees of conflict, confusion and understanding as to how the policy is communicated and interpreted.

Further strengthening of HR's position can also be identified in the notion that it should be considered as the 'legal' expert in relation to discipline handling and this affords some freedom to adopt an interventionist role on proceedings. Importantly it can also reinforce HR's ongoing quest for acceptance, status and legitimacy which is supported by previous studies (Legge, 1993; Clark, 1993; Caldwell, 2001). Also HR intervention is widely expected by senior managers and the majority of operational managers, especially as organisations are confronted with complex and ever changing employment legislation. A requirement for legal compliance (Watson, 1986; Legge, 2005) is seen to be driven in organisations by fear of litigation that can arise from potential disciplinary malpractice claims (Harris, 2009; Edwards, 2000). Consequently HR can be viewed by other actors within the disciplinary process to be operating as a "game keeper" whose primary function is to keep threats at bay (Purcell, 1995:78). Arguably any possible shift to a more advisory role can be seen to dilute the strength and position of the HR role leaving HR professionals stranded without real influence, administrative resources or power within the handling of discipline as they will simply become internal consultants Caldwell (2003).

Fundamentally this raises questions regarding inconsistencies within the nature of disciplinary handling, especially as to why there continues to be a trend to increase formality of practice. This research suggests that this formality appears to be promoted by HR's preference for the application of disciplinary proceedings in response, primarily, to a

fear of litigation which is understandable. This can result in the adoption of a defensive approach, which can later descend into rigorous checks and controls followed by more sophisticated avoidance tactics (Liff, 1989: 32), that both influence the nature of HR's involvement within policy and process and in turn elicit an operational management response be it in a positive or negative way. There can be no doubt that the threat of workplace litigation intensifies the pressure on the HR function to demonstrate consistency and procedural fairness in policies and practices and that this is one of the primary causes enforcing, process driven, uniformity of practice and a resort to rigorous compliance of the rule book (Legge, 2005).

The question still remains as to why some operational managers do not appear to want to manage or own procedures? Unquestionably this is buttressed by a reliance on the HR function by inexperienced operational managers within disciplinary handling (Harris *et al.*, 2002), especially since there is a requirement driven by HR for procedural compliance throughout the disciplinary handling process and cost implications associated with getting disciplinary decisions wrong by managers. Equally they can be prone to avoiding taking on disputes for fear of being implicated in formal proceedings (CIPD, 2008) which in turn reinforces mainstream understanding where a fear of litigation often leads to an overreliance on the HR function. This in turn can lead to operational managers, who already appear hesitant, abdicating their responsibilities for disciplinary handling by referring problems back to the 'experts' in Personnel (Cunningham and Hyman, 1999; Whittaker and Marchington, 2003).

It is equally the case that operational managers do not have, or possess the appropriate skills and confidence to resolve and handle difficult situations within conflict management (CIPD, 2007) and lack any support from senior management to improve this situation (Teague and Roche, 2011). Unless addressed this position is unlikely to change as it is widely acknowledged as seen in Leitch Review (2006) that the UK spends less per manager than any other European country on management development. Furthermore, current management skills training mainly concentrate heavily on qualifications and too little energy is applied to how people skills are impeded within the workforce (MacLeod and Clarke, 2009).

In looking as to what appears to drive informal approaches by operational managers when handling discipline they often regard the process of disciplinary handling as to be excessively time consuming (Edwards, 2005) when balancing this against their burgeoning workloads and performance targets and this can further exasperated by increased formulaic disciplinary processes now being designed by HR. It is also widely acknowledged that the operational managers have a disliking of strict application of bureaucratic procedures and are much in favour of adopting a pragmatic approach in order to solve situations which are often based on their own 'gut feeling' (Rollinson *et al.*, 1996:51). This capricious style of operational management can then be seen to force HR professionals to 'police' managers' activities more closely in order to protect both them and the organisation from potential litigation which see approaches revert back to formality.

Overall it could be interpreted that there is increasing activity within HR in developing disciplinary policy to bring it in line with recent changes in respect of minimising risk from litigation (Collins *et al.*, 2000; Lovells, 2005) and in doing so to operate as custodians of risk. The consequences however are more far reaching in respect of achieving any desire of informality of disciplinary practice. The prospects of a shift towards greater informality and flexibility are to some extent restricted by national regulation and procedures in that the new principles-based Code of Practice on Disciplinary and Grievance Procedures still appears to promote and foster a formal approach to dispute handling at work.

The very nature of the HR role equips them with knowledge, understanding and technical expertise to facilitate intervention within the disciplinary process when necessary and so it appears likely that HR will continue to play the most influential role. This is supported and fuelled by a reliance on the HR function to guide organisations when faced with requirements for legal compliance and the potential for litigation and, when coupled with increasingly reliant operational managers who lack essential experience, skills and confidence in handling disciplinary situations, it will perpetuate HR's drive for increased formality. All of which can be seen to cement HR's position at a more strategic level (Wright and McMahan, 1992; Gilmore and Williams, 2007) by reinforcing the idea that robust procedures are vital for the regulation of management behaviour in achieving consistency of their operation. Essentially this can be seen to afford a degree of power and authority to the

HR function in disciplinary proceedings and in doing so reduces the scope for management to affect the disciplinary process and outcome.

What is apparent is that the role of operational managers in the handling of discipline is pivotal both because it is they who experience the effects of disciplinary transgressions before, and more directly than, other branches of management and because it is often precisely this proximity that determines what is the most appropriate response. However this can only be achieved if operational managers take a more prominent role within conflict resolution and are willing to develop the necessary skills and competencies to carry out this vital role. Furthermore, it appears that HR's involvement within the disciplinary process is often influenced by the level of discretion and decision making afforded to operational managers' as part of their role.

Historically operational managers had always handled discipline within the workplace enjoying limited or no interference in the process therefore it could be contended that they were afforded a considerable degree of discretion when applying disciplinary rules. This was done indiscriminately with little outside interference arguably prior to the development of the Personnel or HR function. Nevertheless since then the involvement of HR it can be seen to have confused and exasperated the handling of disciplinary in a number of ways. Since the inception of HRM within the workplace there appears to be some 'blurred' understanding of what is the actual role that HR now plays in proceedings and to what is the extent of power over the process is afforded to them? Since its inception the role of HRM within the process of disciplinary handling has never been entirely clear and this lack of clarity is compounded by the range of differing opinions about the nature of that role that are held between HR themselves and other significant actors

The dominant position achieved by the Personnel/HR function, by virtue of their 'expertise' of the law underpinning the area of conflict resolution, ideally places them to continue their policing of the disciplinary process through the drafting of policy and oversight of its implementation. This is reinforced by a notion, held by some actors, that the HR function serves as 'custodian of the people management policies' and that within the framework of disciplinary approaches it has constructed lies a repository for business morals and ethics.

It seems that within the disciplinary process there lies a continuum of practice that drives varying degrees of tensions - often gradated according to the level of seniority and personal characteristics type of individual operational managers and by the role that HR plays within the disciplinary process. These tensions are frequently highly contested by the actors that play out the disciplinary role and this can in some ways be recognised around the acknowledgment and prescription of devolution of HR practice down to operational managers which suggest a varied response to a range of different circumstances. Examples include tightly controlling HR practices encompassing limited devolution of disciplinary practice down to managers and operating when the HR function requires a highly formalised approach in order to ensure compliance and standardisation of disciplinary proceedings in response to regulatory and/or other internal drivers. This position is also seen to be maintained when less able operational managers rely on HR intervention within the disciplinary process. When this occurs it confirms an acceptance of the HR functions' freedom to monitor and regulate the process whilst strengthening its own position within the organisation at the same time.

The other extreme that can be identified is where loosely controlled HR, or HR's lack of standing within the workplace affords a degree of devolution, permitting operational managers' a similar degree of discretion in disciplinary practice which may then be interpreted as presenting them with opportunities to handle disciplinary matters outside the formal process. This is where potential for misunderstanding occurs in that the option taken by operational managers in most cases reflects a preference for handling discipline informally which can lead to unpredictable outcomes. This can amount to pragmatic solutions being sought, outside of the formal disciplinary procedure in conformation with ideas of "level-headedness" and of "nipping issues in the bud". What is somewhat more problematic is where operational managers fail to act on potentially serious transgressions in order to facilitate idiosyncratic work and personal requirement. This coupled with a lack of ability and skills in handling "people problems" ensures that the extent that disciplinary practice has been devolved to operational managers continues to be exaggerated. It is conceivable that this paradox will remain in place unless operational managers are more serious about taking on the mantle of people management, unless they are more fully developed and given adequate time to allow them to take on the broader skills and

competencies that would equip them with the confidence to take on the role properly, and until they see greater transparency in the policies and procedures that underpin the practice. Although there have been attempts by HR to address concerns about operational managers abilities in some workplaces these have tended to be superficial and not to focus on the deep underlying issues that affect discipline handling. Consequently it can be seen that the interplay between the HR function and operational managers and other actors in respect of disciplinary handling is extremely complex and is dependent on a whole range of differing conditions in that are encountered in everyday context. To some extent the initial role played by HR practitioners was seen to devolve dispute handling down to operational managers and move away from more direct involvement, which concurs with the contemporary HR literature which promotes the function as a supporter of operational managers by providing disciplinary advice on related legal and procedural issues. This appears to be in stark contrast to the notion of HR devolving ownership of discipline handling down to operational managers achieving process informality by so doing (Hutchinson and Purcell 2003; Kersley *et al.*, 2006).

What is revealed is that the management of workplace discipline remains a highly complex and contested arena. Clearly the role of the HR professions is to take an active role in facilitating conflict resolution within their workplaces but this must go beyond the focus of formal resolution. By developing a greater understanding of informal resolutions they would go some way to repair and maintain their relationship with other actors that take part in this vital process. Likewise operational managers must develop enthusiasm to take on people management skills otherwise this position is unlikely to change.

So what is the future for the handling of dispute resolution in the workplace? It is clearly evident that a continuum of practice will continue to remain along the formal-informal axis and this will continue to be contested by the actors that enact this role unless they develop and build their relationship to achieve a common purpose. The actors require appreciation and understanding of the role that each plays within the disciplinary process in if they are to progress in achieving sound workplace conflict resolution.

How the aims and objectives have been met

From the beginning of this thesis the intention was to provide an in-depth qualitative enquiry of the workplace disciplinary practice and process. The objectives of this investigation have considered how the form and content of discipline procedures are shaped in a variety of different organisational contexts over time. In particular, it focused on the social role that the key actors play within this process and how they shape and form disciplinary practice in order to inform disciplinary outcomes. It reveals that a contested relationship exists between the actors that enact discipline at work and that power dynamics and inequalities are reinforced and challenged throughout the disciplinary process.

Original contribution to knowledge and areas to be considered for future research

By observing the practice of workplace discipline the thesis provides us with augmented understanding of the social interaction that takes place between the various actors that enact this crucial everyday practice. It provides recognition that the handling of workplace discipline is more than simply just a prescribed process for operational managers and employees to follow. It contends that the handling of discipline is highly contested and is subject to oppression and resistance and that power dynamics and inequalities are constantly reinforced and challenged by the process. Beneath this lies a sequence of irregular and erratic choices of formal and informal approaches that occur within the everyday practice of disciplinary handling by the end user. The findings of this thesis identify that formality is forced and determined by the HR function not only as a requirement to maintain procedural compliance but also to strengthen HR's standing within the organisation. It argues that devolution of disciplinary practice to operational managers has not occurred to the extent that previous research would suggest. The situation is deliberately maintained in order to strengthen the HR function within the process of conflict resolution. There can be no doubt that the way discipline is handled in the workplace is an area of concern for the government, academics and practitioners alike and therefore further studies into this ever changing process can only enrich our understanding.

Limitations

The thesis presents evaluative and valuable insight into the often hidden social world that takes place within workplace disciplinary processes and practice and therefore assists closing a gap within current scholarly knowledge. The emphasis of the research was to gain tangible depth of understanding of how the actors that undertake this role are affected by their social relationships and how this then forms and shapes disciplinary outcomes. The focus was chiefly to gain understanding into the everyday practice of HR practitioners, operational managers, and union or employee representatives that were involved in disciplinary handling. The sample used eight case organisations across the north west of England which was broad enough to give legitimacy to the findings. Nonetheless union involvement only featured in two case organisations and whilst this indeed reflects a more general picture of declining union involvement in this process it also denied the research the additional depth that their perspective might have provided.

Final close

By their very nature disciplinary procedures go some way to providing organisations with criteria for justice in order to manage the employment relationship when responding to the circumstances concerning conflict handling. They reinforce the regulations that are in place in that all parties: operational managers and employees, must abide by them in order to control behaviour. At a fundamental level, when end users are following set procedures, it could be argued that - to all intents and purposes - the prescribed elements of disciplinary handling are being covered. However deeper examination of the process reveals innate problems and in doing so identifies that the handling of discipline will continue to be a concern not only for those involved in the everyday practice, but also as part of the ongoing dialogue in relation to national policy agenda. When applied properly, the handling of discipline is highly complex for a myriad of reasons. The relationships between the various actors acting out the role of discipline handling are highly contested and are subject to matters of acceptance, power, control and bias. Ultimately it is the human interactions that will decide whether the handling of discipline is conducted effectively or not in that it is subject to how the process is created and accepted from an individual perspective, how is it maintained and how it is deconstructed.

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Case	Job Title	Gender	Age	Time in service	Ethnicity
A	HR Manager	Female	37	6 years	White British
	Line Manager	Male	52	24 years	White British
	Sales Manager	Male	33	2 years	White Other
	Production Manager	Male	57	43 years	White British
	Warehouse Manager	Male	48	19 years	White British
B	HR Director	Female	30	2 years	White British
	HR Officer	Female	24	9 months	White British
	Retail Manager	Female	42	3 years	Asian
	Shop Floor Manager	Female	29	6 months	White British
	Transport and Delivery Manager	Male	54	8 years 4 months	White British
	Sales Manager	Male	33	18 months	White British
	Union Rep	Female	31	3 years	White Other
C	HR Manager	Female	40	2 years 1 month	White British
	Section Manager	Male	31	4 years 5 months	White British
	Operations Manager	Male	58	13 years 7 months	White British
	Sales Manager	Male	40	5 years	White British
	Finance Manager	Male	51	18 years	White British
	Section Leader	Female	27	14 months in current job – 2 years in the company	White British
	Union Rep	Male	46	9 years	White British
	Union Rep	Male	50	15 years 7 months	White British
D	HR Manager	Female	33	5 years	White British
	Office Manager	Female	29	13 months	White British
	Leisure Manager	Male	26	3 years	White British
	Housing Manager	Male	44	1 year (TUPE) 12 years with previous role.	White British
	Training Manager	Male	47	14 months	White British
	Centre Manager	Male	50	10 years	White British
233	HR Director	Female	55	6 years 2 months	White British
	Sales Manager	Male	59	18 years	White British

E	Finance Manager	Female	50	22 years	White British
	Production Manager	Male	35	16 months	White British
	Production Design Manager	Male	28	15 months	White British
F	HR Officer	Female	28	1 year 4 months	White British
	Office Manager	Female	40	7 years	White British
	Section Leader	Male	33	3 years	White British
	Customer Service Manager	Male	36	6 years 1 month	White British
	Section Leader	Female	27	22 months	White British
	Head of Department	Male	51	10 years	White British
G	Personnel Manager	Female	36	4 years	White British
	Line Manager	Male	34	7 years	White British
	Line Manager	Male	31	4 years	White British
	Front of Office Manager	Female	27	3 years	White British
	Transport Manager	Male	47	12 years 8 months	White British
	Estates Manager	Male	58	19 years	White British
H	HR Manager	Female	27	4 years 3 months	White British
	Operations Manager	Male	28	19 months	White British
	Plant manager	Male	30	6 years	White British
	Plant Manager	Male	46	22 years	White British
	Section Manager	Male	36	15 years	White British
	Catering Manager	Male	44	6 years	White British