

Research Paper

Workplace Dispute Resolution and the
Management of Individual Conflict —
A Thematic Analysis of Five Case Studies

Ref: 06/14

2014

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ISBN 978-1-908370-48-8

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EXECUTIVE SUMMARY

This report explores the management of individual conflict and the resolution of employment disputes in five organisations drawing on over one hundred hours of interview data gathered from discussions with HR practitioners, line and operational managers, employee representatives, and trained mediators. In light of increased concern over the impact of employment disputes on public expenditure, economic performance and employee well-being, substantial policy attention has been paid to the ways in which organisations respond to workplace conflict. In particular, there has been an increased focus on the potential for earlier intervention in order to resolve conflict through the use of alternative approaches such as mediation. Surprisingly, there has been relatively little contemporary academic research into these important issues. Therefore, this thematic review aims to provide new insights into the challenges faced by organisations in managing conflict.

Key insights for policy and practice

- In larger organisations, effective conflict management revolves around informal social processes that help to identify and address conflict at an early stage and also facilitate more consensual resolutions to disciplinary and grievance disputes. These processes are underpinned by high-trust relationships between key organisational stake-holders. However, these relationships are threatened by the development of more centralised models of human resource (HR) and the erosion of employee representation. At the same time, responsibility for managing conflict has been placed in the hands of line managers, many of whom lack the confidence and capability to deal with difficult issues. Together these factors have the potential to create a 'resolution gap' in British workplaces.
- In order to fill this gap, there needs to be a shift in emphasis away from written procedures designed to ensure compliance and towards finding ways of reconstructing workplace relationships – this means a commitment to developing structures of employee representation and using creative and innovative approaches to building trust. Furthermore, increased investment in developing the skills and confidence of line managers is vital. For this, organisations must recognise that conflict management is a strategic rather than a transactional issue.
- Involving operational managers and employee representatives in the implementation and operation of in-house mediation schemes can lay the basis for attitudinal change and improved relationships. However, models of mediation based around schemes populated by accredited mediators may not be flexible enough to deliver the more fundamental cultural changes envisaged by the government. Instead there is a need for greater focus on disseminating and developing mediation skills as opposed to building mediation structures.
- Attempts by government to reduce the cost and risks associated with the termination of employment by relaxing employment regulation and restricting access to the employment tribunal system will do little to encourage organisations to manage conflict and resolve disputes *within the workplace*. Instead, there is a danger that employers will be less likely to invest the time and resources necessary to develop approaches that focus on early intervention and the maintenance of employment relationships.

Discipline, grievance and the impact of procedure

- Our findings suggest that the pattern of disciplinary and grievance disputes is essentially driven by the nature of work processes, managerial style and the organisational context. Thus workplaces operating within highly competitive markets and which have closely controlled work processes and a younger and relatively mobile workforce, are likely to experience relatively high levels of disciplinary action and low levels of employee grievances. In contrast, in the public sector and where staff enjoy autonomy, relative job security and access to representation, grievances are likely to be more common but the incidence of disciplinary action is likely to be relatively low.
- While there was widespread recognition, within the sample, that written procedures did little to help to resolve disciplinary and grievance disputes, they were still relied on by managers to steer them through difficult issues and to ensure compliance with legal and organisational norms. For HR practitioners, procedures were a crucial tool in regulating managerial behaviour and ensuring consistency. Finally, although employee representatives conceded that outcomes were often unsatisfactory, robust procedures remained important in deterring unfair treatment.
- Disciplinary and grievance procedures were essentially linear with an 'informal stage' commonly preceding the onset of formal proceedings such as investigations, meetings and hearings. However, in practice, informal discussions often shadowed the procedure. This allowed resolutions to be explored and sanctions minimised. But, shadow informal processes were dependent on the presence of employee representatives and on the existence of high-trust workplace relations. Where there was a lack trust, procedures became a focus for antagonism and the development of what some respondents referred to as 'grievance cultures'.

The changing nature of conflict management

- In a number of organisations, on-site HR practitioners had not only been responsible for the day-to-day handling of discipline and grievance but had also played a critical role in brokering informal resolutions by liaising with managers and employee representatives. In unionised environments, HR practitioners acted as a buffer between line managers and representatives who were often better trained and more knowledgeable in regard to employment issues. HR practitioners were also seen as providing an important coaching role for inexperienced managers.
- The role played by HR practitioners within the sample was undergoing substantial change. There was evidence of a fundamental shift to a business partner model of strategic HR management. The extent to which this had taken place varied. However, in all the organisations taking part in this research, HR practitioners were moving away from day-to-day involvement in conflict management and dispute handling and towards an arms-length advisory role providing expert advice over procedural and legal issues.
- Line and operational managers were increasingly responsible for the day-to-day management of conflict and the application of individual disputes procedures. However, managers lacked conflict management skills. Many line managers did not have the confidence to pursue early resolution when faced with difficult situations, as there was a fear of litigation, criticism from superiors and reputational damage.

- The support of senior managers was critical in providing first line managers with the necessary belief to take a proactive and creative approach to conflict. However, some respondents felt that senior managers were often more concerned with short-term operational objectives and targets and therefore did not allow the time and the space needed to manage conflict. This was exacerbated by the fact that successes in resolving issues at an early stage were opaque and often went un-noticed.
- The evidence suggested that conflict management was seen as a lower order skill – accordingly there was an assumption from some senior managers that all managers should be able to handle the challenges associated with people management as a matter of course. Conflict competence was rarely tested within recruitment processes and training was mainly limited to basic procedural and legal guidance. In some instances this had the effect of reinforcing a fear of litigation and inculcating a risk-averse approach.

Employee voice and representation

- Direct employee voice was important – good communication between manager and employee and the existence of structured performance management processes could play a positive role in identifying and addressing conflictual issues. However, in conflict situations, relations between employee and manager may be fraught – here, access to representation could provide the space in which more creative solutions could be explored. It was generally felt by respondents that employees would be more likely to confide in, and talk freely to, their employee representative. Therefore, employee representatives played a crucial role in ‘mediating’ between their members and other organisational actors.
- Employee representatives were a crucial source of shop-floor ‘intelligence’, helping managers to identify emerging sources of conflict that could otherwise erupt into more serious disputes. Informal discussions with employee representatives were seen as invaluable by management respondents in promoting early resolution.
- Managers generally argued that employee representatives played a positive role within formal procedures by ensuring that the employee understood the process, and the potential outcomes and that they were able to make their case as fully and clearly as possible. This often enabled issues to be addressed in a more equitable and effective manner.
- The impact of employee representation was shaped by the nature of workplace relations. Where there were high levels of trust between representatives and management, informal resolution was widely used. Where, relations were poor, conflict was not addressed and individual disputes were handled (by both sides) in an adversarial and competitive manner.
- Employee engagement strategies, designed to increase staffs’ involvement at work, were seen as important by respondents in improving communication and in combating the development of ‘grievance cultures’. Engagement mechanisms such as staff surveys and fora were also used to pick up specific problems and uncover early signs of conflict. However, the extent to which engagement facilitated the resolution of specific disputes was less apparent.

Innovations in conflict management – the impact of mediation

- There was evidence that the revision of the Acas Code of Practice on Disciplinary and Grievance Procedures in 2009 had led organisations in the sample to revisit their approach to conflict management. One consequence was the simplification of policies and procedures. While this was designed to provide greater room for informal resolution, its main goal appeared to be to increase the efficiency of dispute handling. However, trade union representatives expressed concerns that this diluted the protection offered to staff. At the same time there were signs of increasingly robust approaches to the management of absence and capability.
- Innovation within three organisations in the sample revolved around the development of internal workplace mediation schemes and the training of in-house mediation specialists. Respondents claimed that resolving disputes through in-house mediation schemes had clear benefits; it helped to rebuild relations between the disputants, and did so at a lower cost and more quickly than disciplinary and grievance procedures.
- There was tentative evidence that the introduction of internal mediation schemes could have a broader impact on the culture and capacity of conflict management. Within the sample, mediation training and taking part in mediation had a positive effect on conflict management skills and confidence. We also found that the introduction of in-house mediation schemes could provide a channel through which attitudes and behaviours of key actors are challenged and transformed. However, this appeared to be dependent, to some extent, on the organisational context.
- There were significant barriers against the successful implementation and operation of in-house schemes. There is likely to be resistance from organisational actors (particularly line managers) who may see the need for mediation as an admittance of failure. Very large organisations, and particularly those spread across many workplaces, may also face problems in promoting mediation.
- Pressure of work and conflicts of interest made it difficult for mediators to maintain and develop their practice. In addition, schemes appeared to be relatively dependent on a small number of key individuals who performed the bulk of the mediations and championed the scheme within the organisation. This raised questions over the long-term sustainability of in-house mediation schemes.
- There was limited evidence of the systematic development of integrated approaches to the management of conflict. While organisations had used mediation to achieve specific objectives, it did not appear to be seen as a central part of broader organisational strategy and was consequently vulnerable to changes in wider operational priorities.

1. INTRODUCTION

1.1 Context, rationale and aims

The rise in the volume of employment tribunal applications during the 1990s and 2000s was one of the defining features of contemporary employment relations in Great Britain. For many, this was not only the visible manifestation of a rising tide of discontent but also a direct result of an increasingly sclerotic system of dispute resolution. In fact, it has been argued that to see employment tribunal volumes as a definitive measurement of workplace conflict is misguided – not only have variations in the numbers of claims been distorted by large-scale multiple claims (Dix et al., 2009) but the scale of litigation does not necessarily reflect the extent of conflict that remains within the workplace and away from public gaze.

Nonetheless, the ensuing debate has been largely dominated by employers' concerns over the costs of managing workplace conflict and the consequent impact on organisational performance (British Chambers of Commerce, 2010; CBI, 2011). Accordingly, the government, following the Gibbons Review (2007), has sought to reduce regulation, encourage more flexible informal approaches to disputes and promote the use of alternative dispute resolution (ADR) processes such as pre-claim conciliation and workplace mediation.

The policy discourse has so far been silent on the impact on individual conflict of broader changes in the management and regulation of work in Great Britain. In particular the changing nature of the HR function has seen practitioners increasingly withdraw from day-to-day conflict management. Instead, they provide expert advice to line managers, who are now given the responsibility for handling employee conduct, capability and performance. Moreover, the development of more centralised 'business partner' models of HR management reinforces these developments, often physically removing HR practitioners from the workplace.

These changes place line and operational managers at the centre of organisational efforts to resolve conflict. Importantly, the CIPD have argued that 'managers are neither willing nor capable of taking this on effectively' (CIPD, 2008:8) while the government claim that, 'many more problems could be prevented from escalating into disputes if line managers were better able to manage conflict' (BIS, 2011a:17). Yet, managers appear to be hamstrung by a lack of confidence, skills and experience in dealing with conflict (Jones and Saundry, 2012). Teague and Roche (2012) argue that this is not simply due to inadequate training, but also a lack of support from senior management, who may not see conflict management as a priority (see also Hutchinson and Purcell, 2010).

At the same time, the erosion of union organisation within British workplaces has important implications for conflict management. While some may suggest that increased prerogative may increase the 'efficiency' of managerial decision making over disciplinary and grievance issues, this ignores the contribution of unions to effective dispute resolution. Trade unions have traditionally played a key role in 'self-discipline' (Edwards, 1994), managing the expectations of members and negotiating with managers to resolve issues or minimise sanctions. Furthermore, there is evidence that good employer-union relationships underpin more nuanced, social processes of dispute resolution (Oxenbridge and Brown, 2004; Saundry et al., 2011).

Given these issues, increased emphasis has been placed on the possible extension of mediation in British workplaces (Gibbons, 2007; BIS, 2011). There is a growing evidence base within Great Britain that points to its potential benefits (Latreille, 2010; 2011) in terms of facilitating the resolution of specific disputes and underpinning informal resolution processes. However, the uptake and application of workplace mediation has

been patchy. For example, among SMEs, the personal nature of small firm employment relations and the cost of mediation are undoubted barriers to its use (Harris et al., 2008). Therefore, there is a clear need for further exploration of the potential of mediation to trigger a step change in dispute resolution within different organisational contexts.

Perhaps surprisingly, there has been relatively little contemporary academic research into these important issues. In this context a programme of research, funded by Acas, has been developed by Saundry and colleagues at the Institute for Research into Organisations Work and Employment (iROWE), which represents a significant contribution to the evidence base (for example see Saundry et al., 2011). This has examined the nature of dispute resolution and conflict management within five settings, each with distinct characteristics in terms of sector, work process, workforce composition and employee voice. However, the extent to which reporting individual case studies are able to draw broad conclusions in respect of important conceptual and policy questions is inevitably constrained. Consequently, this report will seek to bring together approximately one hundred hours of interview data gathered through this programme of research, in order to explore and examine a number of key themes that are central to the current debates over the nature and effectiveness of workplace dispute resolution in Great Britain.

In particular this report will:

- *Examine the nature of informal processes of dispute resolution, the key factors that shape such processes and how such processes interact with and relate to formal structures of resolution and regulation;*
- *Assess the challenges facing line managers in addressing and resolving workplace conflict;*
- *Explore the changing nature of HR function and the role played by HR practitioners in handling disputes and managing conflict;*
- *Examine the effect of employee voice within dispute resolution processes and the management of conflict;*
- *Explore the effectiveness and sustainability of innovative approaches to the management of conflict, such as workplace mediation;*
- *Identify and discuss the implications for policy and practice.*

1.2 Research Methods

This report draws on data from five organisational case-studies undertaken between 2009 and 2011 (see Table 1). While each of the studies was undertaken as a stand-alone project the methods used and the key research questions addressed were similar allowing cross comparison. The organisations were originally selected for study for two reasons. Firstly, in organisations A, C and D, there was prima facie evidence of the use of innovative approaches to conflict management involving the introduction of in-house mediation. Secondly, organisations B and E operated in sectors which were of particular interest and in which there was a lack of extant evidence. Over the sample as a whole the cases represented different properties in terms of industrial activity, sector and nature of employee representation. They also differed in terms of size, however, they would all be considered large organisations employing more than 1,000 staff. Broad details are contained in the table below, although specific features are not identified in order to preserve anonymity and confidentiality.

Table 1 – Breakdown of Sample

<i>Organisation</i>	<i>Industrial and Sectoral Type</i>	<i>Sector</i>	<i>Employment</i>	<i>Employee Representation</i>
A	Health	Public	2-3,000	Unions recognised – high density
B	Services	Private	5-7,000	Unions recognised – high density
C	Public administration	Public	8-10,000	Unions recognised – high density
D	Services	Private	Over 50,000	Non-unionised – active staff association
E	Social services	Non-profit	4-5,000	Unions recognised – low density

Within each organisation, research normally consisted of three main elements:

- *Examination of policy documentation for dealing with individual employment disputes and relevant collective agreements;*
- *In-depth interviews with key informants including HR practitioners, operational managers and employee representatives;*
- *Exploration of available statistical data regarding employment, workforce demographics and pattern of individual employment disputes.*

In total, 131 interviews were conducted, comprising 104 hours of interview data. In broad terms the sample across the five cases could be broken down as follows: 53 HR practitioners ranging from HR adviser to HR director level; 66 line and operational managers; and 17 employee representatives. It is also important to note that within the sample twenty five respondents were trained mediators. Importantly, case-studies were not focussed on how individual cases were conducted but on the formal and informal processes that constitute the management of conflict within the organisation. Accordingly, details of individual cases were not requested. In addition interviews were neither sought nor conducted with individuals who were involved with individual employment disputes or subject to processes of mediation. In all but one case (Organisation E) membership of either trade unions and/or staff association was relatively high, therefore, we would suggest that the views of employee representatives interviewed would provide an indication of the broad views of employees within the organisation.

The findings are organised as follows: section 2 of this report identifies the main factors that shape the disciplinary and grievance profile of the workplaces within the sample and examines the role and effect of written disciplinary and grievance procedures. Section 3 discusses the changing nature of conflict management and in particular the impact of the devolution of responsibility for conflict handling from HR practitioners to the line. Section 4 examines the role played by employee representatives, particularly within informal processes of resolution, and discusses the potential of employee engagement to underpin the management of conflict. Finally, section 5 looks at evidence of innovative approaches to conflict management, focussing in particular on the potential benefits of workplace mediation.

2. DISCIPLINE, GRIEVANCE AND THE APPLICATION OF PROCEDURE

In most workplaces, conflict management revolves around the handling of disciplinary issues and employee grievances. Although 'discipline and grievance' are often conflated within discussions over policy and practice, they have very different root causes. Furthermore, the course of disciplinary and grievance disputes is, in part, determined by the nature and application of the processes through which they are managed. In recent years, this has become dominated by the application of written procedure. According to the 2011 Workplace Employment Relations Study, just under 90 per cent of workplaces have a written disciplinary and grievance procedures, covering between 96 and 97 per cent of all employees (van Wanrooy et al., 2013). While this has been driven by the perceived threat of employment litigation, it has been argued that an over-reliance on procedure has tended to disrupt less formal and early approaches to addressing and resolving workplace conflict (Gibbons, 2007). Therefore, this section examines the factors that influence the incidence and trajectory of disciplinary and grievance issues.

2.1 Disciplinary action – control, composition and representation

The incidence of disciplinary action within our sample appeared to be related to the way in which work was organised and labour was managed. Where work was routinised, closely measured and monitored, respondents reported a more robust application of managerial prerogative (Arrowsmith, 2010). In such settings work was generally managed by strict rules with little discretion for employees both in terms of how and when they completed their tasks. In contrast in areas of work in which employees had greater flexibility and discretion, disciplinary issues were less common because the standards required by the employer were more opaque. This was also related to levels of skill and seniority as staff with greater responsibility were afforded more autonomy and discretion both in terms of how and when they completed their tasks.

This contrast was clearly apparent within organisation B. In the company's contact centres and warehousing operations, any departure from relatively narrow performance norms was transparent as management information and key performance indicators provided benchmarks against which success or failure could be clearly judged. For example, a trade union representative in one of the contact centres explained that:

'(Managers) can press a button and for the 8 hours [an individual worked] ...that'll show every key stroke you've done, every number you've dialled... everything...I do think the fact they can do that [monitoring] makes it easier to take people to disciplinary, you know because they've got these wads of information on you now to prove how naughty you've just been.' (Trade union representative – Organisation B)

However, at the head office of the same organisation, work was more loosely scrutinised and staff had much more control over the nature and pace of work. According to a union representative, staff were:

'...allowed to get on with their job. I think the people employed in the business know what their job is, they're trusted to do their job and they're left to get on with it.'

Three other factors appeared to be influential in shaping the disciplinary profile of workplaces in the sample. Firstly, interview data suggested that disciplinary issues were more likely to be found among younger (and also male) workers, reflecting previous research linking the employment of women and older workers to lower incidences of disciplinary disputes (Knight and Latreille, 2000; Saundry and Antcliff, 2006). Some

management respondents argued that younger workers were less concerned about the potential consequences of misconduct or poor performance. This was partly because they may have fewer external personal and financial commitments, but also because some did not see 'this job' as a future career. In contrast, older workers and particularly those with longer service were perceived as having greater commitment to the organisation and more at stake if they were to fall foul of their employers' rules and requirements.

Secondly, there was evidence that the presence of trade unions or employee representatives made disciplinary action less likely. This was partly due to the fact that some line managers felt vulnerable when dealing with union representatives who they saw as often having greater knowledge of policy and employment law. However, more positively, there was considerable evidence that constructive employer-union relations facilitated informal resolutions that either avoided or minimised disciplinary sanctions (Oxenbridge and Brown, 2004; Saundry et al., 2008; 2011). This is discussed in more detail in section 4.

Thirdly, decisions on misconduct and capability were inevitably shaped by the ethos of organisations. In commercial environments, disciplinary action was seen as an unfortunate but necessary means of maintaining standards and efficiency. However, in the public sector, there was reluctance on the part of some managers, particularly those within what might be seen as the 'caring professions', to address performance related issues. According to a senior HR manager in the not-for-profit organisation within our sample:

'People just don't want to be nasty. We're a nice organisation. We care for people. We don't do horrible things.' (HR practitioner – Organisation E)

This did not necessarily mean that issues were handled more effectively or even with greater sensitivity. Instead they tended to be avoided unless or until they escalated to a point at which more stringent action was necessary.

2.2 Employee grievances –voice, (dis)engagement and (mis)trust

Interestingly, the same issues shaped the grievance profile of workplaces, but with very different results. In many respects, the factors that were likely to limit disciplinary action tended to encourage grievances. For example, greater discretion and autonomy which militated against disciplinary disputes created fertile ground for disagreement and interpersonal differences. For example, in one organisation, a large proportion of staff worked in residential units and thus developed close relationships with colleagues and also clients. In this environment, minor conflicts could escalate very quickly into full-blown grievances:

'...people that work together in very enclosed environments...They tell each other their personal business then they fall out some reason...And it all just snowballs from there...' (HR practitioner – Organisation E)

Moreover, older workers, embedded within the culture and life of the organisation, were more likely to challenge what they perceived as unfair treatment. In addition, attempts to manage conduct and capability, which could lead to disciplinary action, could also trigger accusations of unfair treatment and employee grievances. Respondents argued that this was becoming increasingly common as increased competition and/or pressure on costs had led line managers to take a more assertive stance on performance:

'...managers have a job to do, and quite often, people don't like the feedback.... They will come in and say that my manager's bullying me, or harassing me, when, actually, there's no evidence to suggest they are...they're feeding back about how they've done something, and they don't like what's being said to them.' (Operational Manager – Organisation D)

There was an acceptance that some managers could be heavy handed when dealing with such issues and rigid approaches could lead to a negative reaction from employees, particularly where this clashed with the existing workplace culture. Also, organisational restructuring had led, in some cases, to uncertainty and resentment as staff were faced with adapting to unfamiliar locations and tasks. Indeed, the break-up of established teams and the formation of new groups was cited as a source of inter-personal conflict.

Whereas union presence tended to reduce the incidence of disciplinary action, our research supported previous findings that grievances are more likely within unionised workplaces (Kersley et al., 2006; Pollert and Charlwood, 2009) in which employees may receive support in making formal complaints. However, the precise impact of representation depended on the employment relations climate within the organisation. In three of our cases, the development of what respondents termed a 'grievance culture' stemmed from a breakdown in trust between union representatives and management. In one public sector organisation, unions had adopted an adversarial stance in individual disputes, partly in response to what they saw as a lack of respect from management:

'They [union representatives] probably felt they didn't have a great deal of voice. They weren't used to being treated with an enormous amount of respect...from senior managers in the organisation.' (HR practitioner – Organisation A)

Importantly, in each case, employment relations had improved significantly by the time this research was conducted. Nonetheless, restructuring processes and changes to working practices could create a negative climate within an organisation and where the collective influence of unions was suppressed, individual procedures became the only channel through which managerial authority could be challenged.

More broadly, a lack of communication and engagement with staff was seen as fuelling grievances. Where employees did not feel that they were being listened to or that they had access to channels to voice their concerns, discontent was quick to grow. For example, one respondent, working in the private sector, described beginning work at a site at which there were *'three of four grievances every week'*. He explained that staff felt the only way to raise concerns with management was through the grievance process:

'...the process gets them an audience...because we didn't have the [staff] survey, we didn't have the engagement...if I was on the shop floor and I wanted to raise something, maybe the grievance process was the best way to go about it.' (Senior manager – Organisation B)

2.3 Procedure and process – managing discipline and grievance

In managing disciplinary and grievance issues, the application of detailed written procedures played a central role. Procedures were more extensive than those suggested within the Acas Code of Practice on Disciplinary and Grievance Procedures. They typically included additional levels of appeal and precise detail regarding conduct of investigations and roles of managers and HR practitioners. Within public sector organisations, both disciplinary and grievance procedures were semi-judicial with cases being presented in an adversarial manner, relying on witness testimony and cross-examination.

One explanation for the complexity of disputes procedures is the fear of litigation (Edwards, 2000). Certainly this was a significant theme in interviews with managers for whom procedure represented a safety net – protecting them against employment tribunal action, organisational criticism and the consequent impact that this could have on their reputation and career development. For HR practitioners, procedure was a vital part of their armoury in regulating managerial behaviour and in enforcing compliance, helping to make up for a general lack of knowledge, confidence and competency among line managers. For example one respondent working a large private services organisation in which there was no specific on-site HR presence explained that line managers relied on procedure as a source of guidance:

'Line Managers want it so it says you know you cross the line, that's it. ...It's easy whereas when that line's a little bit blurred they don't like that... it's easier to say well I've just followed it in line with procedure, in line with policy'. (HR practitioner – Organisation D)

Consequently, organisations tended to adopt much more detailed procedures than necessary in order to ensure a degree of consistency and uniformity.

Procedural adoption and design had also been driven by concerns over fairness and equity. For trade union representatives, disciplinary and grievance procedures had become vital for their ability to defend their members' interests, particularly given declining influence over collective issues. Furthermore, identifying potential procedural breaches and the potential threat of litigation was an important source of bargaining power, enabling them to get the best possible result for their members. Accordingly, formal procedures were seen as central in maintaining equity and natural justice (Sanders, 2008; TUC, 2007).

It is important to note that managerial respondents (particularly HR practitioners) also saw procedures as a source of fairness, consistency and employee voice. But, they felt that procedures had become an increasing burden due to their length, complexity and inflexibility. This was particularly the case in the public sector as the following quote from an operational manager in a local authority illustrates:

'...we'd built up this bureaucracy, huge paper chain, lengthy grievance procedure which seemed to lose sight of actually trying to achieve solutions...So there was discontent from managers because they were endlessly investigating things and it was taking a long time; discontent from the individuals who had lodged them because...they weren't getting an answer, really.' (Operational manager – Organisation C)

Although, respondents accepted that some cases, such as serious misconduct and unfair treatment, necessitated formal action, there was a general consensus that the conduct of disciplinary and grievance procedures provided insufficient room for less formal approaches to disputes. Once formal procedure had been enacted, they had an unstoppable momentum. This was found across both private and public sectors. For example an operational manager working in the private sector argued that:

'...ours [disciplinary procedure] is almost too formal, you have to follow the format once you get to that, there's nothing that enables me to nip it in the bud...once it starts it's like a ball that rolls and there's things you have to do and letters you have to send and, there isn't anything to take it offline with a chat in a room.... it would be looked on as you're not following the procedure' (Operational manager – Organisation D)

Managers were often concerned that trying to resolve an issue informally or even having a discussion 'out of procedure' could be seen as a procedural breach or viewed negatively by an employment tribunal. A further problem was that the views of the parties could harden and become more defensive once issues had been put in writing and made 'formal'. Even trade union representatives who relied on formal process to defend their members were concerned that enacting written procedures could trigger adversarial approaches which were not in the best interests of either employer or employee. A union official in the public sector explained this as follows:

'They're plenty of people in management and trade unions who'll say "well according to section five of the procedure, paragraph three you've haven't followed this. You haven't showed the letters in time so we'll scrap the whole process." And that's what becomes a win/lose type of approach and I don't think it's ever paid dividends for anyone that I've had experience of representing.'
(Trade union representative – Organisation B)

2.4 Application of procedure – room for resolution?

Given that in some workplaces, the processes surrounding disciplinary and grievance procedures had become somewhat inflexible, as described above, what are the prospects for using informal discussion and negotiation to resolve issues before they reach the disciplinary or grievance hearing? Perhaps the most obvious window for resolution is prior to the enactment of procedures – nipping issues 'in the bud' in this way was encouraged within all the procedures we examined. Within our sample, this generally took the form of a line manager having 'a quiet word' with an employee to try and resolve an issue before considering invoking the procedure. However, the real work of informal resolution tended to be handled through third parties – specifically HR practitioners and employee representatives. For example, in Organisation B, where trade unions were well organised, it was common for employee representatives and HR practitioners to meet on a regular basis to sound each other out and to try to identify any emerging issues:

'I also have an off the record meeting with the site manager and HR once a month as well and the basis of that, look we don't want to be airing our dirty laundry in public really. Can we get it sorted before any of these meetings? That suits me because if it's getting stuff sorted I don't care what way it's done, really, you know. But it's through these meetings that you build your relationships anyway. You know you go and have a coffee and you sit chatting.' (Trade Union Representative – Organisation B)

Crucially, informal processes of this type were entirely dependent on high-trust relations between key actors (Purcell, 1981) and particularly reliant on constructive relationships between employee representatives and HR practitioners. This enabled the parties to maintain a dialogue even when formal proceedings had been started with 'off-line' discussions and contact shadowing disciplinary and grievance procedures. In unionised organisations, it was normal for the employee representative to be informed of management intentions in respect of one of their members. This could be just a courtesy but sometimes provided an early opportunity to explore options as to how the case could progress. In one public sector organisation, a case conference was convened as soon as a dispute emerged. This involved the relevant operational manager, trade union representative and an HR manager who discussed the case and developed an action plan for the handling of the matter.

Furthermore, in practice, informal contact sometimes extended to disciplinary and grievance hearings. Although this was not necessarily a common occurrence, most management respondents and employee representatives reported that they had

experience of hearings being adjourned during which discussions took place to clarify issues or move towards a mutually acceptable resolution. For example, managers often found it difficult to persuade employees facing disciplinary action to discuss possible mitigating factors of a personal nature. In these contexts, 'off the record' discussions could reveal new information and allow for a much more balanced outcome. But once again, this relied on a high level of trust between managers and representatives.

Without good relationships, all parties sought the shelter and certainty of formal procedure. A senior manager in the third sector organisation within the sample explained that their approach to 'off the record' discussions depended on the representative that they were dealing with:

'...there's probably one person out of the three that might get involved locally that I could do that with. I can phone and say, look let's just talk about this off the record and this is what we're thinking of doing. What do you think about that? One of them you can, but I certainly wouldn't do it with the other two because they would actually use that against us and say you've been negotiating outside of the hearing.' (Operational manager – Organisation E)

Importantly, while trust was generally related to the broader employee relations climate within the organisation, it could be shaped by the way in which disciplinary and grievance issues were handled. In short, if managers kept the union informed and implemented procedure fairly and equitably, representatives were more likely to trust them in the future. Similarly, trust in employee representatives was built through the way in which they handled difficult issues.

2.5 Summary

Our findings would appear to support previous analyses from the WERS series that suggest that there are clear sectoral differences in the composition of workplace conflict. In basic terms, 'high discipline' workplaces tend to operate within highly competitive markets, have routinised and closely controlled work processes and have a younger and relatively mobile workforce. In contrast, 'high grievance' workplaces are more likely in the public sector and have more established workforces who enjoy a relative degree of autonomy, job security and access to representation. Of course, this is an over-simplification, but it suggests that workplace conflict is not a pathogen but is ultimately shaped by the nature of labour management relations and how this is moulded by the external context within which organisations operate. Moreover, it cautions us against seeing conflict as homogenous and points to the need to explore the distinct trajectories of disciplinary action and employee grievances.

Our sample also reflected the dominance of written procedure in managing both disciplinary action and employee grievances. However, procedures occupied a paradoxical position within organisations. Both unions and managers found them unsatisfactory, the former because they did not necessarily deliver positive outcomes and the latter because they were an encumbrance to efficiency. Nonetheless, there was also a reluctance to move away from written procedures. For trade unions, they still represented a last line of defence for their members, while they were a reassurance for managers faced with the threat of litigation

Importantly, the existence of written procedures for dealing with grievances and disciplinary did not preclude informal discussion and the consensual resolution of disputes. In fact we found that in some settings, these informal practices 'shadowed' formal process. However, this appeared to be dependent on the existence of high trust relations between HR practitioners and employee representatives.

3. THE CHANGING NATURE OF CONFLICT MANAGEMENT – A CRISIS OF CONFIDENCE

Perhaps the most fundamental change to workplace systems of conflict management has been the significant shift of responsibility for conflict management and dispute handling from HR practitioners to line and operational managers (Hutchinsin and Purcell, 2010; McGovern et al, 1997; Teague and Roche, 2011). Traditionally, HR professionals were tasked with negotiating informal resolutions, investigating disputes, ensuring the implementation of formal procedure, and providing solutions. More recently, the desire to develop a more strategic HR function has seen them leave the day-to-day management of specific disputes to line managers and adopt a more arm's length advisory service.

There are clear concerns about line managers' current lack of capability and confidence in dealing with conflict. Government calls to improve managers' abilities to resolve disputes will inevitably depend on the extent to which organisations are prepared to invest in skill development which in turn will reflect the importance placed on conflict management alongside competing strategic priorities. This section examines the implications of changes to the HR function and how line and operational managers within our sample have coped with their new found responsibility for conflict handling.

3.1 From conflict manager to expert advisor

Conventionally, HR or personnel practitioners played a central role in the day-to-day management of conflict (Storey, 1992). Line managers may have been the first point of contact, but continuing problems would be passed over to HR. Even where line managers had decision-making responsibility, they would be closely guided by HR practitioners. However, within organisations in our sample, there was evidence of a fundamental shift towards a business partner model of HR management (Caldwell, 2003; Pritchard, 2010). This involved: the devolution of responsibility for management of people to line managers (Hall and Torrington, 1998a; 1998b); the progressive centralisation of advice in relation to workplace conflict; and a move away from on-site or departmental HR managers and advisors.

The precise structure of the HR function varied within the organisations in the sample. In three cases, HR practitioners had been relocated to a more centralised setting. Organisation D had perhaps developed furthest in moving from site-based HR managers to a telephone-based employee relations advice service supplemented by a number of regionally based HR business partners. Interestingly, this model was being replicated by Organisation B, although, at the time the research was undertaken, on-site HR advisors and business partners were still in place.

The rationale for these changes was four-fold: firstly, by leaving managers to deal with transactional elements of conflict management, HR practitioners could step back and take on a more reflective and strategic approach. A number of respondents saw this as being 'released' to engage with activities which could add greater 'value' to the organisation. In short, managing conflict was not something that most HR practitioners relished and was identified as a low level activity. Secondly, there was a view that line and operational managers were best placed to deal with such issues – they worked at the point of conflict and knew their staff and the context within which they were employed. Thirdly, a widely held view among HR practitioners was that their on-site presence created a 'dependency culture' among managers:

'If you're involved in everything how are you developing the skills of the line managers? How are they becoming accountable for their staff? HR aren't... we can support and facilitate but you're the one who's working with that individual all day in and day out. (HR practitioner, Organisation B)

Finally, in most of the organisations, the HR function had been significantly rationalised. At a basic level, this meant that there were insufficient HR staff to continue to play an interventionist role even if this was desired.

Overall therefore, HR practitioners tried to take an arm's length advisory role, only becoming directly involved in complex cases, those involving senior management staff and sometimes where an element of coaching for more inexperienced operational managers was needed. The level of capability of line managers was seen by some HR practitioners to limit the extent to which this was possible. There was still a very strong sense in which HR was needed to control 'rogue' managers and to maintain organisational integrity by ensuring that disciplinary rules are applied consistently (Cooke, 2006) and in line with existing legislation. In this way they regulated managerial behaviour to minimise any negative implications for the organisation (Cunningham and Hyman, 1999; Hunter and Renwick, 2009). Moreover, the combination of inexperienced managers and an increasingly complex legal environment arguably placed the HR practitioners, in our sample, in a particularly influential position (Caldwell, 2003).

3.2 Line and operational managers – nipping issues in the bud?

In all the cases we examined operational managers were now not only the first point of contact for emerging conflict but had responsibility for the application of procedure and decision-making in grievance and discipline cases. Most believed that conflict was something that could be avoided through effective day-to-day management of their team. Perhaps not surprisingly they generally argued that this was achieved through maintaining regular communication with staff, often through an 'open door' policy. For example, one senior manager in a large private services organisation claimed that at his site there was a constructive and open culture in which staff were encouraged to air their views:

'I think the site has a pretty open culture. We encourage people to air their views, we encourage people to bring forward their ideas and opinions...we tend to encourage people to put them on the table and have an adult conversation.' (Operational manager – Organisation B)

In some respects, the data supported the prevalent view that line and operational managers have a preference for informal and pragmatic approaches to difficult issues (Rollinson et al., 1996; Cooke, 2006). There was general agreement among respondents that trying to resolve conflict at the earliest stage was desirable. At its simplest level, this would involve a line manager having an informal discussion or series of discussions with the employee(s) concerned:

'...we try and resolve things, before they get to that, that point, where somebody feels that they need to take it formally...So, by actually sitting down with the individual, and seeing if we can come to some sort of compromise.' (Operational manager – Organisation D)

Informal contact was backed up to some extent by formal performance management mechanisms. For example, in one organisation, all staff had monthly one-to-one meetings with their line managers which were logged and recorded. Both management and union respondents saw this as not only maintaining important channels of

communication, but also providing a place in which employees and managers could raise and try to resolve concerns.

3.3 A question of confidence?

However, the evidence suggested that some line managers lacked the confidence and/or the capability to hold difficult conversations with their staff. Respondents generally agreed that line managers found it challenging to raise concerns over issues of conduct or capability with members of their team:

'.....They find it really, really difficult, really difficult, to feedback about poor behaviour. I mean it's a really big thing and they really get themselves worked up about it and I think it is because they work so closely and they know each of them on a level that perhaps you wouldn't normally know a fellow worker.' (HR Manager – Organisation C)

This was particularly the case where managers worked very closely with their staff. An HR practitioner from Organisation E explained that a number of their managers were based in residential units and therefore lines between colleague and manager were often blurred:

'Our services are based in, mostly, in-house where you are with these people in a house/homely thing and I think it's the environment...I'm not going to say creates family - that's not right - but they're very close knit. There's not distance between managers and staff. They're very close together. I think they're too friendly, sometimes.' (HR practitioner – Organisation E)

Managers were also concerned that addressing difficult issues might undermine morale, lead to staff absence and/or employees filing grievances. Thus it could be tempting to turn a 'blind eye' to misbehaviour or misconduct if it involved valued and otherwise productive members of staff (Dunn and Wilkinson, 2002; Cole, 2008).

3.4 Litigation and risk-averse approaches to conflict

Pragmatic considerations were however, balanced against the potential implications of both organisational and legal scrutiny. In particular, there was concern over the perceived threat of employment tribunal action. As the following senior manager in a private services organisation explained, line managers feared that they would be held responsible:

'I think there's some concern...if somebody took it to tribunal and then won a pot full of money because they'd done it wrong at the beginning.' (Operational manager - Organisation B)

This contributed to managers taking a more risk-averse route and clinging to procedure to avoid decisions being appealed or their approach being criticised. It was also suggested that the stress placed by organisations on the importance of compliance and the potential costs of employment tribunal action added to managerial uncertainty. Thus, there was a danger that HR practitioners in trying to regulate the actions of managers and protect organisational integrity, may help to create a culture of fear around the management of conflict. This was illustrated by an HR practitioner from a large private sector company who argued that an emphasis on what could go wrong had increased managerial anxiety. Thus managers had been trained:

'...to fear legislation...So we've said, sex discrimination, race, disability...and they're petrified about talking to people about things that might not be comfortable...rather than say, 'look, let me explain it to you', they'll say, 'put it in writing, let's let HR deal with it. And actually, we've moved away from just knowing people, knowing our teams, knowing ... you know, how to manage them as people. And we're trying to get back to that a bit more....[But] there's a big fear factor around them [managers] that actually, they may have to go to court, they may have to be up in the dock' (HR Practitioner – Organisation D)

The 'fear factor' was strengthened for many managers in unionised organisations by a lack of experience in dealing with representatives who were well trained and had a detailed knowledge of procedure and employment law. In fact respondents acknowledged that union representatives were often much more knowledgeable in this regard than the managers that they were dealing with:

'There is definitely a fear that the union know more than they do about these things and they are often more experienced in dealing with them and they don't want to have that confrontation within the meeting...So they will shy away from things as long as humanly possible and take the path of least resistance sometimes.' (HR Manager – Organisation B)

For some managers, there was a feeling that union representatives were trying to 'trip them up' on technical and procedural issues. Certainly, where employment relations were poor, trade unions saw greater responsibility being placed on relatively inexperienced management as an opportunity to win cases on behalf of their members by exposing procedural defects. A trade union official in a large public sector organisation explained that, at times, they had taken advantage of this:

'There were failings in procedure on the part of management. We had a better understanding...Managers, they're not HR advisers so they might see the policy but until they actually needed to use it and things brought to their attention. So procedurally we had quite a lot of wins.' (Employee representative – Organisation C)

Not surprisingly this tended to deepen low-trust relations and defensive approaches on the part of line managers. Consequently, they were more likely to adopt a safety-first attitude to dealing with conflict whereby procedure would be applied to the letter squeezing out any chance of informal resolution.

3.5 The importance of HR Practitioners – building relationships and facilitating resolution

Importantly, a number of line managers argued that the availability and proximity of HR advice was vital in bolstering the confidence of themselves and their colleagues. In one organisation, in which there were dedicated, on-site HR practitioners, respondents were particularly vocal about the consequent benefits:

'It's so important that you've somebody that you can knock on the door of and they don't mind you asking questions maybe three, four times the same thing. You know you've got to feel able to talk to your HR and you've got to feel that they support you. (Operational Manager – Organisation B)

This also helped in building managerial capability and giving managers the confidence to take calculated risks in exploring informal resolutions. In another organisation, operational managers argued that having an HR practitioner based in their regional office

was helpful both in terms of building relationships and also in being able to address issues at an early stage:

'a lot of the time they use our office for team meetings, the training room upstairs. So you get the whole staff team so I am visible, I am there and they know I am around; I can be approachable. Whereas sometimes if you step back from the region it can be, it's more formal isn't it, as opposed to an informal chat with me because I am around.' (HR Practitioner – Organisation E)

In this context, HR practitioners were particularly important in unionised workplaces for two reasons. Firstly, it was unrealistic for the relatively small number of trade union representatives within an organisation to know and trust all operational managers. Secondly, and partly because of this, operational managers were often concerned about dealing with trade unions (as discussed above). Therefore, HR practitioners were able to act as a bridge between representatives and operational managers and also to broker resolutions away from the emotion of the situation and sometimes the entrenched attitudes of manager and employee(s).

'.. the trade union rep will know if I sit them down in a room and say look we've got to get this sorted, we can't carry on like this, they'll listen and they will try and resolve it... I think we have a very good relationship with the managers and the trade union so we work very closely with them.' (HR practitioner – Organisation B)

Some respondents again argued that being located within a department, or on a particular site, and therefore coming into regular face-to-face contact with representatives, helped to break down suspicion and build constructive relations. For example, one HR practitioner, working within the public sector, argued that the centralisation of the function in her organisation had reduced the level of dedicated resource devoted to dispute handling and created a gap between HR practitioners, union representatives and operational managers. In particular, trade union representatives were left to deal with managers who they often did not know and did not trust. This led to more defensive adversarial attitudes which HR practitioners had to then come in to diffuse:

'...we had quite a good working relationship with some of the local stewards in there so if there was an issue that had been brought to one of the stewards' attention by an employee or one of their members they wouldn't necessarily accept that as being that's what's gone on they would quite often pick the phone up to myself or my colleague...they gave us an opportunity to try and resolve it informally if we could...' (HR Practitioner – Organisation C)

3.6 Remote HR – maintaining trusting relationships?

Therefore, one might argue that the shift towards a more distanced HR function undermines relationships which underpin informal processes of resolution. However, this evidence was not clear cut. A number of HR practitioners argued that it was still possible to develop and maintain good relationships with senior managers and employee representatives without having a constant physical presence:

'I do think it's about the relationship that the regional director and area managers have with the HR advisor and the other way round. The HR advisor can become part of the team without being sat at the desk in the office.' (HR practitioner - Organisation E)

Furthermore, in Organisation D (where employment relations advice had been located within a number of contact centres) it was argued that, despite their 'distance' from operational managers, advisors were still able to coach and develop improved conflict management skills:

'what the [employee relations advice service] provides...is coaching, it is like almost more speaking to your old HR manager, it's not just complete this is the policy you must do this...if they feel the line manager's being a bit gung ho or not handling the situation in the best way the [employee relations advisory service] member will challenge the line manager...' (HR practitioner – Organisation D)

Importantly, they linked with regional HR business partners who would then provide face-to-face support where necessary or work with local operational management to fill skills gaps and address broader issues that may be leading to conflict. Indeed HR business partners saw the maintenance of relationships with managers and employee representatives as an important part of their role. It is also important to note that managers, in this organisation, were very positive about the role of the ER advice service. They believed that it provided a more consistent approach and one which could always be accessed, something that had not always been possible with on-site HR managers.

3.7 Training and capability

Despite the acknowledged problems with line manager confidence and capability, we found limited evidence of widespread attempts to systematically up-skill them to cope with their new responsibilities. Most operational managers who were interviewed had received generic management training and specific guidance in relation to organisational processes and procedures. However, there was little time spent developing conflict management skills. A key problem with training line managers was the difficulty of freeing up the time of staff given intense operational pressures. Furthermore, the wholesale training of operational managers also had significant cost implications. The combination of these two factors made any substantial training initiatives problematic.

One exception to this was Organisation D, a very large private sector business, which provided training on a wide range of people management issues including: disciplinaries, grievances, appeals, hearings, absence management, and managing misconduct. Moreover, unlike many organisations, training extended to handling difficult conversations. Importantly, employee relations' staff within the organisation were given significant input into the development of training programmes, and learning and development teams were briefed on relevant HR issues. Even here it was accepted that while training for new staff was comprehensive, more established staff would probably be limited to updates in relation to policy and procedure:

'I suppose where that falls down is current managers. Maybe you've got managers who have been in the business for twenty years and working at that level for twenty years in different departments. They will get trained on new policy changes or updates.' (HR practitioner – Organisation D)

There was also some scepticism as to whether what many respondents referred to as 'classroom training' was the solution. Instead it was argued that managers needed to develop 'soft skills' related to conflict situations with an emphasis on experiential learning. In three of the five organisations, there were informal shadowing or 'buddy' schemes in which more experienced managers worked with newer staff to develop skills and confidence. A senior operational manager, in another private sector organisation, explained that:

'...we can give them [managers] all the policies forever, we can give them policy after policy but actually experience, that's what we need to support them with. So they wouldn't just be thrown in here to deal with a situation, we would buddy them up with someone. And that could be for as long they want. So another manager who is more experienced could deal with the issues in their team.'
(Operational manager – Organisation B)

3.8 Support and strategy

Teague and Roche (2011) have argued that a lack of confidence among line managers can be ascribed, in part, to a lack of support from senior management. This echoes a range of research findings which have suggested that line managers find it difficult to convince their own superiors of the importance of conflict management (Hales, 2005; Harris, 2001; Wright et al., 2001) and thus receive limited support which in turns makes it difficult to balance with their operational responsibilities (Hutchinson and Purcell, 2010; McGovern et al, 1997; Renwick, 2003).

There was little doubt that line and operational managers were taking on increased responsibility for conflict management at a time when pressures to increase efficiency and reduce cost were intensifying. Thus there were concerns that their ability to devote time to exploring informal channels of resolution could be compromised by operational imperatives. This was particularly acute in the private sector, where competition was intense. One operational manager explained this as follows:

'I think the pressure on the department managers at the moment is so heavy because we're trying to achieve so much...if you dealt with these couple of issues, just take 5 minutes out of your day, stop filling shelves so hard and deal with your long term absence, you would either get this person back into work or they'd leave, and we'd have somebody else in the store....there is short term[pressures], but we have to pull away from that, we have to be allowed to pull away.'
(Operational manager – Organisation D)

There was also a sense that pressure from senior managers to 'sort out issues' and meet performance targets could push more junior managers to eschew informal routes to resolution in favour of rigid but more visible formal action. For example a number of respondents pointed out that a desire to be seen to reduce absence levels had made it more difficult to adopt nuanced and informal resolutions that took into account the circumstances of each case. For example, if a senior manager has KPIs in relation to absence it may be difficult for more junior staff to use discretion when deciding upon a potential sanction:

'...absence is a key performance indicator for my manager...So he's constantly on their backs and because it's one of these KPIs he has a tendency to say, 'well we've got to get rid of them.' (Operational manager – Organisation D)

Across the sample, the willingness of line managers to address issues could also be affected by the extent to which they believed that their superiors would support them in the event of formal action having to be taken. Where managers were unsure whether they would be backed up, there was a tendency to leave issues to escalate. For example, in the not-for-profit organisation within the sample, a team of employees had three different managers in an eighteen-month period. Each had been moved on after complaints from staff following attempts to address issues within the team:

'...we've moved the manager out, where I think, really, we should have really turned round and looked at it and said, 'Actually, it's not the manager's problem,

it's actually the team's problem and we need to disband the team rather than changing the manager all the time'. (HR practitioner - Organisation E)

Thus, where senior managers failed to provide support, managers would tend to avoid conflict or follow procedure to the letter, as to do otherwise would risk internal criticism. In contrast, if managers' judgements were backed, they were more likely to have the confidence to adopt creative and informal solutions to difficult issues. Thus the leadership offered by senior managers could have a decisive effect on how their managers responded to workplace conflict. An HR practitioner in the same organisation explained this as follows:

'I just see the two managers just dealing with their services completely differently. In [region] they've got motivation, they've got support from [regional director] and they're just different managers; they are fundamentally different managers...they are allowed, dare I say, to fail. They are allowed to, you know, take those risks' (HR practitioner - Organisation E)

Fundamentally, the evidence suggested that conflict management was not seen as an important part of the managerial function. For example, a number of respondents remarked that indicators of conflict, save for absence, were often not systematically measured and certainly not used as performance criteria for junior or more senior operational managers. In addition, conflict competence did not appear to play a significant role within recruitment processes. Therefore, there would appear to be a link between the confidence and capability of operational managers, the attitude of senior managers and the place of conflict management within the strategic objectives of the organisation.

3.9 Summary

The role played by HR practitioners in managing conflict has undoubtedly changed significantly in recent years – both strategic and pragmatic considerations has seen them withdraw from the 'shop-floor' and from the day-to-day handling of discipline and grievance issues. Within our sample, this had occurred to varying degrees – it is important to note that in the one organisation that had created a centralised HR advice service, there were few complaints from line managers over the support they received. However, in other organisations, there were concerns that a more distanced HR function could make it more difficult to build competence within the line manager population and crucially, endanger high-trust relationships with employee representatives that could underpin effective and early dispute resolution.

Overall, the lack of confidence and competence among line managers was a major barrier to effective conflict management and the early resolution of disputes. This had two, possibly contradictory effects – initially, managers would ignore emerging issues, hoping that they would simply peter out. But if forced to address the conduct, capability and/or performance of their staff, line managers would tend to apply procedure in a rigid and inflexible manner.

This lack of confidence stemmed from a number of factors including a fear of litigation and, in unionised environments, concerns over being challenged by more experienced representatives with greater procedural and legal expertise. Although respondents generally accepted that line managers lacked necessary conflict management skills, there was no evidence of this deficit being addressed. This reflected a general sense that managing conflict was not a strategic imperative for organisations but a basic, transactional function that all managers were simply expected to be able to perform. While this may have been true for some managers, for most this was simply not the case.

4. EMPLOYEE REPRESENTATION AND VOICE

Given the central role traditionally played by employee and trade union representatives within workplace dispute resolution, it is unfortunate that their influence has been almost completely ignored within contemporary policy discourse (Gibbons, 2007; BIS, 2011a; 2011b). However, there is consistent evidence that shows that workplaces in which trade unions are recognised and union density is high tend to have lower rates of disciplinary sanctions and dismissals (Millward et al., 1992; Knight and Latreille, 2000; Antcliff and Saundry, 2009). Accordingly, it could be argued that changes in the structure of representation and employee voice within British workplaces will have a major impact on the nature of workplace dispute resolution. Therefore this section examines the role played by employee representatives and also the influence of employee engagement on conflict management in our sample organisations.

4.1 Constraining management action and facilitating resolution

Lower rates of disciplinary action and dismissals in unionised workplaces would seem to be consistent with a picture of unions attempting to restrain managerial prerogative and 'punitive modes of discipline' (Edwards, 1995; Moore et al., 2008) on one hand and supporting members to challenge their employer on the other. This was certainly reflected within the four of the five organisations within our sample in which unions were recognised. As noted in section 2, trade unions relied on the application of procedure and individual employment rights to defend their members' interests. Indeed this could also involve (as outlined in section 3) exploiting the relative lack of experience and knowledge of some line managers.

Arguably, presenting union representation in individual disputes as simply resisting managerial control is one-dimensional. In fact, unions (and employee representatives in general) play a much more nuanced role, often accepting the need for discipline (Edwards, 1994), managing the expectations of employees and negotiating with managers to resolve issues or minimise sanctions (McCarthy, 1966; Batstone et al., 1977; Saundry et al., 2008).

Within our sample, representatives provided an 'ear to the ground'. In Organisation D, which did not recognise unions, employee representatives provided vital intelligence:

'they're the eyes and ears on the floor...and they're the ones that talk to the [staff], so if there is some kind of rumbling ... we're expecting them to be picking that up and then going to the relevant [manager] and discussing that, and then going from there.' (Operational manager – Organisation D)

This was also the case in unionised workplaces. Not only were issues more likely to be identified but there was a greater chance that the root causes of conflict could be revealed and addressed. Critically, respondents reported that employees may not have the confidence to air their views either with their line manager or HR, but may be prepared to discuss personal issues with employee representatives (both union and non-union). An HR manager, in a private sector organisation with a well-established union presence, explained that in her organisation:

'...an employee who would feel much [more] comfortable going to speak to somebody in the union and [the union] are great because what they do is say "Well, listen, I can't give you the answer here? Do you feel comfortable with me speaking to [HR]?"' (HR manager – Organisation B)

Thus, the intervention of employee representatives helped to identify mitigating factors at an early stage.

Employee representation also helped in managing issues of conduct and capability. For example, both union and non-union representatives explained that an important part of their role (in disciplinary disputes in particular) was to ensure that employees properly understood the implications of the case and the potential consequences for the employee. One employee representative, within a non-unionised environment, explained this as follows:

'In fact, often, it would be me, or my colleagues, that will say to an individual, 'You do understand that this could mean' ... 'God, you mean I could lose my job?' ... it's sometimes about getting the person they're comfortable representing, to actually say, well, you know, we've done this...You need to be straight with people.' (Employee representative – Organisation D)

In this way, employee representatives could try to minimise a sanction by encouraging the employee to tell the truth or negotiate the best possible outcome. In gross misconduct cases, this could include persuading the employer to allow the employee to resign rather than face inevitable dismissal.

In addition, respondents also pointed out that representatives were able to talk to an employee in a direct way, outside the formality of a disciplinary or grievance hearing, which managers would not be able to do. An HR manager gave the following example:

'I'd say to a union representative, if she does not buck up she will be dismissed for her poor attendance, and he's saying to me, I know that and I'm working with her, and that's great...We don't want her to be dismissed so let's try and get in on that beforehand.' (HR practitioner – Organisation E)

It could therefore be argued that employee representatives could 'get through' to an employee in situations in which the views of managers would carry little weight or authority.

4.2 The importance of trust

However, the presence of employee representatives was not necessarily enough in itself to underpin effective conflict resolution. Constructive and trusting relationships between representatives, HR practitioners and managers were crucial. A union representative in the NHS argued that trust helped to underpin a culture in which difficult issues could be voiced and discussed:

'it's having that open culture where people open up and have those discussions and say things like, 'I'm a bit worried about somebody's behaviour...' (Trade union representative – Organisation A)

Where these relationships were absent, it was unlikely that representatives would share information with management and instead escalate the issue by encouraging the employee to take formal action. Procedure could become a battleground within which trade unions and managers struggled to assert their authority and influence. A union official within a public sector organisation explained that mistrust resulted in an adversarial approach to employee grievances:

'I think it was always a case of we didn't trust management. We would never enter into any kind of informal discussion because we were mindful that at some point in the future that would be used against us so we were always very formal...we would've just submitted a written grievance and straight into procedure of 7 days have passed you've not responded to it, you've not

acknowledged it. You know that letter would be going on the eighth day saying you're in breach of procedure'. (Union representative – Organisation C)

Furthermore, personal antipathy between managers and union representatives resulted in a zero-sum game in which the wishes of the employee were sometimes over-ridden or lost sight of in the attempt to 'beat' management:

'the aim was drag it out as long as you can because they'll get peed off and they'll start throwing money at it....I put round about, I think, at one stage, twenty odd grievances in a year and only lost one. I was at a point where management had wound me up that many times, I didn't care whose grievance it was. Sometimes I'd say I've got to go back and have a go at these people'. (Union representative – Organisation A)

Not surprisingly, this tended to cut-off any opportunity for informal discussion and negotiation. According to an operational manager working in the public sector, issues could escalate very quickly:

'...it tended to go from nought to a hundred on the Richter scale of disputes very, very quickly... I would be, for example, called up by the union to be told that a member of staff was taking out a grievance...there's been no kind of heads up in advance of that, or any discussion or any attempt to resolve the matter; it was simply a case of moving straight in to a formal process.' (Operational manager – Organisation C)

Therefore, unions sought to expose managerial flaws which in turn resulted in defensive responses from managers. In this climate, there was insufficient trust to engage in informal discussions with neither side prepared to be seen as 'giving in' to the other.

4.3 Reconstructing trust and informal resolution

Nonetheless our research also provided examples as to how negative and adversarial relationships had been turned around. In some cases, this was due to certain managers or HR practitioners making a concerted effort to engage with employee representatives and establish relationships. In a private sector services organisation a senior manager had made gaining the trust of local union representatives a priority in his first days in the role:

'...when I came into the operational role...the most important thing then was to engage the union and for them to understand that actually I'm not this ogre of a manager who's just going to run all over you and make life hard for your staff and it's taken me a long time to get that trust and understanding... what I always do, which is key, is if you're making any changes just tell the union and when someone comes knocking on [their] door they'll say, we know about it, we ain't got a problem.' (Operational manager – Organisation B)

More deep rooted organisational problems were perhaps more difficult to overcome. As will be discussed in section 5, in one organisation, the introduction of an in-house mediation scheme was fundamental to changing attitudes and building trust. In another, the development of a framework for dealing with organisational change and promoting informal resolution was seen to have a similar impact. Once again, this involved union representatives and managers being trained together which broke down stereotypes and provided a basis for reconstructing positive relationships. According to one HR practitioner who attended the training:

'I thought it was really useful because I think it got a lot of the managers thinking, 'well maybe we can do things in a different way, maybe these trade union people aren't as difficult as I think they are'. But I also think it built up a lot of trust as well between the trade unions and managers and they maybe appreciated where managers were coming from...' (HR practitioner – Organisation C)

In both cases, there had been an attempt to build relationships with union representatives in advance of these initiatives. Interestingly a common feature was agreement over union facility time. This not only served as a positive signal of managerial commitment to engage with trade unions but also allowed union representatives the time and space in which to explore informal resolution. This is an important issue within unionised environments as time-off is automatically granted in relation to formal disciplinary or grievance hearings but may not be as easy to establish when representatives are working outside procedure.

4.4 Conflict resolution or management collusion?

Nevertheless, in some cases union representatives themselves felt under pressure from their members to take amore adversarial stance – indeed commitment to informal resolution can be seen as inconsistent with the need to fully represent members (Nicholson, 1976). In this context, are union representatives working on behalf of their member or the organisation? There is a danger that this distinction becomes blurred as individual cases become intertwined with wider employment relations and the importance of maintaining high trust relations between representatives and managers. Nonetheless, among union respondents there was a view that on the whole informal resolutions were of clear benefit to the member:

'Some people have this perception, oh well you're collusive. You know, you're working with managers; you're in their pockets. But at the end of the day, from my perspective, it's improving the quality of life of the staff; it's a benefit for the organisation, because you've not got obviously staff going off sick and formal process... I just don't see the point in having a situation where you're exacerbating a problem when it can be dealt with early on. It's having those discussions, nipping it in the bud and dealing with it.' (Employee representative – Organisation A)

Indeed union representatives interviewed in this study were sceptical whether an adversarial approach to disputes delivered longer term benefits for members. Procedures were not only very stressful but were often extremely lengthy and often took their toll on those involved with long-term absence commonplace:

'...there's definitely no winners. It's nice if you get one up on HR but equally, HR think it's nice they get one up on the Reps but I really, truly believe this, it's the people in the middle... If I can phone HR, or a manager, and say 'Can we talk about this before we go into a formal meeting?' or, you know, 'This is what we're looking at,' then I'll do that.' (Union representative – Organisation A)

Furthermore, they argued that engaging in informal discussions had little impact on their ability or willingness to challenge managerial actions through formal procedure as and when necessary. Management respondents argued that good relations were robust enough to withstand situations in which unions and the organisation adopted diametrically opposed views on a particular case. The key here was reciprocity and trust. Even in a highly competitive environment within the public sector constructive relations could be maintained as the following quote from an HR manager illustrates:

'We very often look to them to support us with things and they expect us to reciprocate by being quite honest and open with them and respectful of their position really as well.' (HR Practitioner – Organisation B)

4.5 Direct voice and engagement – an alternative to representation?

Therefore it would seem that structured employee representation is important in underpinning informal processes of resolution. However, the current debate over dispute resolution is taking place in a context in which most employees have no access to workplace representation of any type. Arguably this makes additional sources of employee voice particularly important.

As outlined earlier in this report, all organisations within our sample emphasised the importance of managers communicating with their staff. However, even where managers are convinced that their 'door is always open', and where relations with staff are good, employees may be reluctant to raise or discuss difficult and personal issues with managers. To a certain extent more formalised systems of communications such as one-to-ones, review meetings and appraisals potentially provided a more structured and transparent way of managers giving an opportunity to employees to air their views. While this undoubtedly constituted an element of 'direct' voice, it was still constrained by the nature of the relationship and the fact that any discussion tended to take place within the context of the employee's performance. Thus it could be argued that if the employee is not able to talk openly to their manager, but has no access to representation, they are left with little alternative apart from formal procedure. In contrast, employee representatives can act on their behalf without any fear of the consequences and provide both a degree of objectivity and breathing space in which a more creative resolution can be explored.

At a broader level there was emphasis in all of the case-study organisations on employee engagement. While employee engagement is notoriously difficult to define, Storey et al. (2009:301) argue that engagement is *'a set of positive attitudes and behaviours enabling high job performance of a kind which are in tune with the organisation's mission.'* Furthermore, organisations seek to enable employee engagement through a variety of practices designed to improve communication, enhance relations with managers and deepen organisational integrity (MacLeod and Clarke, 2009). In the fieldwork, there was a general belief that effective employee engagement could prevent the development of discontent and consequently was of greater strategic importance than conflict management. One HR practitioner in the private sector summed this up as follows:

'I think the more engaged we can make our employees, the more of a higher trust environment we then create and that just make HR issues a lot more straight forward. And on broader issues, so if we go into things like pay reviews and we're saying, you know, we can only afford x amount of pay increase, then the higher the trust, the more likely we are to get that seen in good faith, as opposed to the opposite. So I think it has really broad implications and, in my opinion, it's not just about surveys and it's not just about kind of forums and listening groups, it's about trying to understand what it is about a job role that they don't like. You know, and quite often it's not necessarily that they don't think they have enough fun at work and stuff, it's usually around pressures and their perceived ability to actually perform to the standards that the company's expecting.'

Conflict was seen as a direct result of a lack of communication and engagement with staff. Where employees did not feel that they were being listened to, discontent was quick to grow. Also, without such channels, there was a danger that low levels of

grievances may mask underlying conflict. A senior manager in the third sector organisation argued that although his organisation received very few formal complaints this was mainly because *'people just keep stuff to themselves'*.

Management respondents claimed that effective employee engagement strategies could minimise conflict by improving commitment and motivation of staff. They argued that employee engagement mechanisms ranging from staff surveys to discussion fora and working groups provided employee voice and therefore a way in which issues could be discussed and addressed. In this way, engagement, the incidence of conflict and management responses to it were intertwined:

'It has to start with the recognition that you can't be successful unless you've got people who are engaged come in, come in on time, and you treat fairly; firmly but aware of the boundaries. So there are lots of things that actually make up the ability to have a good department...our engagement score is the highest across the Group, but that for an operation area it's been consistently up over 85, 86 percent. Couple that with low absence, low turnover, you kind of get people who want to be there, who want to deliver and your costs kind of get reduced so there's an equilibrium.' (Operational manager – Organisation B)

For example, in the same organisation, one senior manager had established an online facility where staff could pose questions and raise concerns and a similar initiative in which staff were able to log any problems or issues on a central notice-board which would then be addressed by managers.

This would suggest that employee engagement may have a role to play in minimising conflict and in helping management to address broad issues that may be causing discontent. However, it could be argued that if conflict escalates into a full-blown dispute, then engagement mechanisms (alone) have less to offer in providing a channel through which resolution can be sought and it is here that representation is vital.

4.6 Summary

The positive influence of employee representation on conflict and dispute resolution was a recurring theme in all the cases in our sample. It was notable that the vast majority of management respondents saw representation as helpful and constructive – both in terms of facilitating early and informal resolution but also allowing organisations insights into cases which would otherwise remain uncovered. Of course, the impact of representation is dependent on the nature of the relationship between representatives and management – as we mentioned in the previous section, it is here that HR practitioners can play a key role.

These issues are increasingly relevant given the growing diversity of representational forms and the absence of any form of indirect representation in the majority of workplaces (Charlwood and Terry, 2007). While there is evidence of isolated attempts to develop roles for non-union employee representatives within discipline and grievance processes, there is little evidence as to their impact (Podro et al., 2007). Thus it could be argued that the growing representation gap in British workplaces has profound consequences for conflict and dispute resolution.

Some might argue that this gap could be filled by employee engagement mechanisms. Our research pointed to the value of engagement and other forms of direct voice in creating workplace cultures in which conflict is less likely to emerge, however, we would suggest that for resolution to be effective, the presence of representatives who can act as a conduit for negotiation and remove the parties from the emotion and intensity of workplace disputes is essential.

5. INNOVATIONS IN CONFLICT MANAGEMENT – THE PROMISE OF MEDIATION?

Given the challenges outlined in this report, it is not surprising that attention is turning to new and innovative ways to manage conflict and resolve individual employment disputes. Within Great Britain, the main focus has been on the potential of workplace mediation following its enthusiastic promotion within the Gibbons Review in 2007. The government has also supported the extension of mediation seeing it not only as an efficient mechanism for dealing with disputes, but also as a way in which the culture of conflict management can be transformed (BIS, 2011b). This section examines the evidence of innovation in conflict management and looks in detail at the use and impact of mediation and the barriers to its implementation.

5.1 Procedural reform – informality and efficiency

There was little doubt that respondents within our sample were looking for new ways of dealing with workplace conflict. This was particularly driven by the sense that existing approaches were adversarial, costly and rarely had positive outcomes. Within all the organisations we examined, there was increased emphasis on making procedures more flexible and encouraging early resolution. The trigger for this appeared to have been the Gibbons Review, the Employment Act 2008 and the consequent introduction of a shorter principles-based Acas Code of Practice on Disciplinary and Grievance Procedures¹. The revision of the Code was 'intended to allow the parties involved to tailor approaches to their own situation, and encourage less legalistic and more practical solutions' (Rahim et al., 2011:6). There was clear evidence that the revision of the Acas Code in 2009 had led four of the five organisations in both the public and private sector to re-examine their disputes processes and implement consequent revisions. In one, large private sector business, the code prompted a new emphasis on informality and consideration of the use of mediation:

'...when the Acas code came out we had to really go through it and change the language and soften it up and put a real emphasis on informal resolution...' (HR Practitioner – Organisation D)

Procedures had been changed in three main respects. Firstly, they were simplified, with what were perceived as unnecessary layers removed, for example reducing the number of disciplinary stages. Secondly, procedures in three of the organisations had been amended to provide a greater decision making role for line managers reflecting the general thrust of devolution. Thirdly, grievance procedures, in particular, had been revised to place a greater emphasis on informal resolution and, where applicable, mediation.

In all organisations, procedures had been simplified, with (what were perceived by employers as unnecessary) layers removed, such as the number of disciplinary stages or appeals. In addition, procedures in three of the organisations had been amended to provide a greater decision making role for line managers reflecting the general thrust towards devolving the management of conflict and individual employment disputes.

Furthermore, organisations had sought to balance the need for informal responses to conduct and capability, and the preference of managers for a clear process to follow through the introduction of improvement notes or documented discussions. An

¹ The Employment Act 2008 repealed the Dispute Resolution Regulations (2004) and provided for the introduction of a shorter non-prescriptive statutory Acas Code of Practice in 2009.

illustration of this was found within a contact centre setting in which strict application of policy on swearing was leading to a high level of dismissals.

As a consequence the organisation had introduced a system of documented conversations for less serious breaches of policy:

'...we decided to take more of an approach where 'do you know I heard you swearing, luckily the customer didn't hear you, let's make a note of it, this record of interview', so that they're clear something wrong has taken place but the company is giving them an opportunity.' (HR Manager – Organisation B)

While more streamlined procedures could be seen as encouraging a less formal approach, the evidence suggested that the main objective was to increase the speed and efficiency of decision making. At the same time, in most of the organisations in our sample, there was greater emphasis placed on the robust management of absence and capability. In an attempt to reduce costs and improve service quality, there was clear evidence of organisations adopting more pro-active approaches to the management of these issues. In contrast to the notion of greater informality and flexibility, within disputes processes, this was operationalised through a tightening of procedure and a more rigid application of rules:

'We've tightened up our internal application of the policy...[on] long-term absence... we have reduced our absence significantly over the last few years as we've focussed on it...I think that before we ignored it so it was very rare to take somebody down a disciplinary.' (Operational Manager – Organisation B)

5.2 Mediation – a panacea for workplace conflict?

The revised Acas Code of Practice also increased the profile of workplace mediation and, in one case that we examined, had prompted the introduction of an in-house mediation scheme (Latreille, 2011). In all, three of the five organisations in the sample had developed internal mediation provision. Our research suggested that mediation had clear benefits in helping to resolve specific disputes with respondents citing rates of settlement of over 90 per cent (McDermott et al., 2000; Bingham et al., 2002). While the screening of cases may inflate the success rate of mediation, respondents argued strongly that disputes that might otherwise result in long-term absence and litigation were resolved relatively quickly and cheaply through mediation (Corby, 1999; Kressel, 2006). Indeed, Organisation A claimed that each mediated case cost an average of £695 compared to £4042 for those handled through conventional procedures. Respondents argued strongly that mediation was more effective and efficient than traditional procedural routes.

In addition to facilitating the resolution of certain disputes, it has been suggested that the use of mediation, and in particular, the introduction of in-house mediation schemes, can have a broader impact in transforming the culture of conflict management (BIS, 2011b). Within our sample, there were certainly signs that training as a mediator and conducting mediations had a positive impact on conflict handling skills (Bingham 2004) and the development of new perspectives on workplace conflict, arguably making 'creative problem solving' (Kressel, 2006:747) more likely. An experienced HR practitioner working in the private sector explained this as follows:

'It definitely gave me an increase in confidence that I had the skills to go into a conflict situation...because even though you're trained in facilitation skills...re-learning some of the techniques definitely builds your capability. I think on a personal level for me it really showed me the impact of conflict between two individuals.' (HR Practitioner – Organisation D)

The most profound effect appeared to be on operational managers and employee representatives. For managers, who often struggled with what might be seen as 'softer' people management skills, mediation training provided them with, '*a vocabulary and a set of techniques*' that facilitated a less emotional and more objective approach to conflict. One operational manager explained how mediation had influenced the way in which conflict was approached within his part of the organisation:

'I mean I've started using the word [mediation] more, with my section managers in terms of some of the issues that they will come up with...rather than saying to somebody 'oh she has a problem, right tell her to take a grievance', we're going to have to work very hard...to steer people towards using softer language.'
(Operational manager – Organisation D)

In addition, there was compelling evidence from two public sector cases (Organisations A and C) where union representatives, operational managers and HR practitioners were trained together that this not only shifted previously entrenched attitudes but provided a forum in which personal high-trust relationships were built:

'...it was with a group of managers who I'd had no contact with...But because of the length of time we spent together we were able to develop relationships. And see each other's point of view.' (Trade union representative – Organisation C)

The extent to which this extended beyond the relatively select group of individuals who had experienced mediation was much more questionable. The only organisation where this had occurred was Organisation A, an NHS Primary Care Trust. Here, a strategic decision was taken to involve key union and HR practitioners around whom the management of conflict tended to revolve. By building relationships between these central players, the way the culture of conflict handling was undoubtedly transformed. But this was more difficult in Organisations C and D which were not only much larger, but had also devolved conflict management to a large number of line and operational managers therefore constraining the development of relationships between stakeholders.

5.3 Innovation – mediation and the development of integrated strategies

Commentators in the USA have argued that the wider organisational benefits of mediation are more likely to be realised when organisations introduce complementary ADR practices (Bendersky, 2003) as part of an overall strategic approach. The suggestion that organisations should develop integrated conflict management systems (ICMS) has gained widespread support in the USA (Lipsky et al, 2003; Lynch, 2001, 2003; Ury et al., 1998). Within our sample, two of the organisations managed conflict solely through conventional rights based procedures, while in the other three, innovation revolved around the development of in-house mediation capacity and the application of mediation skills.

Certainly, the introduction and/or extension of mediation had been linked to changes in grievance and disciplinary procedures that promoted early resolution. This reflects Rahim et al.'s (2011) evaluation of the introduction of the revised Acas Code which found specific cases whereby, 'the introduction of mediation into an organisational approach was prompted by a review of policies in light of the Code' (40). But whether this represented an attempt to develop integrated conflict management systems is debatable.

Nonetheless, there were some examples of the creative use of mediation. In one organisation, a pilot scheme was initiated, involving operational managers, HR practitioners and unions, whereby key staff within one department, were trained as mediators and given the role of 'Resolution Officers'. These individuals were intended to

complement the organisations existing mediation scheme, act as champions for the promotion early resolution and provide advice, guidance and influence within their workplaces. Unfortunately, despite initial enthusiasm, this initiative stalled as more pressing budgetary and other pressures were prioritised.

In two cases mediation skills were used to address a wider range of issues, beyond interpersonal disputes. Within Organisation C, a very large public sector organisation, mediation was used to resolve issues that lay at the root of long term absence:

'...if anybody goes through occupational health as a result of being off work because of stress or as a result of any workplace conflict or workplace issues, then part of the intervention that the employee health and well-being unit would suggest as a mechanism is to go through mediation and put that in as a route to try and resolve the issues, ...' (HR practitioner – Organisation C)

In Organisation D, in-house mediators had been used to resolve on-going employment tribunal applications where the organisation had come to the view that reinstatement was a possibility. Here mediation was conducted between the individual and the manager who had heard the appeal and used to:

'...rebuild their relationship with the company if that makes sense and the trust in terms of "how do I come back"...part of that would normally have been a basic reinstatement meeting, so there were the usual details of pay to sort out, but we used it in a much broader sense in terms of actually rebuilding the trust in the organisation as well.' (HR practitioner – Organisation D)

Finally, there was evidence that the adoption of a calculated approach to the introduction of workplace mediation could reap significant rewards. In the two public sector organisations within the sample (A and C), there was a conscious attempt to recruit mediators who played important roles within the day-to-day management of conflict. Specifically, trade union representatives who tended to deal with the majority of employee grievances were explicitly targeted. In the NHS organisation within the sample, one of the two co-ordinating roles within their mediation scheme was given to a senior shop steward. It was anticipated that as he acted as the first point of contact for aggrieved staff this would increase the likelihood of referrals. In addition, it was hoped that their involvement in mediation would change the way that union representatives approached individual disputes and consequently facilitate a shift from an adversarial to a more consensual approach:

'Because [the lead steward] role was so influential in dealing with grievances and discipline within the organisation, if (they) had an understanding, a trained understanding, of what mediation was, it would enable (them) to see conflict differently.' (Operational manager – Organisation A)

In both organisations, the involvement of trade unions alongside managers and HR practitioners changed the overall dynamic of conflict management beyond those issues dealt with by mediation underpinning positive working relationships and therefore facilitating the early and informal resolution of disputes.

5.4 Barriers to workplace mediation and innovation

Despite its potential benefits, our research suggested that there were a number of barriers to the use of mediation and success of in-house schemes. Perhaps the most significant was the resistance of line managers who felt that the ability of employees to ask for mediation threatened their authority (Sergeant, 2005). There was a concern that attempts to manage performance could be effectively challenged through employees

referring issues to mediation. For example managers within Organisation A had been extremely sceptical according to one of the scheme's mediators:

'they couldn't see why it was being taken out of their hands. It was a control issue for managers, you know? They regarded themselves as not managing if they were not actually doing the thing that fixed the problem. So it was trying to convince managers to relinquish control in order to gain more control.' (HR practitioner - Organisation A)

Perhaps a more fundamental problem was a widespread belief among operational managers that that asking for someone else to mediate a case involving their staff represented an admittance of failure. The following view expressed by a senior manager, in large private sector organisation that had no in-house mediation capacity, was typical:

'Would I feel that it was a good thing to go outside of the family to have mediation? No, I would personally feel that I had failed in my role if I wasn't able to find an adult solution to a situation, no matter what it was.' (Operational manager – Organisation B)

Thus, referring a case to mediation would send the wrong message to senior managers in the organisation and may invite un-necessary scrutiny. This was felt most strongly where the mediation scheme was located within the HR function. In this context, operational managers, in a private sector business that had introduced an internal mediation scheme, felt that requesting mediation was like asking 'head office' to come in and sort out a problem that they were incapable of handling:

'..there's a bit of a barrier around I think just admitting that there is an issue and we try and resolve things in [house] because sometimes we don't want other [parts of the organisation] to know there is a problem.' (Operational manager – Organisation D)

It is important to note that this view was not restricted to operational managers – while HR respondents were generally more positive about mediation there was still some reticence (see Lipsky et al., 2003). In particular, it was argued that the HR practitioners, who were generally used to providing solutions to problems, found it difficult to hand over responsibility to the disputants in a case:

'I think mediation is out of the HR comfort zone. If you are, if you've not been encouraged to experiment, be innovative and creative and look to solutions, but to feel, to only think about the safety of the organisation and the process rather than the person itself, then.' (HR practitioner – Organisation A)

Furthermore, there was some suspicion of mediation among trade union representatives. Commentators have suggested that mediation may help management to stifle legitimate resistance and strengthen control over organisational systems of dispute resolution (Colling, 2004). Certainly, where representatives had no experience of mediation, there was concern that it threatened to undermine their representative role and their ability to challenge managerial decisions. A union official in a public sector organisation in which an internal mediation scheme was introduced explained that it:

'was regarded with great suspicion because some union representatives felt it was a way for management to pull the union's teeth.' (Union representative – Organisation A)

In this case, trade union representatives had subsequently become enthusiastic advocates of mediation after becoming closely involved with its introduction. However, in Organisation B, a private sector business which enjoyed relatively positive employment

relations, the need for mediation was questioned because union representatives felt that existing informal mechanisms were adequate. The largest union within Organisation C had also declined to become involved in mediation training. While they saw mediation as a positive development they felt that having trade union representatives as mediators could blur the lines of their representative role and lead to a conflict of interest.

There were also concerns over the sustainability of in-house mediation schemes. In particular, mediators faced problems in finding time to combine mediation with normal duties. The most extreme illustration of this was in Organisation C, a large local authority, where there was just one mediator who also co-ordinated the scheme:

'People had moved, people were doing two jobs and people, a couple retired and people were just finding their day job more and more pressured so it was the facility time or time out. Some people, the more senior they were the more they were able to release themselves really, to manage their own diary and made time. The less senior, the more front line, if you worked on an information shop or something like that, you know they needed it in triplicate before they could come out to see people'. (HR practitioner – Organisation C)

Hence there was a real fear that if key personnel left the organisation or moved into different roles that schemes would struggle. In Organisation C, while the mediation scheme had survived, there was a view that dispute resolution had move down the agenda 'to the bottom of the pile' in the face of immediate concerns over redundancy and restructuring. In some respects, this reflected a broader concern that conflict management was seen as peripheral by senior management. Against this backdrop, winning the necessary investment and support to develop innovative approaches was very challenging.

5.4 Summary

Given the changing landscape of conflict resolution the ability and willingness of organisations to develop innovative approaches to conflict management has become increasingly important. There was some evidence in the organisations within our sample that the revisions to the Acas Code of Practice had encouraged them to consider ways to promote early and informal resolution. However, procedural reform was generally focussed on improving the efficiency and speed of decision making while innovation was generally limited to the introduction of internal mediation schemes and/or the use of mediation training to develop conflict management expertise and capacity.

Certainly, our evidence suggests that workplace mediation can provide an effective way of resolving specific disputes. Perhaps more importantly, we found that the introduction of in-house mediation schemes can provide a channel through which attitudes and behaviours of key actors are challenged and transformed (see also Saundry et al., 2013). This is partly due to the acquisition of new competencies and an increased focus on resolution. In particular, the training process can give participants an opportunity to understand different perspectives and build high-trust relationships.

Nonetheless, it is also clear that the development and extension of mediation faces significant challenges that are indicative of barriers to broader innovation. Firstly, there is resistance from organisational actors who see their conventional roles within structures of authority and dispute resolution potentially undermined. Notably, operational managers feared the potential consequences of referring cases to mediation and so admitting their inability to manage the issue themselves. Furthermore, there is a danger that mediation schemes become dependent on a small number of individuals and therefore fragile in the face of organisational change. However, perhaps the most

fundamental problem is that mediation is still regarded as an additional tool of conflict resolution rather than part an integrated and strategic approach to the management of conflict.

6. CONCLUSION – IMPLICATIONS FOR POLICY AND PRACTICE

Persistent concerns over levels of employment tribunal applications, costs of managing individual disputes and the consequent impact on economic performance suggest that the management of workplace conflict remains a fundamental policy issue (CBI, 2011). In recent years, successive governments and policy organisations have sought to reduce regulation, encourage more flexible informal approaches to disputes and promote the use of alternative dispute resolution (ADR) processes, in particular mediation. Most recently, the increase in the qualifying period to two years, the introduction of tribunal charging and new measures over settlement agreements all appear to be designed to reduce the perceived risks that employers face when ending employment relationships. At the same time, the development of early conciliation, through Acas, aims to resolve disputes before they reach the employment tribunal.

To some extent, our research reinforces the belief that the spectre of litigation shapes the behaviour of managers and the way that organisations address workplace conflict. It deepens the sense of unease that many line managers feel in dealing with difficult issues and ensures that legal compliance and the application of procedure become the main focus of HR advice and intervention. However, this is only one factor – in reality our findings suggest that changes in the nature of workplace relations and in the structure of the HR function are the main obstacles to successful dispute resolution.

Importantly, the analysis reported above identifies a number of features that would appear to underpin effective conflict management. Respondents highlighted the importance of communication between managers and their staff and the positive role that performance management systems and employee engagement mechanisms can play in identifying and addressing conflictual issues. However, a recurring theme across the sample was the centrality of employee representation in achieving early and informal resolutions (Saundry et al., 2011). The involvement of employee representatives had three main benefits: firstly, they were able to help identify conflict at an early stage which might otherwise have been suppressed; secondly they were able to help to develop joint approaches and solutions to conflict; and thirdly, even within formal situations, representatives were able to manage employee expectations, uncover mitigating factors and limit the severity of formal sanctions. In short, they were able to act as intermediaries between the employee and employer - without this there was a much greater likelihood that informal discussions would not take place and parties would adopt defensive postures which would only escalate the issue.

Employee representation alone was not enough – just as representatives could promote informal resolution, they could also adopt adversarial approaches with the potential to escalate individual employment disputes. The key ingredient was the existence of high trust relationships between representatives, managers and HR practitioners. Where there was reciprocity and trust, managers and representatives had the confidence to go outside the process, to exchange their views and explore possible solutions. Where this was not the case, parties would cling to procedure for fear that any ‘off the record’ discussion would be used against them at a later date. Trust was, in part, related to broader collective issues and was consequently vulnerable to rapid organisational change. However, it also revolved around the extent to which employee representatives felt that they had a genuine voice within the organisation.

The role played by HR practitioners was also particularly important. Just as employee representatives acted as a buffer between employee and manager, HR practitioners provided a link between the representative and the manager. Respondents reported that managers lacked the confidence and sometimes the capability to deal with conflict. For managers within unionised environments, dealing with experienced and relatively well trained representatives could be daunting. In this context, HR practitioners were an important source of expert advice and guidance but they also played a coaching role

which helped managers develop the confidence to address difficult issues and also to explore informal and creative options for resolution.

We found however, that structures of informal resolution were under significant pressure. Perhaps most obviously, the growing representation gap in British workplaces means that the possibility for informal resolution in many cases is extremely limited. While in some contexts, managers and employees will be able to discuss issues and seek resolutions with no third party intervention, we would suggest that in most cases, and particularly those involving sensitive personal matters, this will be problematic. Not only will many employees find it difficult to be open with their managers, but we know that managers themselves find such situations challenging (Rollinson et al., 1996; Cooke, 2006).

Furthermore, changes in the structure of the HR function have left line and operational managers responsible for conflict management and dispute resolution. This is not only problematic given the concerns over managerial capability outlined above, but accentuated by two factors which we found were encouraging risk averse and formalised responses to conflict. Firstly, the potential threat of litigation limited the extent to which managers addressed issues and were then prepared to take calculated risks in dealing with them in an informal manner. Secondly, and perhaps more importantly, line and operational managers were being asked to take on the onus for dealing with conflict at the same time that pressures to reduce costs and increased efficiency were intensifying. Conflict management was some way down the agenda for managers whose own performance in this regard was rarely measured or assessed in any systematic way (Teague and Roche, 2012). This also reflected broader organisational priorities – in short conflict management did not appear to be seen as a strategic issue. Just as operational managers are in need of support, HR functions are not only being slimmed down but also reshaped into more centralised and/or remote services. We do not have enough evidence to assess the impact of these changes as yet, however, there is a danger that these developments will create a resolution gap which is not being filled by enhanced skills and capability.

The extent to which organisations are developing new, creative approaches to deal with the deficit in conflict management capacity is unclear. There was certainly evidence within our sample of a desire to promote informal resolution and in some cases explore the introduction of mediation (Rahim et al., 2011). In particular the introduction of the revised Acas Code of Practice in 2009 prompted organisations to revise policy and procedure, consider the use of mediation and inculcate less formal approaches to disciplinary and grievance issues. Where mediation had been introduced, there was evidence of positive direct and indirect impacts of in-house mediation (see Latreille, 2011). The mediation schemes within three of the organisations in our sample had a high success rate and reported sustainable resolutions in a significant number of difficult cases. Perhaps more importantly, the process of mediation training appeared to develop a more resolution focussed approach to conflict and, where managers, HR practitioners and employee representatives, were trained together also helped to establish high-trust relationships which underpinned wider processes of informal resolution. Furthermore, where employee representatives were involved in the delivery and administration of mediation, emerging disputes were more likely to be mediated and resolved.

Despite the benefits outlined above, we found clear limitations. In particular, managers were sceptical of mediation seeing it as both impinging on their authority but more importantly as an admittance of their failure to manage conflict efficiently. This led to mediation sometimes being used as a process of last resort as opposed to an informal early intervention. There were also structural barriers that hampered any notion of 'cultural change' (BIS, 2011b). In large organisations, where management of conflict had been devolved to the line, wholesale mediation training of operational managers was too costly and time consuming. Thus it could be argued that models of mediation based

around structured schemes populated by accredited mediators may not be flexible enough to deliver the more fundamental organisational changes envisaged by the current government and proponents of mediation.

Perhaps the biggest challenge for organisations is in developing conflict management capacity among line and operational managers. However, our findings suggested that traditional training may not be the answer and pointed toward the success of coaching, shadowing and mentoring systems. Moreover, even where mediation schemes may be impracticable the development of mediation skills among managers may have a role to play. More fundamentally, we would argue that organisations need to recognise that conflict management is a strategic rather than a transactional issue and locate it within the core competencies of their managers and accordingly the criteria on which they are recruited, developed and appraised.

The extent to which organisations are likely to re-appraise their approach to conflict management is questionable given the general thrust of the current government's approach to employment regulation. Interestingly evidence from the USA has suggested that increasing use of ADR has been driven, among other factors, by the growing threat and cost of litigation (Colvin, 2003). In short, employers have been forced to innovate to reduce their exposure to court action. However, in Great Britain, policy has been aimed at substantially reducing the risks associated with employment termination. Therefore, we would suggest that this will also reduce the incentive for employers to invest in their staff and develop more creative ways of minimising and resolving conflict. Furthermore, if employers respond to a de-regulated employment environment by simply side-stepping fair process, high-trust workplace relations which underpin informal approaches to conflict resolution could be fundamentally eroded.

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