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Understanding the behaviour and decision making of employees in conflicts and disputes at work

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About Labour Market Analysis & Minimum Wage

Labour Market Analysis is a multi-disciplinary team of economists, social researchers and statisticians based in the Labour Market Directorate of the Department for Business, Innovation and Skills (BIS).

Our role is to provide the evidence base for good policy making in employment relations, labour market and equality and discrimination at work. We do this through:

- conducting periodic benchmark surveys
- commissioning external research reports
- conducting in-house research and analysis
- assessing the regulatory impact of new employment laws
- monitoring and evaluating the impact of government policies

We publicly disseminate the results of this research through the BIS Employment Relations Research Series and other publications. For further details of LMA's work, including PDF versions of all our publications, please see our web pages at:

About this publication

Foreword

This publication was produced in May 2011 and at this time the Department for Business, Innovation and Skills (BIS) leads work to build a dynamic and competitive UK economy by creating the conditions for business success, promoting innovation, enterprise and science and giving everyone the skills and opportunities to succeed. To achieve this, we will foster world-class universities and promote an open global economy.

Within the Department the Labour Market Analysis & Minimum Wage team provides the evidence and information that underpins policy making and delivery in the Labour Market Directorate. This involves an extensive programme of analysis, research and evaluation on areas including domestic and European employment legislation; labour market flexibility and diversity; employment and industrial relations; and monitoring developments in ACAS and other organisations in the employment relations area.

This report reviews the literature on the factors that may influence the behaviour of employees who are involved in a conflict or dispute at work. The aim is to inform the debate about how to encourage parties to resolve such problems earlier and more informally rather than through employment tribunals. The focus of the review was, therefore, on understanding the early stages of a conflict or dispute, before a tribunal claim may be lodged.

We hope that you find this report of interest. Electronic copies of this and all other reports in our Employment Relations Research Series can be downloaded from the BIS website. (We have discontinued publishing printed copies). A complete list of our research series can be found at the back of this report.

Please contact us at labourmarket.analysis@bis.gsi.gov.uk if you would like to receive regular email updates on our research, new publications and forthcoming events.
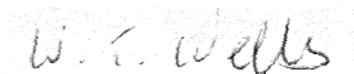
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Executive summary

This review was commissioned in an attempt to understand how employees behave, and influences on that behaviour, during workplace conflicts and disputes, in the period leading up to an employment tribunal claim if one is made.

Much of the literature reviewed emanates from the USA and deals with a range of behavioural theories. While these theories are valid for workplaces in both the USA and the UK, it is important to understand the differences between the legal context and the workplace dispute resolution systems in the USA and the UK. The differences between these two systems are likely to have an impact on the behaviour of both employers and employees in the USA and the UK, although it should be borne in mind that the overall psychological theories concerning behaviour around the issue of conflict will remain valid for employees in both countries.

This review found that the profile of employees who report workplace problems in the UK is different to that of those who go on to register employment tribunal (ET) claims. Employees registering ET claims tend to be male, older, and with longer tenure, compared with those experiencing workplace problems in general, who are, in comparison, younger, female and with lower tenure. This suggests that, although certain groups of workers are more likely to experience problems at the workplace, these are not necessarily the same types of workers who are most likely to make a tribunal claim. The reasons behind this are unclear.

UK survey evidence provides information on the actions taken by employees to resolve workplace problems. This demonstrates that the majority of employees seek advice or support in dealing with the problems they experience. However, it also suggests that a significant minority do nothing, but would like to act, indicating capability issues for some. UK evidence also suggests that the first point of contact for advice and support is often that of the workplace rather than external sources, suggesting that employees do make efforts to resolve conflicts internally before resorting to outside help.

Further, there is a relatively low take-up of mediation, which is at odds with an expressed acceptability of mediation for resolving workplace disputes. This may be the result of lack of awareness or availability of mediation, but it is also possible that attitudes to hypothetical situations addressed in the surveys studied in this review may not reflect behaviour in actual workplace disputes.

There is less research in the UK context on why employees behave the way they do during workplace conflicts and which factors influence that behaviour. Much of the evidence that this review has drawn on in order to explore this question comes from the US, where there is a wide-ranging literature on the different types and models of conflict. More narrowly, disputes in the employment context have a number of specific characteristics. Many of those involved have ongoing relationships with each other and there may be

differences in status between the parties. There is also a wide range of dynamics associated with employment-related disputes. For example, employee disciplinaries have a different character to employee grievances.

There is a wide range of conflict management styles, and there are also different factors that determine whether or not a conflict is escalated. The way in which employees approach resolving conflicts is also likely to be affected by issues such as trust and the perceived likelihood of success of reaching agreement. Evidence on conflict management styles suggests that managers who adopt strategies for resolving conflict based on collaboration and problem-solving are likely to engender trust and are more likely to be successful at resolving conflicts. Employees, in turn, are more likely to adopt problem-solving strategies where there is a desire to reach an agreement, and the anticipation of achieving one.

A number of theories can explain employee behaviour in a conflict situation. For example, under the theory of attribution bias, if an individual attributes the event to the dispositional characteristics (ie personality or character) of the individual who caused the event, this can lead to anger and a desire to seek to restore justice.

Under the loss aversion theory, individuals, when faced with a sure loss, tend to gamble, even if the expected loss from the gamble is larger. In an employment context, this may lead to those faced with job loss, particularly those with long service (enhanced loss aversion), to initiate a claim.

Under the reactive devaluation theory, individuals involved in a dispute tend to diminish the attractiveness of an offer or proposed exchange simply because it originated from a perceived opponent. In this case, a compromise proposal is rated less positively when proposed by someone on the "other side" than when proposed by someone seen as neutral or an ally.

Under the theory of optimistic overconfidence, individuals are often overconfident in their predictions concerning the outcome of future events. The implication of this for dispute resolution is that disputants may be unwilling to settle a dispute if one or both parties overestimate their chances of prevailing in litigation.

This review has identified some key organisational and social factors influencing employee behaviour. First, and perhaps foremost, there appears to be consistent evidence, mainly from the US literature, pointing to the importance of perceptions of organisational justice in terms of responses to conflict, and the avenue taken to resolve conflict, including claiming behaviour. Three types of organisational justice are identified in the literature:

- distributive justice, which refers to the perceived fairness of outcomes;

- procedural justice, which refers to the perceived fairness of the procedures by which outcomes are determined; and

- interactional justice, which refers to the perceived fairness of interpersonal treatment.

- Whilst all three appear important, it also appears that procedural and interactional justice can compensate for low levels of distributive justice.

The procedural justice literature offers a number of prescriptions for ensuring that processes are fair and consistent. Prescriptions for achieving procedural justice include putting into place a procedure that allows for employee input, provides for consideration of that input, and is remedial in nature. Inaction in response to discontent voiced by an employee is likely to exacerbate feelings of injustice. In addition, clear explanations for unfavourable outcomes (the type and adequacy of explanation can mitigate against negative reactions) are seen as important.

Trade union presence in an organisation also appears to play a role, being associated with lower dismissal rates. This may be due to issues such as trade unions being able to present an employee's case to a manager in a credible way, which in turn may restrain employee actions, higher employee engagement as a result of trade union presence, enabling more disputes to be resolved at an early stage, or trade unions being able to restrain managerial action. However, the influence of trade unions is likely to be affected by the nature and quality of their relationships with managers. In the absence of high-trust relations, union representatives may adopt more adversarial approaches in defending members.

In terms of extraorganisational factors influencing employee behaviour and decision-making, guidance from sources such as colleagues, family and friends may encourage individuals to consider claiming. However, the most common source of advice for claimants was a lawyer, followed by trade unions and Citizens Advice. Overall, research has found that when employees are unsure about the causes of workplace events, they are more likely to be influenced by the opinions of other people, for example, if they cannot directly attribute the cause of an event to a particular individual, meaning that the cause may be open to interpretation.

There is evidence to suggest that, when deciding whether to follow advice, individuals are more likely to give more weight to their own opinion than that of their adviser, although they tend to be more responsive to advice from those with greater age, education and life experience, or if they have paid for advice. However, it should be noted that this evidence does not stem from an employment context.

The review has also found that economic factors – ie economic rewards from winning a case – play a role in decisions to make a claim, even though economic rewards are often not accurately estimated. However, the influence of economic factors was not as strong as the influence of feelings of injustice and poor treatment.

Conclusions and policy implications

The literature examined for this review suggests that a relatively high proportion of those experiencing employment problems who did nothing to try to resolve them, did however want to act. Further, it has been suggested that unrepresented workers may find it particularly difficult to resolve workplace

problems. Taken together, the evidence suggests the existence of barriers for some groups for resolving workplace problems.

The evidence also suggests that the majority of employees experiencing workplace problems do something to address their problems. Compared with other types of problem, those experiencing workplace problems are more likely to seek advice or support. However, only a small proportion of employees experiencing problems at the workplace go on to register employment tribunal (ET) claims.

Understanding the behaviour and decision-making of employees at an individual level in the period before a claim is made, and potential influences on that behaviour, was the main aim of this review. To provide potential explanations, a wide range of literature from a variety of disciplines has been considered. It should be noted, however, that this review found no evidence that follows individuals over time in the period up to making a claim, and so the evidence reviewed relates mostly to retrospective views, snapshots or theories.

Research on conflict management styles suggests that employees are inclined to adopt problem-solving and compromising strategies where there is a desire to reach an agreement, and the anticipation of achieving one. Importantly, the use of engagement and problem-solving strategies by managers has been linked to trust and therefore the style adopted by managers may influence employees' perception of the likelihood of reaching an agreement.

Attributions of responsibility appear to play a role in the development of conflict, and prospects for resolution. Whilst the research reviewed does not appear to be drawn from the employment context, or to the specific case of ET claims, it may be the case that such generalised psychological processes also play a role in the development of conflict at work.

Crucially, employee perceptions of justice appear to be key in determining whether a conflict escalates, and how employees seek to resolve disputes in the workplace. They also appear to be key in determining claiming behaviour. Other behavioural influences include loss aversion, which is particularly likely to affect employees with long service. Optimistic overconfidence can also affect behaviour, and there is evidence to show that both sides have overly optimistic expectations of the outcome of a tribunal claim.

In terms of information, advice and guidance, evidence suggests that in the majority of cases, employees favoured workplace sources over external sources as the first point of contact. This does suggest that in most cases, employees seek to resolve their problems internally first, before seeking help from outside the organisation. Where external sources of help are sought, the most common sources identified were a trade union, Citizens Advice or a solicitor, or Acas. It would also appear, however, that social guidance – advice and information from friends, family and co-workers – was important in explaining the transition from an in-house dispute to an external legal claim – claimants appeared motivated to claim following encouragement from family, peer groups or a trade union. Other research has suggested that individuals

are likely to follow advice where they have paid for it, and the adviser is known to be expert and trustworthy.

A range of policy implications flow from these conclusions. These centre around:

- encouraging more realistic expectations of the outcome of a formal claim;

- encouraging the development of trust within organisations: if the parties involved in a dispute have a basis of trust, any conflict that they enter into is more likely to be resolvable without escalation;

- building empathy between individuals in the workforce, which may help to contain the escalation of conflicts;

- avoiding escalation by reinforcing procedural and interactional justice within organisations. The role of line managers is particularly key in this regard;

- helping individuals to value the offer from the other party, by building trust and, where feasible providing expert and impartial information, advice and guidance, either internally or externally;

- valuing and encouraging the positive role that trade unions can play in helping to resolve workplace disputes (in workplaces where there are recognised trade unions);

- considering how to encourage greater use of information, advice and guidance by ensuring it is actually followed. This could involve framing information, advice and guidance in such a way as to be influential in affecting behaviour. This could include accurate information about the financial outcomes of and length of time spent on an employment tribunal case, and the advantages of seeking alternative ways of resolving a dispute, possibly involving testimonials or case studies.

1. Introduction

Employment tribunals play a critical role in protecting employment rights and ensuring fairness at work. However, they can impose considerable costs on those involved, and on the taxpayer. As such, there has been a continued policy focus on encouraging earlier and more informal resolution of disputes at the workplace. To this end, the Department for Business, Innovation & Skills (BIS) issued on 27 January 2011 a consultation document aimed at improving the way workplace disputes are resolved[1]. The aims of this consultation included gaining a better understanding of the current use of mediation as a way to resolve disputes at an early stage, its costs and benefits and whether there are any barriers to its use, and if so, how these can be overcome. This report will be used by policymakers to consider (alongside stakeholders' views on the consultation) actions the Government could take to encourage greater resolution of disputes within the workplace.

Other key policy questions include how best to frame the nature of information and advice provided, and identifying how and when best to intervene.

This review was commissioned following an initial examination of the evidence conducted internally by the Department of Business, Innovation and Skills (BIS) aimed at understanding:

- (a) how potential claimants (employees) decide which pathway to follow in order to resolve a dispute, and

- (b) the characteristics of these claimants at different stages of the process up to the point of deciding to register a claim.

Information was identified on the characteristics of individuals reporting the experience of workplace problems, and on the characteristics of those initiating tribunal claims. Evidence was also found about the characteristics of those individuals seeking advice for workplace problems, and the sources of advice accessed.

However, this examination also identified a number of evidence gaps. These included an apparent lack of available evidence on employees' behaviour and decision-making up to the point of making a claim, including understanding what incentivises particular behaviours. There was little evidence from the studies identified on the effect of employees' personality or behavioural types in the choice of route taken in employment disputes. It was acknowledged, however, that personality may be only one factor, and a range of influences - from the situation in the workplace to relationships with management, and institutional processes - were likely to have an effect on the routes taken. This

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[1]   Resolving workplace disputes: A consultation. BIS, January 2011.

review was primarily commissioned in an attempt to fill the above evidence gaps.

This report is set out as follows:

- chapter 1 sets out the method of the review and its limitations

- chapter 2 reviews the available data on who experiences workplace problems and registers ET claims

- chapter 3 reviews the legal context surrounding workplace dispute resolution in the UK and the USA

- chapter 4 reviews some of the available data on what actions individuals take in response to problems at the workplace

- chapter 5 reviews literature on conflict process and dynamics and how they may help explain employee behaviour

- chapter 6 reviews literature on the social and organisational context, in order to help understand what other factors may influence employees' decision-making and behaviour

- chapter 7 sets out the main conclusions and evidence identified in the review

- chapter 8 sets out potential policy implications emanating from this review

2. Method

The main stages to the review methodology were:

- developing the review protocol (including defining the research question, devising the search strategy, defining the inclusion criteria, devising quality assessment criteria, devising data extraction and data synthesis strategy).

- conducting the search and selection phase

- data extraction and synthesis

Developing the review protocol

Defining the review question

The main purpose of this review was to answer the question:

What is known about or theorised to influence employees' behaviour (including advice-seeking behaviour) and decision-making from when a conflict arises in the workplace up to the point of making a tribunal claim (if made), including understanding what incentivises employees to behave in a particular way?

This review was therefore focused on:

- a limited stage in the process, from when a conflict or dispute initially arises, through seeking advice and information, up to the point of registering a claim with a court or tribunal. Therefore, this review was not concerned with behaviour and decision-making once the legal process has started (for example, the review was not concerned with decisions on whether to settle a claim or continue to a tribunal hearing). This focus is illustrated diagrammatically in figure 2.1 below;

- the individual employee and what influences their behaviour in a workplace dispute. Other research has investigated what factors influence the number of ET claims at an aggregate level (e.g Burgess et al., 2001; Goodman et al., 1998). For example, fluctuations in economic conditions are likely to influence the number of redundancy cases at an aggregate level, although whether and how an individual comes to make a claim is a somewhat different level of analysis.

- employee behaviour, and not that of employers. Although, as organisational context and managerial behaviour are obvious influences on employee behaviour, and organisational responses may be required to more effectively resolve disputes at an earlier stage, they have been considered to some extent.

- conflicts and disputes in the workplace, predominantly between an employee and their manager or employer, and to a lesser extent, interpersonal conflict more widely.

- the negative effects of conflict. There is a literature on the potentially positive effects of conflict for organisational performance that is not covered.

In addition to the main review question, BIS identified a number of related questions of interest. These are:

- what psychological theories of handling disputes in general can contribute to our understanding of behaviour, and whether behaviour is different in, or specific to, employment disputes?

- the effect of personality on conflict handling and how it may influence behaviour

- the relationship with the social and organisational context within which disputes occur

- information and advice seeking behaviour, including its impact on decision-making

- which sources (eg family, friends, legal advisers, Citizens Advice, trade unions) are the most influential on decision-making behaviour?

- individuals' motivations in dispute resolution and what shapes these

- the extent to which behaviour in employment disputes differs from other types of civil disputes

- the extent to which financial incentives influence individual behaviour in approaches to resolving disputes

- whether there are differences in attitudes, behaviour, and responses to incentives amongst different sectors of the population

- the relationship with institutional processes to resolve disputes.

The search strategy

This review used multiple methods to identify relevant material. These included:

- an email consultation with an agreed list of nine academic experts from a range of disciplines (including economics, law, organisational behaviour, psychology etc.), and 13 research or policy staff from stakeholder organisations. In addition, a further two academics specialising in the psychology of conflict were contacted, of which one responded with broad comments. Seven of the 11 academic experts responded to the consultation, in addition to five stakeholder organisations. The email

consultation asked respondents to identify key (un)published research papers relevant to the research question;

- a search of relevant government, stakeholder, and research institute websites;

- a search of selected electronic databases using an agreed list of search terms. Three databases were selected: Psychinfo, Econlit and Web of Science. These databases were chosen as they provided a balance between generalist and specialist literature in the areas identified by BIS as of interest;

- citation searching using Google scholar;

- reference checking of selected studies.

With respect to the search of electronic databases, a list of search terms was agreed at the initial set-up meeting for this review. A full list of these is included in appendix 1. With limited time and resources available, highly specific searches were conducted using combinations of search terms rather than very general searches using terms in isolation.

The inclusion criteria

The key inclusion criteria were as follows:

- studies published in the past 15 years (ie from 1995 onwards)

- studies published in English

- studies relating to the main research question

- both theoretical and empirical studies were included. However, empirical studies relevant to the main research question were required to meet certain quality assessment criteria.

In conducting the review, we have also included papers outside of these criteria where they have added useful context, or where they have been identified as a seminal paper in the area of interest. In addition, it should be noted that as the scope of the review covered a vast terrain from conflict, conflict resolution, alternative dispute resolution, industrial relations, economics, law and social psychology, there was necessarily some reliance placed on reviews of research areas.

Conducting the search and selection phase

Research papers that were identified through the search of electronic databases were screened, using their title and abstract where available. In cases where the paper appeared to meet the inclusion criteria, the full article was retrieved for further consideration. In cases where only the title of the paper was available, the full article was only retrieved in circumstances where this clearly indicated that the paper was relevant.

In total, the search of electronic databases retrieved over 500 abstracts. 64 of these were initially selected as potentially relevant, and 29 full papers were retrieved. In addition, the consultation with academic experts, stakeholders and other sources generated a significant number of other papers for consideration.

11 of the identified papers detailed single, empirical research studies relevant to the main research question. These were subjected to a quality assessment using a traffic light system. For a summary of these papers and their quality assessment, see Table 2 in Appendix 3.

Data extraction and synthesis

Data was extracted from included studies using an agreed data extraction form (see appendix 2). Research findings were then mapped against the key research questions.

Limitations

The main limitations of this review relate to the constraints placed on it in terms of timescale and resources. The entire review was conducted in less than three months and with limited resources. With these constraints, this review cannot hope to be comprehensive. Nor was it possible to review in detail some of the material uncovered (for example, the review uncovered a wealth of material on conflict management styles and whilst it was possible to provide an overview of the main findings in relation to those styles, it was not possible to review all the relevant studies in depth). However, a wide consultation with experts from a range of relevant disciplines and relevant stakeholder organisations will have mitigated against the risk of omitting key papers. The review, therefore, provides an indication of the evidence available in relation to the main research question(s).

A note on the quality of the studies reviewed

Direct, contemporaneous evidence on what affects employee behaviour and decision-making in the period leading up to the decision to proceed (or not) to an employment tribunal is not available. That would require following a cohort of employees over time, understanding their experiences of conflict and their reactions to it.

The review has drawn on a wide range of empirical and theoretical evidence. This has included:

- survey evidence from the UK (these tend to be large-scale, representative samples of a particular population, funded by Government departments or agencies, and can be considered to provide robust and reliable evidence) e.g 2007 Civil and Social Justice Survey ; 2008 Fair Treatment at Work Survey (FTW)

- (reviews of) experimental studies (whilst these studies have themselves been adequately designed, there are limitations in terms of both study populations (sometimes involving exclusively students) and transferability

both to the real world and, in particular, the employment context) e.g Arnold and Carnevale, 1997; Bonaccio et al., 2006

- US studies on individuals' reasons for (not) making a claim related to employment. These studies appear to be designed appropriately, and link notions of organisational justice to claim-making behaviour, but are subject to limitations i.e recall bias, post-hoc rationalisation, and the applicability to the UK context eg Lind et al., 2000; Goldman, 2003.

- work discussing social psychological theories and how these may relate to issues like mediation or employment disputes. The evidence supporting psychological biases in decision-making tends not to be drawn from the employment context, however UK survey evidence seems to support the operation of some of these biases with respect to tribunal claims, eg Korobkin, 2006; Mnookin, 1993.

In addition, the wide scope and short timescale of the review has necessitated the use of a number of research reviews. Some of these have focused on providing an overview of empirical evidence in a particular field e.g Bonaccio et al., 2006, and others have focused more on describing theories in an area of work (eg Lewicki et al., 1992). In the former case, it has not been possible within the timeframe to assess individual studies contained within the reviews.

Figure 2.1:Pathways to dispute resolution

Workplace	Outside workplace	Tribunal service and Acas	Dispute resolved

Diagram contents:

- Conflicts at work
- Workplace dispute resolution
- External advice: Actions taken
  - Pay and workers rights helpline
  - CAB
  - Acas helpline
  - Acas PCC
  - Acas Mediation
  - Private Mediation
  - Other advice
- Accepted ET claims
- Rejected claims
- ET claims disposed
  - Successful at hearing
  - Unsuccessful at hearing
  - Struck out (not at a hearing)
  - Dismissed at a preliminary hearing
  - Acas conciliated settlement
  - Private Settlement
  - Withdrawn
- Resolution of employment dispute

3. Legal context in the UK and the USA

Much of the evidence cited in this review comes from the US, where the legal context that frames the handling of workplace disputes differs significant from that which operates in the UK. While it can be argued that much of the evidence examined in this review can also apply to a UK context, it is nevertheless worthwhile to highlight some of the differences in the two systems.

Employment tribunals in the UK

Employment Tribunals (until 1998 known as Industrial Tribunals) are independent judicial bodies which determine disputes between employers and employees over employment rights. Employment tribunals are made up of three people, comprising a legally qualified employment judge, plus two lay members, one of whom has been chosen as an employee representative and the other as an employer representative. In some cases, however, the employment judge will sit alone, particularly when there are any preliminary legal arguments. The tribunals are serviced by regional offices, which process the claims and arrange the hearings.

Employment Tribunals are seen as a distinctive feature of the British system of administrative law that aim to provide speedy, accessible justice. They play an integral part in the provision of fairness at work and the enforcement of individual employment rights. For people concerned that their employment rights have been infringed, they are the place where, when other methods fail, they can be finally resolved.

Employment Tribunals acquired their present role, to adjudicate on disputes arising between individual employers and employees, with the Redundancy Payment Act in 1965. Under the Industrial Relations Act (1971), Employment Tribunals acquired jurisdiction over Unfair Dismissal, which in terms of the volume of applications has proved to be the most important jurisdiction.

Tribunals were originally intended to provide a relatively cheap, quick and informal means of settling employment rights disputes between employees and employers. While they are still less formal than civil courts, they have become more legalistic and formal as the law has become more complex.

Employment Tribunals hear cases based on the following main areas of employment law:

- equal pay

- age discrimination

- sex discrimination

- race discrimination

- disability discrimination

- discrimination on the grounds of sexual orientation

- discrimination on the grounds of religion or belief

- business transfers

- discrimination on the basis of trade union membership/non-membership, or activities

- time off rights for pension fund trustees, trade union and safety representatives

- wages issues, including national minimum wage and unlawful deductions

- wrongful dismissal (breach of contract)

- unfair dismissal

- redundancy

- "whistle blowing"

- working time, part-time working and fixed-term working

- the right to be accompanied, or to accompany a colleague at a disciplinary or grievance hearing in the workplace

- the right to campaign for or against trade union recognition

- dismissal for taking lawful industrial action

- parental leave, maternity leave, leave for family emergencies or flexible working

- dismissal for asserting a statutory right

- written statement of employment particulars

- written reasons for dismissal.

However, the majority of claims at tribunals relate to unfair dismissal.

The workload of employment tribunals grew rapidly in the 1990s, with a threefold increase in claims to tribunals between 1991 and 2001, when the number of applications peaked at over 130,000. Although the number of

applications was lower than this in subsequent years, it increased from 86,000 in 2004-05 to 115,000 in 2005-06, and to a new peak of 133,000 in 2006-07.

According to the most recent annual statistics, released on 3 September 2010 by the Ministry of Justice and the Tribunals Service and relating to the period from 1 April 2009 to 31 March 2010, the number of claims to tribunals was rising. Overall, the number of accepted claims during 2009-10 was 236,100, which represents an increase of 56% on figures for 2008-09 and of 25% on 2007-08. The 2009-2010 study states that the increase is due to the increasing number of multiple claims, but also to the current economic climate. However, the most recent quarterly figures show that the number of claims between 1 October and 31 December 2010 declined when compared with the same period in the previous year (a total of 188,600 claims, representing a decrease of 18%).

The reasons for the increase until recently in the number of claims to tribunals are varied. They reflect the increasing complexity of employment legislation, the introduction of new jurisdictions and changes in the structure of the economy and composition of the labour market. However, there is also evidence that they reflect an increase in problems occurring in the workplace and in the propensity of employees to resort to litigation when workplace disputes arise. The significant growth in applications is explained largely by an increase in the number of multiple cases (where two or more people bring cases arising out of very similar circumstances, often backed by trade unions). This practice is common in areas such as equal pay and working time.

The employment tribunals disposed of (dealt with) 112,400 claims in 2009-10, an increase of 22% on the previous year. In terms of jurisdictional claims, around a quarter (95,200) were brought under working time legislation. A total of 126,300 claims were brought under unfair dismissal legislation, a figure that is 17% higher than in 2008-09 and 62% higher than in 2007-08, a rise that is attributed to the economic situation.

The average award from an employment tribunal for a claim based on unfair dismissal was £8,120 in 2009-10. The average award from an employment tribunal for a claim based on race discrimination was £18,584, £19,499 for sex discrimination, £52,087 for disability discrimination in 2009-10 (Employment Tribunals Service Annual Report 2009-2010).

Dispute resolution in the USA

The information in this section is based on information provided by the US Department of Labor and the US Federal Mediation & Conciliation Service (FMCS).

Organisations are encouraged by the FMCS to put into place dispute resolution procedures that are designed to help resolve disputes within the organisation. If, however, the parties to a dispute cannot resolve it internally, the parties may take the issue to a civil court.

The US employment law system differs significantly from that of the UK and it is in general difficult to make generalisations, as legal provisions vary from state to state. In many states, employees do not have an employment contract

and therefore it is not possible for employees to sue employers for breach of contract. They can, however, bring a case for breach of statutory provisions in areas such as hours of work and wages (minimum pay at national or state level).

There is no employment tribunal system in the US and individual employees may be governed by the concept of "employment at will", giving employers the right to terminate employment contracts at will. If an employee is covered by employment at will, an employer may dismiss or demote an individual for any reason or for no reason.

Employees not covered by employment at will include:

- those represented by a trade union, for whom a collective agreement may restrict the employer's right to terminate at will;

- those who have a written employment contract; or

- those who are subject to a provision offering security of employment.

Further, if employee is a member of a protected class, employers may have to prove that a dismissal was carried out for a good reasons, such as poor performance. Legislation protects certain classes of individual from dismissal due to their membership of a protected group. These include:

- race or national origin

- religion

- sex

- disability

- age

- veteran status

- those engaged in trade union activity.

Dispute procedures

Contracts of employment may include some form of dispute resolution or arbitration provisions. However, for employees without such provisions in their contract, and who are not unionised, if they have been dismissed, there is generally no appeal mechanism other than to take a private lawsuit. The provisions governing this vary between US state.

For unionised employees, the Federal Mediation and Conciliation Service (FMCS) provides mediation, conciliation, fact finding and arbitration services. The core mission of the FMCS is to help employers and unions avoid costly work stoppages and minimise their potentially devastating effects on regional or national commerce. In the FMCS's 2009 annual report, it states that in 2009, FMCS mediated 1,669 grievance mediation cases and helped the parties reach agreement in 1,260 of these.

In terms of contesting unfair dismissal (wrongful termination), there is no Federal wrongful termination law, but rather a variety of Federal laws that, if violated by employers when terminating employees, might constitute wrongful termination. Collectively, such laws are generally called wrongful termination laws or wrongful discharge laws.

Relevant wrongful termination laws allow victims of employer violations to seek relief by filing complaints with the government agencies that enforce the laws, filing private lawsuits, or both. However, because of the variety of laws, legal principles and legal concepts under which unfairly-discharged employees may have legitimate claims of wrongful termination, such cases can be complex. For example, in some cases, such as violations of public policy verses specific written laws, there may not be an appropriate state or Federal agency with which to file a complaint. In such cases, only private lawsuits might provide relief.

Additionally, the doctrine of employment at will is so strong in the US that it can make it difficult to prove wrongful termination.

In order to try to introduce more fairness into the system, the Model Employment Termination Act (META) was developed in 1991. This law protects qualified employees from wrongful termination by requiring covered employers to show good cause for employment termination. It also defines what constitutes "good cause" and makes it unlawful for employers to retaliate against employees for participating in proceedings under the Act. This is not a Federal labour law that requires mandatory state compliance, but any state may voluntarily adopt this Act. It would appear that few have done so.

Implications for this study

As can been seen from the above, there are significant differences between the UK and the US systems for handling workplace conflicts and resolving disputes. In the USA, employees are governed by the concept of employment at will, which means that they do not have any protection against dismissal. The exceptions to this are employees covered by a written contract or collective agreement that contains provisions relating to wrongful dismissal, or employees in certain protected categories, who have strong legal rights that protect them against wrongful dismissal. This is likely to affect the behaviour of both employers and employees.

In the case of employees covered by the employment at will concept, there is likely to be less conflict around the fact of dismissal, as both parties will be aware of the employer's right to dismiss an employee at will.

In the case of protected employees or those covered by collectively-agreed or contractual provisions giving protection against wrongful dismissal, there may be a hiring reluctance on the part of employers, which may be more pronounced than in the UK due to the higher degree of protection of some employees in the USA. There may also be conflicts around performance-related issues that the employer may find difficult to resolve, or feel nervous of resolving, in the case of an employee who enjoys protection against dismissal.

This study looks primarily at the influences on the behaviour of employees in a workplace conflict situation, basing itself to a large extent on a number of psychological theories concerning behaviour around the issue of conflict. While the behavioural theories are valid for both the USA and the UK, it may be that the different employment relations contexts outlined above may have some influence on employee behaviour and this should therefore be borne in mind when reading this study, given that much of the psychological literature we review emanates from the USA.

Summary

This chapter has examined the systems governing workplace disputes in the UK and the USA, in order to set the findings of this review in context. We felt that it was important to highlight the differences between the two systems, as much of the behavioural literature on which this review draws is taken from US studies. Workplace dispute resolution in the UK centres on the employment tribunal system, which is seen as a distinctive feature of the system in the UK. Employment tribunals are less formal than civil courts, although they have evolved as the law has become more complex. The majority of claims to employment tribunals relate to unfair dismissal, and the overall workload of tribunals has increased significantly until very recently, due to a range of reasons.

By contrast, in the USA there is no employment tribunal system and employees who are not in protected categories or who are not covered by contractual or collectively-agreed provisions to the contrary may be governed by the concept of employment at will, under which employers may dismiss individual employees without having to give a reason. For many employees, therefore, there is generally no appeal mechanism against dismissal other than to take a private lawsuit to try to prove that the dismissal has been wrongful.

These differences are likely to have an impact on the behaviour of both employers and employees in the USA and the UK, although it should be borne in mind that the overall psychological theories concerning behaviour around the issue of conflict will remain valid for employees in both countries.

4. Dealing with workplace problems

Before addressing the main research questions, it is worth reviewing the available information on the characteristics of employees who experience problems at work, and ultimately register employment tribunal (ET) claims.

Who experiences workplace problems?

Evidence is available from both the 2008 Fair Treatment at Work Survey (FTW) (Fevre et al., 2009), and also from the 2007 Civil and Social Justice Survey (CSJS) (Pleasance et al., 2008).

Evidence from the 2008 FTW survey shows that the following groups were significantly more likely to report experiencing problems in the workplace:

- younger employees (those aged under 25)

- female employees

- employees who work in routine and manual occupations

- employees with shorter length of service ie up to one year's service

- employees with an income of less than £15K, and between £15K and £25K

- employees with a long-term illness or disability

- gay/lesbian/bisexual employees, when compared with heterosexual employees.

In addition, evidence from the 2007 CSJS shows that the following groups were found to be more likely to report experiencing employment problems:

- lone parents, and those with dependent children under the age of 16

- those who are black, compared with other ethnic groups

- those under the age of 35, and mostly people aged 25 to 34

- individuals who have some qualifications compared to no qualifications.

However, it is not clear to what extent differences in the likelihood of different groups reporting problems reflect differences in awareness and expectations of how they should be treated, or indeed how they are treated.

Characteristics of workplaces experiencing disciplinary sanctions and dismissal

The 1998 Workplace Employment Relations Survey (WERS) has been used to investigate the association between certain workforce characteristics and disciplinary sanction rates (ie disciplinary measures against employees), dismissal rates, and the probability of an unfair dismissal claim being made (Knight and Latreille, 2000). This research found:

- higher disciplinary sanction rates in workplaces with a higher proportion of younger workers and a larger share of ethnic minority employees;

- higher disciplinary sanction rates where the proportion of low-skilled workers was higher;

- workplaces with a higher proportion of female workers had lower disciplinary sanction rates;

The same research found that: the probability of dismissal was highest in workplaces with higher proportions of manual workers and those employed in sales and personal/protective services. Further, in terms of the probability of a dismissal becoming an unfair dismissal claim, the research suggested that higher proportions of manual workers in the workforce increase the probability of a claim. In addition, the non-white ethnic group was associated with a greater probability of an unfair dismissal claim. The research notes that it is not clear whether this finding results from the association between this group of workers and the probability of a dismissal, or from being more litigious or badly treated. It is not clear from the available evidence why some groups are more or less likely to receive a disciplinary sanction, be dismissed or go on to register an ET claim.

Characteristics of employees who register tribunal claims

Evidence on the proportion of employees who experience workplace problems who go on to register an ET claim is available from the 2008 Fair Treatment at Work Survey, which shows that only a small proportion (3 per cent) of employees who report experiencing a problem at work actually go on to register an ET claim.

Comparing evidence from the 2008 Survey of Employment Tribunal Applications (SETA) (Peters et al., 2010) with that available from the 2008 FTW survey shows that the profile of employees who report experiencing workplace problems differs from the profile of claimants.

Whilst younger employees are more likely to report experiencing a workplace problem (from the FTW survey), the SETA survey shows that older employees (those aged between 45 and 54) are significantly over-represented amongst those registering employment tribunal (ET) claims.

Similarly, although women were identified as more likely to report problems in the workplace in the 2008 FTW survey, according to the SETA survey, men were significantly over-represented amongst ET claimants. Whilst employees

with less than a year's service were more likely to report problems (FTW survey), the SETA survey shows that ET claimants had, on average, a longer length of service (a mean of 6 and median of 3 years' service). This may, in part, be explained by an ineligibility to lodge claims save for those relating to day one rights (ie those enjoyed by employees from the first day of service), such as the National Minimum Wage or discrimination.

SETA 2008 found that other groups significantly over-represented amongst ET claimants were:

- ethnic minority groups

- employees with no qualifications (although it was acknowledged that this may reflect the older age profile of claimants)

In addition, SETA showed that the following groups were found to be more likely to be over-represented in ET claims:

- employees with a long-term limiting illness or disability

- those in managerial occupations and those within the occupational groups of process, plant and machine operatives and those in skilled trades.

The actions employees take when faced with employment problems

Evidence is available from Genn's (1999) landmark 'Paths to Justice` survey, and subsequent Civil and Social Justice Surveys (eg Pleasance et al., 2007) on the strategies used by people to resolve employment problems. In addition, evidence is available from the 2008 Fair Treatment at Work (FTW) survey, the 2005 Employment Rights at Work (ERWS) survey, and surveys of various helplines and advice services on advice-seeking behaviour.

Problem-solving strategies

Although now more than 10 years old, Genn's survey demonstrated that individuals took some action to resolve three-quarters of their employment problems. The most common actions taken were seeking advice about the problem (56%) or talking or writing to the other side (52%).The survey identified that, in comparison to other types of justiciable problem, respondents did nothing in a relatively high percentage of cases (16%). The most common reasons given by respondents for not taking action were that respondents did not think anything could be done or that the other side was right (33% and 27% respectively). Just over one in ten who did nothing had taken no action as they felt it would either cost too much (2%), damage their relationship with the other party (2%), take too much time to resolve (4%), or were too scared to do anything (5%). The 2007 CSJS survey found that 6.4% of respondents did nothing when faced with an employment problem, although it is difficult to draw firm conclusions from these figures as the two surveys are unlikely to be comparable. Using data from the CSJS, Balmer et al. (2010) found that 61.2% of those who did nothing about an employment problem wanted to act, suggesting issues around capability. The Genn study found

that in a minority of cases (14%) where a respondent faced a problem, they threatened legal action.

Genn's study (Ibid.), found that roughly three in five respondents facing an employment problem had had some contact with the other side prior to obtaining advice. The vast majority of respondents who had not had such contact had not tried to contact the other side, suggesting that a relatively high proportion made no attempt at resolution prior to obtaining advice.

Advice and guidance

The Civil and Social Justice Survey (Pleasance et al., 2007) has demonstrated that people with employment problems are more likely to seek advice than people with problems involving their rights in general (62% compared with 49%). The review also found that the proportion of individuals seeking advice or support for their problem had risen from 53% in 2005 to 72% in 2008 (this latter figure is consistent with Genn's (Ibid.) study from nearly 10 years earlier, which suggested that 78% of individuals obtained advice to help resolve an employment problem). The findings from the Civil and Social Justice Survey in the case of employment problems drew on a comparable set of problems from the 2008 FTW survey and the 2005 Employment Rights at Work survey (ERWS). This was found to be consistent with data from Citizens Advice, which show an increase in the number of enquiries relating to employment problems since 2004/2005.

The 2008 Fair Treatment at Work (FTW) survey also provides information on sources of advice. The survey found that the majority of employees who sought advice or information for their problems consulted more than one source of advice (54%, FTW 2008). This is consistent with findings from surveys of both the Acas helpline (Thornton A and Fitzgerald, 2010) and the Pay and Work Rights (PWR) helpline (Rutherford I and Achur J, 2010). The former found that following their call to the Acas helpline, 32% of employees or former employees went on to seek advice or assistance from another body. The latter found that following a call to the PWR helpline, 35% of employees went on to seek advice from an external body.

The 2008 Fair Treatment at Work survey found that in the majority of cases (82%) employees chose, at some point, to contact a workplace source, compared with an external provider such as Acas or Citizens Advice (42%).Workplace sources were favoured as the first point of contact over external sources (71% compared with 15%), or family and friends with or without specialist knowledge. In terms of workplace sources, a manager at work (38%), personnel/HR officer (24%) or another colleague at work (23%) were the most common sources of advice or support sought. For external sources of advice, the most favoured sources were a trade union (23%), Citizens Advice or a solicitor (both 9%) and Acas (7%). According to both the FTW and CSJS surveys, legal advisers are consulted by a small proportion of people who have employment problems (9% in FTW 2008, and 14% in CSJS 2007).

An interesting finding from the CSJS is that between 2006 and 2007, there was a notable increase in those with employment problems using the internet

for their problems. This finding was mirrored in the Acas helpline survey and the survey of the Pay and Work Rights helpline.

In terms of the socio-demographic and job-related characteristics of those individuals who seek advice for employment problems, the review found variations in the profile of users across sources of advice. Research (Mitchell D, 2008) has found that the following groups are over-represented amongst those who bring employment problems to Citizens Advice:

- those from Black, Asian or non-white groups

- younger adults, ie those under the age of 35

- those leaving education by the age of 16 years

- workers who were not born in the UK

According to the same research, employees in 'low to middle management`, those who had been with their employer for less than two years, and those paid less than the UK average were more likely to bring employment problems.

Information from the evaluation of the Acas helpline has suggested that compared with the profile of employees in the UK, employees who call the Acas helpline are more likely to be:

- females

- older employees

- employees from workplaces with under 50 employees (Ibid.)

The same research suggested that in terms of occupational groups, managers and senior officials, administrative and secretarial, and personal service occupations were over-represented.

The Pay and Work Rights Helpline (PWRH) survey found that newer employees (those with less than one year's service), employees working for smaller employers, and employees with more than one job were over-represented in the profile of PWRH callers (Ibid.). However, it should be noted that the PWRH was established in order to provide advice on five government-enforced employment rights (such as the National Minimum Wage), and would not be expected to serve a representative sample of employees, as it largely targets vulnerable workers.

Mediation in the context of an employment dispute is a way of resolving disputes without the need to go to an employment tribunal. It involves a mediator, who is an independent third party, who helps the parties to a dispute to come to an agreement and an outcome that both sides are happy to accept. The mediator can talk to both sides separately or together. Mediators ask questions that help to uncover underlying problems, assist the parties to understand the issues and help them to clarify the options for resolving their difference or dispute. Mediation is a voluntary and confidential process and

can involve the mediator talking to both sides separately or together. will only take place if both parties agree. Mediation is a non-binding process - any resulting agreement is not legally enforceable, unless the parties take steps to make it so.

While the evidence base on workplace mediation is not strong, it appears that take-up is relatively low. Evidence from SETA 2008 shows that 23 per cent of ET claimants reported that someone suggested that they use mediation prior to putting in their tribunal claim. Nine per cent of claimants took part in mediation at some point in the process. Of those claimants who received a suggestion to take part in mediation but who decided against it, the most commonly cited reason for not taking part in mediation was that the employer did not want to (45 per cent of claimants). One in ten claimants who had received a suggestion to take part in mediation and did not, said that the reason was that they did not want to. It should be emphasised that this evidence is based on the experiences of those who have made a claim, and therefore does not represent all those involved in an employment dispute.

The relatively low take-up of mediation is at odds with the expressed acceptability of it for resolving workplace disputes. For example, 80 per cent of claimants in SETA said that they would consider using mediation in the future. This finding is consistent with findings from 2008 British Social Attitudes Survey, which suggests that most employees feel that mediation is more acceptable than a tribunal for workplace disputes, and that the majority (71 per cent) would be likely to use the services of a mediator if one was available (BSAS 2008, unpublished). This finding is related to hypothetical disputes relating to the workplace such as unfair dismissal or discrimination.

Low take-up of meditation in the UK may be the result of lack of awareness or availability, but it is also possible that attitudes to hypothetical situations addressed in surveys may not reflect actual behaviour when a workplace dispute is experienced.

Summary

This chapter has examined the characteristics of employees who experience problems at work, and ultimately register employment tribunal claims. Investigation of a number of datasets shows that there are a number of groups that are overrepresented among those who experience problems at the workplace. These are employees aged under 25, female employees, employees who work in routine and manual occupations, employees with up to one year's service, employees with an income of up to £25,000, employees with a long-term illness or disability, gay/lesbian/bisexual employees, lone parents, and those with dependent children under the age of 16, black employees, and individuals who have some qualifications, compared with those with no qualifications.

When looking at employees who are more likely to experience disciplinary sanctions and dismissal, there was a greater likelihood of this in workplaces with a higher proportion of younger workers and a larger share of ethnic minority employees, and a larger share of low-skilled workers. However, workplaces with a higher proportion of female workers had lower disciplinary

sanction rates. Research has also suggested that suggested that higher proportions of manual workers and the presence of non-white ethnic minorities in the workforce increase the probability of a claim. However, this evidence dates from 1998.

Moving on to those employees who are most likely to register a claim at an employment tribunal, the overrepresented groups differ from those reported to be most likely to experience problems or disciplinary sanctions. While younger workers were reported to experience problems, it is older employees (45-54) who are significantly over-represented amongst those registering employment tribunal claims. Similarly, although women were identified as more likely to report problems in the workplace, men were significantly over-represented amongst tribunal claimants, and while employees with less than a year's service were more likely to report problems, tribunal claimants had, on average, a longer length of service. This suggests that, although certain groups of workers are more likely to experience problems at the workplace, these are not necessarily the same types of workers who are most likely to make a tribunal claim.

It has also examined the actions that employee take when faced with employment problems. Overall, the majority of employees tend to seek advice when they experience problems at work, although a significant minority have been found to do nothing to try to resolve their problems. Most of those taking action sought advice and guidance, with the majority seeking this from multiple sources. The majority also consulted a workplace source in preference to an external source, particularly as a first point of contact.

In terms of the profile of workers bringing employment problems to external sources, research looking at Citizens Advice, found that the groups that are over-represented were those from Black, Asian or non-white groups, those under the age of 35, those leaving education by the age of 16 years, and workers who were not born in the UK. Further, employees in low to middle management, those who had been with their employer for less than two years, and those paid less than the UK average were more likely to bring employment problems to Citizens Advice. Further, employees who call the Acas helpline are more likely to be female, older employees, and employees from workplaces with fewer than 50 employees.

There is a relatively low take-up of mediation (SETA 2008 shows that 23 per cent of ET claimants reported that someone suggested that they use mediation prior to putting in their tribunal claim), which is at odds with the expressed acceptability of mediation for resolving workplace disputes. This may be the result of lack of awareness or availability of mediation, but it is also possible that attitudes to hypothetical situations addressed in the surveys studied in this review may not reflect behaviour in actual workplace disputes.

5. Conflict processes and dynamics

In this chapter, the aim is to explore, in the context of conflicts and disputes, what factors may be influencing the way employees behave. To do this, it has been necessary to draw on a range of empirical and theoretical literature from a range of disciplines. First of all, however, we discuss the nature of conflicts and disputes in the workplace.

Definition of conflict and disputes

No one definition of conflict dominates the literature. However, conflict has been referred to as a 'state of mind involving a perceived divergence of interest, a perceived difference of opinion, or a feeling of annoyance about another party's actions' (Pruitt and Kim, 2004; taken from De Dreu, 2008, p.245).

Drawing a distinction between conflict and dispute is made difficult as there are a number of definitions for each in use. Conflict is sometimes referred to as the existence of a fundamental disagreement between two parties. This may or may not then become manifest in a dispute ie a conflict is a state rather than a process. When viewed this way, a dispute is one possible outcome from a conflict. Other possible outcomes may include avoiding the conflict, or capitulation. It is important to note, however, that the terms conflict and dispute are often used in the literature without necessarily specifying how these terms are defined. It is therefore often difficult to draw a clear distinction between the two.

Models of conflict and disputing behaviour

There is a vast literature on conflict in organisations. The issue has been approached from both the perspective of a variety of academic disciplines, and with certain problem areas in mind (eg labour relations). In addition, conflict has been investigated from the perspective of how best to resolve it, covering fields of research including third party dispute resolution and bargaining and negotiation. It is not within the scope of this review to provide a comprehensive assessment of conflict research. However, a consideration of the different ways in which conflict has been conceptualised, particularly in terms of intraorganisational and interpersonal conflict, may be useful in understanding the potential shape and dynamics of disputes which may influence the behaviour of employees.

Models of conflict have attempted to describe the character, causes and dynamics of conflict. In terms of the former, Rapoport's (1960) 'fight` model (taken from Lewicki et al., 1992) describes conflict that stems from interpersonal aggression. These conflicts are characterised as emotional and involving hostile, tit-for-tat responses that develop into 'conflict spirals`. This model has been applied to intra-organisational conflict. As an alternative,

Rapoport also described a second type of conflict, 'debate`, characterised by an exchange of ideas, and a process by which opposing parties attempt to convert their opposite number to their point of view using logic. Behaviour clearly informs, and is influenced by, the character of conflict.

Other models of conflict focus on the dynamic nature of conflict and describe stages through which conflicts are seen as progressing. There are a number of stage models of conflict, each suggesting that conflict has a specific number of identifiable stages. Some of these models of conflict are very general (eg Pondy, 1967, taken from Lewicki et al., 1992), and others are specific to a certain type of conflict (eg fights). These models tend not to have been empirically verified, and where research exists, this tends to focus on influences on elements of the model. For example, examining the influence of mistrust or perceptual bias.

One of the most influential models of conflict is that of Pondy (1967). This describes a conflict 'episode` as involving five stages: antecedent conditions; latent conflict; perceived conflict; manifest conflict; and conflict aftermath. The model identifies three main antecedent conditions or causes of conflict: competition for scarce resources (ie between different interest groups); conflict for control (ie between superiors and subordinates, typically involving disputes related to rules and rule-making); and conflict in lateral relationships (workers in different units attempting to resolve disputes with regard to work coordination and task integration). Despite its influence, Pondy's model has not been empirically verified.

In addition to stage models of conflict from the academic literature, models of conflict escalation are also present in the practitioner literature, eg The seven stages of conflict escalation in work teams (D Liddle, 2004)[2].

The potential value of these models is not so much that they are empirically proven, but that they provide useful conceptual schemas for thinking about appropriate intervention points. Indeed, a key concept in the mediation literature is that of 'ripeness` (Sourdin, 2002 taken from Latreille PL, 2010). This suggests that disputants may not see the benefits of an intervention, such as mediation, early on in a conflict process, yet there is value in intervening prior to the situation escalating and opposing parties' positions become too entrenched.

Models of disputes also emphasise their dynamic character. One of the most influential models of disputing behaviour in civil litigation is that of Felstiner (1980, taken from Goldman, 2004). This individual-level theoretical model describes the stages through which a dispute develops. Accordingly, there are four stages: naming (where a person identifies an experience as harmful or injurious); blaming (attributing the cause of the harm to another individual or organisation); claiming (where the person seeks a remedy by voicing a grievance to the individual or organisation concerned); and disputing (where the individual feels that their claim has been rejected either explicitly or

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[2]   Taken from http://www.10actions.com/files/CONFLICT%20RESOLUTION%20AND%20ASSERTIVENES S.pdf.

through lack of perceived action taken by the individual or organisation the person believes is responsible).

Again, although the validity of the model may be debated, it provides a useful way of thinking about points at which to intervene. Goldman (2004), for example, has used Felstiner's model to suggest how social psychological processes may influence the transformation of employment disputes from one stage to the next, ending in an employment discrimination claim. In the same paper, Goldman suggests interventions which may prevent the progression of disputes from one stage to the next. It should be noted, however, that Goldman's paper is theoretical rather than empirically based, and is focused on US employment discrimination claims.

The employment context

There are a number of features of disputes in the employment context that are worth highlighting. Firstly, it is important to note that many of the disputants have ongoing relationships with each other. Whether disputants desire to maintain or restore this ongoing relationship may well influence whether or not a situation is perceived as a dispute and how disputants choose to resolve it. In addition, whether and how a dispute is resolved may well have psychological and political consequences for those involved.

It is important to note also that ET claims, and disputes leading up to those claims, are not homogeneous. For example, employee disciplinaries have a different 'character` to employee grievances. Disciplinaries involve action taken against an individual in relation to non-compliance with a rule. As such, disciplinaries are considered to closely fit 'the psychological definition of punishment` (Rollinson et al., 1996; p.39). Punishment is apt to give rise to strong emotional reactions if not undertaken with care. In contrast, grievances rarely involve a clear decision-rule about whether another person (in particular the supervisor or manager) has broken a rule. For this reason, the grievance process requires a mutually acceptable definition of rights and obligations. Raising a grievance may also entail risk for the employee, incurring as it might the disfavour of the supervisor or manager, and perhaps the organisation more widely. There is also evidence to show that managerial style varies across the two types of dispute (Rollinson et al., 1996; Rollinson et al., 2000). It is worth noting that in the development of a conflict, both grievance and disciplinary action may be involved. Further, other types of dispute are likely to be different in character for other reasons ie disputes involving discrimination against a particular group of workers.

Conflict management styles

There is an extensive, predominantly US, literature on conflict management styles, and how these may be influenced by individual, relational and organisational factors. Models of conflict management styles generally describe strategies that vary along two dimensions: cooperativeness (concern for other people) and competitiveness (concern for self). Models differ in terms of the number and names of styles and whether or not these are seen as reflecting an habitual way of handling disputes (eg Thomas, 1976 taken from

Lewicki et al.,1992) or whether they are seen as strategic choices that are influenced by the context of conflict (Pruitt and Carnevale, 1993 taken from De Dreu and Gelfand, 2008).

As an example of a conflict management style framework, Thomas and Kilmann (1974) identified five main styles of dealing with conflict. They argued that individuals have preferred styles, and that styles varied in their usefulness, according to the situation. The five styles identified were:

- competitive;

- collaborative;

- compromising;

- accommodating; and

- avoiding.

When adopting a competitive style, an individual pursues their own concerns at the other person's expense, using whatever power seems appropriate to win their position. This style is considered to be useful in emergency situations where quick decisions are required. A person is seen to adopt a collaborative approach where they attempt to fully satisfy the concerns of both parties. This approach is both cooperative and assertive. Collaborating involves exploring underlying concerns and trying to find a creative solution. Compromising also involves trying to find a mutually acceptable solution, but involves less exploration of issues than collaboration, and might involve simply splitting the difference or seeking a middle-ground position. When adopting an accommodating position, an individual seeks to neglect their own concerns to satisfy those of the other person. It is unassertive and cooperative. Finally, a person adopting an avoiding style will seek to evade the conflict altogether.

An individual who desires to maintain the other party's sense of self or 'face' will adopt less confrontational approaches to conflict resolution. In the language of conflict styles, they are more likely to use integrating (collaboration and engagement in problem solving), smoothing (accommodation of others' concerns), and compromising (meeting the other party half-way) strategies than individuals who are concerned with protecting or restoring their own 'face`. Cultural differences in the preference for conflict styles are associated with concerns for preserving 'face` ie people in collectivistic cultures have a greater preference for strategies such as avoiding (withdrawing from the scene of a conflict either physically or psychologically).

Research suggests that the selection of conflict styles in an organisational context is more a function of the desire to reach an agreement, and the anticipation of achieving such an agreement, than power differences. For example, research has shown that when employees anticipate resolving a conflict, they use conflict styles such as problem solving and compromising, regardless of any power differences (Powell and Hickson, 2000; Rahim, 1986; both taken from De Dreu et al 2008). Importantly, the use of engagement and problem-solving strategies by managers has been linked to trust (Chan et al.,

2008) and therefore the style adopted by managers may influence employees' perception of likelihood of reaching an agreement. Supervisors and managers have been found to be most successful in resolving conflicts with employees when using approaches involving problem solving (Van de Vliert, Huismans and Euwema, 1995 taken from De Dreu et al., 2008).

Research has also investigated what triggers changes in conflict style over time. Non-compliance with requests for action in a dispute situation (e.g Conrad, 1991 taken from De Dreu et al., 2008), perceived likelihood of success, and gender have all been shown to have an influence on whether individuals change their conflict styles over time. Work by McCready and Roberts (1996, also taken from De Dreu et al., 2008) found that disputants who initially attempted a problem-solving strategy shifted from this to inaction (ie doing nothing or changing the subject) and then to contending (ie arguing persistently for one's needs) when reaching an agreement seemed less likely to them. This has implications in terms of the escalation of conflicts. Papa and Natalle (1989, taken from De Dreu et al., 2008) found that where two men were involved in a dispute, high levels of contending were used over time. In contrast, where a dispute was between a man and a woman, compromise was used initially, followed by contending. Disputes between females followed a different pattern, beginning with problem solving and contending and finishing with compromise.

In a workplace setting, this applies to managers, but also to the individuals who are involved in a dispute. Managers are at the forefront in terms of trying to deal with conflict at the workplace, and therefore manager training would need to take into account these different types of style, bearing in mind questions about whether it is desirable or possible to change an individual's style.

Escalation

In addition to the conflict management styles and strategies outlined in the various models of conflict management, there is an alternative response to dealing with the conflict. This is escalation. This essentially involves hostile or aggressive acts towards the other party and includes a wide range of behaviours, from filing a legal claim to verbal or physical assault.

Escalation has been investigated across a variety of contexts. An attribution of responsibility (ie believing that the offending party is responsible for the unfavourable event) has been found to be make escalation more likely (Bies and Tripp, 1996 taken from De Dreu et al., 2008). This finding was based on student explanations of why they had decided to retaliate against someone at work (see also the next section on the underlying psychological processes in relation to dispute management).

Research has also demonstrated that retaliatory acts are more likely where fairness norms are violated (violations of distributive, procedural and interactional justice have all been shown to produce retaliatory acts). A study by Starlicki and Folger (1997, taken from De Dreu et al., 2008), set in a work context, found that retaliatory acts by US factory workers were more pronounced where companies violated all three norms. However, in

companies that were seen as affording procedural and interactional justice, a lack of distributive justice did not lead to higher levels of retaliation (see also the next section).

In terms of personality, a number of characteristics have been related to the tendency to retaliate. These are: the hostile attribution bias (a tendency to assume that annoying behaviour from others is done with hostile intent); type A personality; and high but unstable self-esteem. These have all been linked with a greater readiness to retaliate. Conversely, high need for social approval and empathy with others are linked with reduced extent of escalation (all taken from De Dreu et al., 2008). However, none of this research has been based in a work context.

Mechanisms for resolving conflict

As referred to in chapter 3, whilst there is a relatively low take-up of mediation in employment disputes in the UK, this is at odds with its acceptability to employees in response to hypothetical employment problems.

Evidence from predominantly US literature on procedural choice and alternative dispute resolution (ADR) may offer some insights into situational factors that influence whether or not mediation is chosen as a way of resolving a dispute, or whether arbitration is preferred. Procedural choice studies typically take place in experimental settings, using students to make choices about hypothetical conflict scenarios. Factors leading individuals to choose arbitration over mediation include: the nature and type of conflict (ie disputes that have some form of legal basis such as sexual harassment and discrimination e.g Thibault and Walker, 1975, taken from De Dreu et al., 2008); severity of the dispute (the more severe the likely consequences of the dispute, the more likely individuals are to choose arbitration, eg Arnold and Carnevale, 1997); attribution of intent (where wrongdoing is perceived as intentional e.g Arnold and Carnevale, 1997); and the relationship between the individual and the other disputant. Specifically, research has shown that a high level of trust, previous experience with the disputing party, and perceived supportiveness of the organisation all play a role in choice of procedure, making the choice of a consensual procedure more likely to be preferred. In terms of the impact of personality on procedural choice, however, the evidence is not clear (Peterson and Lewin, 2000 taken from De Dreu et al., 2008).

In addition, other procedural choice studies (Leung, 1987 taken from Chan, 2003) have suggested that choice is influenced by factors such as favourability (likelihood of winning the case); animosity reduction (concerning notions of conflict escalation, likelihood of holding a grudge and increased levels of competitiveness); perceived fairness (fairness of the procedure, workability of any solution, and extent to which facts of the case were presented as part of the procedure); and perceived control over the process and outcome (see below for a discussion of the various dimensions of fairness), which may lead to a preference for a consensual procedure.

Underlying psychological processes

A number of psychological processes may have an impact on the way conflicts develop, and prospects for effective resolution. The psychological processes identified are concerned with the way the human mind processes information in evaluating risks and uncertainty, and makes inferences and judgments. These processes are often thought of as mental shortcuts and describe ways in which human reasoning often departs from rational models of decision-making involving weighing the costs and benefits of the available options. Evidence for these processes often derives from experimental studies. Therefore, direct evidence of their operation in the employment context, or with respect to disputes and ET claims, is often lacking. The key points of these processes are summarised in table 1.

Table 1: The psychological processes underlying conflict behaviour

Process	Elements of the process	Relevance to employment disputes
Attribution bias	Where individuals attribute an event to the personality or character of the individual who caused the event, rather than external circumstances, which can cause an angry response.	If individuals believe or assume that the other party to a dispute is responsible, they will have an angry response, making the dispute more likely to escalate.
Framing	Presenting an option in a certain way can affect how individuals perceive it. Framing an option in terms of a gain is likely to lead to risk-averse choices.	If the outcome of a dispute can be framed in terms of a gain (eg improving an individual's situation at work), rather than a loss (eg losing face), they may be less likely to want to escalate it.
Loss aversion	Where individuals, when faced with a sure loss, gamble, even if the expected loss from the gamble is larger.	Individuals with long service or an emotional attachment to the workplace will be more likely to escalate a dispute, especially if they have lost their job, as they may feel that there is no going back from their position.

Reactive devaluation	The tendency for individuals involved in a dispute to diminish the attractiveness of an offer simply because it originated with a perceived opponent.	Unwillingness for a party to a dispute to accept a compromise or solution from the other party, just because it comes from that party.
Optimistic overconfidence	Where individuals are overconfident in their predictions concerning the outcome of future events.	If both employer and employee are overly optimistic about their chances of winning an employment tribunal claim, they are more likely to go ahead with the claim.

Attribution bias

Attribution theory (Weiner, 1979, 1985 taken from Goldman et al, 2004) considers how people attribute causal meaning to behaviour. In experiencing a negative event, an individual may choose to attribute the event to the dispositional characteristics (ie personality or character) of the individual who caused the event, or to situational characteristics (external circumstances). Whether an individual attributes a negative event to dispositional or situational characteristics determines whether they assign responsibility to the individual who caused the event. As dispositional characteristics are generally viewed as in the control of the person, assigning responsibility for a negative event to dispositional characteristics is associated with anger. Anger can be seen as a motivational source and as urging an individual to restore justice or equity. This, in turn, has implications for how a dispute develops, attempts at mediation, and ultimately claiming behaviour.

The mere fact of people assigning causes to events would not be of concern, were it not for evidence suggesting that there are a number of systematic biases in the way people do so. This evidence tends to be drawn from experimental settings, and not in the natural setting of the workplace. Research has demonstrated a number of biases in the way people attribute causes to events. The self-serving (Greenberg et al., 1982 taken from Goldman, 2004) or egocentric (Ross and Sicoly, 1979 taken from Goldman 2004) bias, describes the tendency for people to take credit for positive events and to blame the situation or other people when things go wrong. The 'correspondence bias` (Gilbert, 1995 taken from Korobkin) or 'fundamental attribution error` (Allred, 2000 taken from Korobkin, 2006) refers to the tendency of people to attribute the behaviour of other people to disposition (ie linked to the individual), rather than situation, to a greater extent than is warranted. This is not least because situational constraints on others are hard to identify and appreciate. In addition, the 'actor-observer` bias refers to the

tendency of people to emphasise situational constraints, and to downplay disposition, when explaining their own harmful behaviour.

US research has investigated the relationship between attributions, blame, anger and claiming behaviour with respect to employment. Groth et al.(2002) found that employees' external attributions (ie causes attributed to another person or the organisation) were linked to commitment to legal claiming. Work by Lind et al. (2000) has suggested that blame had a modest effect on wrongful discrimination claims, and for only a subset of these (those related to firings rather than redundancies). Research on civil disputes has also suggested that some injuries are more likely than others to be accompanied by blaming someone else (Hensler et al., 1990 taken from Lind et al., 2000).

Organisational justice researchers in the US have investigated the role of anger in legal claiming in relation to employment discrimination claims. Goldman (2003) investigated the relationship between both 'state' and 'trait' anger and legal claiming. The former refers to anger experienced in response to a particular set of events, and the latter to individual differences in the propensity to experience state anger. The research suggested that both state and trait anger increase the likelihood of legal claiming. Partial support was found for the prediction that injustice leads to anger which, in turn, leads to legal claiming. In other words, although the likelihood of claiming increased with the experience of anger, there was also found to be a direct effect of perceptions of injustice on legal claiming. This research was based on a survey of US workers recently terminated from their jobs. As the research was cross-sectional in design, and asked respondents to recall how they felt several weeks earlier rather than at the time of the events in question, causality could not be established for certain and there is scope for post-hoc rationalisation. However, these limitations apply to all of the US research investigating factors affecting claiming behaviour. None of the research follows employees in the period prior to claiming.

Attributions, in particular the attribution of intent, has also been identified in the procedural choice literature as affecting the choice of dispute resolution procedure (see the previous section on mechanisms for resolving conflict). More specifically, attributions of intent have been found to play a key role in determining whether retributive justice is sought, although this research is from the field of community mediation rather than employment (Peachey, 1989 taken from Arnold and Carnevale, 1997).

Attributional biases can cause disputants to experience levels of anger beyond that justified by the facts, and can make compromise seem less attractive. Indeed, concessions may be perceived as a loss of face. In a paper relating psychological biases to practitioner experience of mediation, Korobkin (2006) argues that anger leads disputants to not only be less concerned with each others' interests, but also to positively value preventing the other person getting what they want (this is consistent with escalation referred to previously). He refers to the latter as a malevolent utility function.

Further, attribution biases can create unhelpful dynamics that impede mediation success. For example, an individual who has caused harm to another is likely to view this as due to situational characteristics. As such, they

are likely to interpret an angry response from the harmed party as unwarranted and evidence of the harmed party's bad disposition. This, in turn, may lead to retaliation by the harmdoer.

In a workplace setting, if an individual believes that an event can be attributed to the personality or character of another individual, they are more likely to react angrily, thus creating a conflict situation. There are ways of countering or minimising this, which will be explored in later sections of this report.

Framing effects and loss aversion

'Loss aversion' (Kahneman and Tversky, taken from Mnookin, 1993) describes the tendency for individuals, 'when faced with a sure loss, to gamble, even if the expected loss from the gamble is larger' (Mnookin, 1993).

Loss aversion may lead, then, to an employee initiating a claim following job loss, as they may feel that they have nowhere to go but forwards in terms of carrying on with their claim, even if it means that they may lose further in terms of time, stress and finance.

In addition, it may lead to both sides in a dispute to continue, feeling that they have come so far and are so committed to the process that there is nothing more to lose. It may also lead disputants to be reluctant to offer concessions, as these concessions may be regarded as losses.

Research has also suggested that employees with longer tenure are more likely to claim. Employees with long organisational tenure may perceive a 'loss frame` due to the significant investment in time they have made in the organisation, which may result in 'risky, compensatory behaviours such as litigation` (Goldman, 2001).

Kahneman and Tversky also suggest a more extreme version of loss aversion, 'enhanced loss aversion`, concerned with the notion of the loss of rights or entitlements. Losses of this type may be deemed less acceptable than those caused by misfortune or the legitimate actions of others. In terms of the employment context, one of the suggested reasons why procedural justice (see chapter 5) seems to matter to employees is the idea that it represents a social norm. Violations of procedural justice can then be seen as a loss of a right or entitlement and so may lead to the experience of 'enhanced loss aversion' and a preference for risk-taking behaviour. Another employment concept which may be relevant to 'enhanced loss aversion` is that of the psychological contract. This term refers to 'the perceptions of the two parties, employee and employer, of what their mutual obligations are towards each other` (Guest D.E, and Conway, N, 2002). The important point is that these obligations may be imprecise and informal but are nonetheless believed by the employee to be a part of the employment relationship. The contract is based on an employee's sense of fairness and trust, hence may frame expectations regarding how they should be treated. Violations of these expectations may lead to a sense of loss and action to right the perception of injustice.

Research by cognitive psychologists has revealed that people evaluate options not simply on their tangible features (as rationalist decision theory would suggest), but also on how those options are described or classified ie

how they are 'framed`. An example originally devised by Kahneman and Tversky (Ibid.) and taken from Korobkin (2006) is illustrative:

'In one experiment, a majority of subjects preferred a public health intervention to control a disease affecting 600 people that would save 200 for certain to one with a 1/3 chance of saving 600 and a 2/3 chance of saving none, but a majority also preferred an intervention with a 2/3 chance of losing all 600 lives and a 1/3 chance of losing none to one that would result in a certain loss of 400 lives` (p.308-309)

Framing the choice in terms of a gain (ie saving lives) led to risk-averse choices, when compared with framing the choice in terms of losses (losing lives). In an employment context, if the outcome of a dispute can be framed in terms of a gain (for example, improving an individual's situation or position at work, perhaps through moving them to a different team or manager), rather than a loss (for example, losing face in the organisation or making no difference to their situation), they may be less likely to want to escalate a conflict.

In a workplace setting, loss aversion will affect most those individuals who have the greatest investment in their workplace, such as those with long service, or those in small companies where identification with the business and workplace relationships are strong.

How the losses and gains that are likely to result from an employment tribunal case are framed is therefore of importance: if the options are presented in terms of a gain, rather than a loss, this may reduce the likelihood of individuals taking a claim.

Reactive devaluation

Reactive devaluation (Ross et al., 1991, taken from Mnookin, 1993) refers to the tendency for individuals involved in a dispute to 'diminish the attractiveness of an offer or proposed exchange simply because it originated with a perceived opponent`. Research has found that: a compromise proposal is rated less positively when proposed by someone on the other side than when proposed by someone regarded as neutral or an ally; a concession offered is rated lower than a concession withheld; and a compromise is rated less highly after it has been offered than it was beforehand. Reactive devaluation suggests that disputants may be unable to exchange compromises or concessions without those concessions or compromises being devalued by the other side. This has important relational consequences, as for example, the disputant who offers a valued concession and sees that the recipient does not respond in kind, is likely to confirm a negative view of the recipient.

In a workplace setting, individuals may well be unwilling to accept a compromise or a solution to their conflict, just because it emanates from the other side. An impartial mediator can play a key role here, as can ensuring that a culture of trust and empathy is created in an organisation (this is explored in later chapters in this report).

Optimistic overconfidence

Social psychological research has demonstrated that, 'on average, people are often overconfident in their predictions concerning the outcome of future events' (Korobkin, 2006). Further, there is evidence to suggest that in circumstances where their prediction will be tested, they tend to be more overconfident the further away in time the evaluation of their prediction is, and less so as evaluation draws near. One possible explanation for optimistic overconfidence is the tendency for people to differentially attend to and recall facts based on whether or not those facts support their position or future prospects (e.g Thompson et al., 1992, taken from Korobkin, 2006). Further, research has suggested that people tend to make self-serving assessments of their own ability and to believe that they have more control over events than they actually do (referred to as the 'illusion of control` ie see Langer et al., 1975 taken from Korobkin 2006). As perceived control over events increases, this 'above-average` effect leads to increased levels of optimistic overconfidence.

The implication for dispute resolution of optimistic overconfidence is that disputants may be unwilling to settle a dispute if one or both parties overestimate their chances of prevailing in litigation. An employee, overestimating their chances of winning at a tribunal, may be inclined to initiate a claim against their employer. Further, and although not the main focus of this review, both sides may be unable to come to agreement as their expectations of winning influence their reservation prices (ie the maximum or minimum the employee or employer respectively would be willing to settle the dispute for).

An analysis (unpublished, Dr Paul L Latreille) of the 2008 Survey of Employment Tribunal Applications (SETA 2008) investigating parties; expectations with regard to ET claims has suggested the operation of optimistic overconfidence in relation to both views of likely success at the outset of a case, and in the amount of award claimants expect to receive at a hearing compared with the final offer made (and economic rewards do play a part in influencing decisions, even though they are often not the main factor). The analysis suggested that:

- at the outset of a case, almost 70 per cent of claimants thought they were 'quite` or 'very` likely to be successful, while slightly fewer than 60 per cent of employers thought they would prevail. Only 2 per cent of claimants and 9 per cent of employers thought they were likely to lose their cases. The SETA data shows that, of those cases that actually made it to a hearing (ie only a small proportion of those lodged), claimant success rates were around 60%.

- when comparing responses in relation to the amount parties thought claimants would receive at a hearing relative to the (final) offer made – almost half of claimants thought they would get more than the final offer, compared with just 13 per cent of employers. At that stage, more than a third of employers thought the claimant would lose compared with 3 per cent of claimants.

- The above findings relate to unmatched data (in other words, the employees and employers were not generally involved in the same cases). Using matched data, similar patterns were identified. In other words, even in the same case parties had widely differing views and believed their chances of success to be high. In around 40 per cent of cases where the employer thought they were 'very likely` to prevail, the claimant thought the same. In only a minority of cases were the perceptions of the two parties in agreement. In addition, both sides thought that the outcome of a tribunal award relative to the final offer was likely to be in their favour.

The research demonstrates the potential relevance of optimistic overconfidence to bringing a tribunal case. Importantly, it demonstrated that a quarter of claimants and a third of employers who thought their case was likely to prevail and whose cases went to a tribunal hearing were in fact wrong. This suggests there is scope for adjusting perceptions to closer match reality, and potentially preventing cases going to tribunal.

Summary

This chapter sought to explore, in the context of conflicts and disputes, what factors may be influencing the way employees behave. There is a wide-ranging literature on the different types and models of conflict. These include those that stem from interpersonal aggression, and those that are characterised by an exchange of ideas, and a process by which opposing parties attempt to convert their opposite number to their point of view using logic. Most models of conflict emphasise the dynamic nature of conflicts. One influential conflict model describes a conflict 'episode` as involving five stages: antecedent conditions; latent conflict; perceived conflict; manifest conflict; and conflict aftermath. According to another model, there are four stages: naming (where a person identifies an experience as harmful or injurious); blaming (attributing the cause of the harm to another individual or organisation); claiming (where the person seeks a remedy by voicing a grievance to the individual or organisation concerned); and disputing (where the individual feels that their claim has been rejected either explicitly or through lack of perceived action taken by the individual or organisation the person believes is responsible).

Disputes in the employment context have a number of specific characteristics. Many of those involved have ongoing relationships with each other and there may be differences in status between the parties. There is also a wide range of type of employment-related disputes. For example, employee disciplinaries have a different character to employee grievances: disciplinaries involve action taken against an individual in relation to non-compliance with a rule, while grievances rarely involve a clear decision-rule about whether another person (in particular the supervisor or manager) has broken a rule.

This chapter has also shown that there is a wide range of conflict management styles, which can be grouped into styles characterised as competitive; collaborative; compromising; accommodating; and avoiding. Overall, research suggests that the selection of conflict styles in an organisational context is more a function of the desire to reach an agreement,

and the anticipation of achieving such an agreement, than power differences within the organisation.

There are also different factors that determine whether or not a conflict is escalated. Escalation is more likely where an individual believes that the offending party is responsible for the unfavourable event (attribution bias). If an individual attributes the event to the dispositional characteristics (ie personality or character) of the individual who caused the event, this can lead to anger and a desire to seek to restore justice.

Under the loss aversion theory, individuals, when faced with a sure loss, tend to gamble, even if the expected loss from the gamble is larger. In an employment context, this may lead to those faced with job loss, particularly those with long service, to initiate a claim.

Under the reactive devaluation theory, individuals involved in a dispute tend to diminish the attractiveness of an offer or proposed exchange simply because it originated with a perceived opponent. In this case, a compromise proposal is rated less positively when proposed by someone on the "other side" than when proposed by a neutral or an ally.

Finally, under the theory of optimistic overconfidence, individuals are often overconfident in their predictions concerning the outcome of future events. The implication of this for dispute resolution of optimistic overconfidence is that disputants may be unwilling to settle a dispute if one or both parties overestimate their chances of prevailing in litigation. Indeed, data from the 2008 Survey of Employment Tribunal Applications (SETA) suggests that this is case in relation both to views of likely success at the outset of a case, and in the amount of award claimants expect to receive at a hearing, compared with the final offer made.

6. Social and organisational context

This chapter explores the influence of situational factors on how employees behave when conflicts and disputes arise in the workplace.

Organisational factors

Organisational Justice

Three types of organisational justice are referred to in the literature:

- distributive justice refers to the perceived fairness of outcomes (Adams, 1965 taken from Goldman, 2004);

- procedural justice refers to the perceived fairness of the procedures by which outcomes are determined (Thibault and Walker, 1975 taken from Goldman, 2004); and

- interactional justice (refers to the perceived fairness of the interpersonal treatment ie whether an employee feels that they are treated with dignity and respect).

As outlined above, perceptions of organisational justice influence behavioural responses to conflict, both in terms of escalation and in terms of procedural choice decisions.

Researchers in the US have found employee perceptions of organisational justice to be significant predictors of claiming behaviour (this includes a range of behaviours from consideration of litigation, contact with an extra-organisational body about seeking a remedy, initiating a lawsuit, and commitment to claiming) (Youngblood, Trevino and Favia, 1992; Bies and Taylor, 1993, taken from Goldman, 2004; Lind et al., 2000; Goldman, 2001, 2002; Groth, 2002; Brockner et al., 2007). This is consistent with exploratory qualitative work done in the UK, which has suggested that claimants were primarily motivated to claim because their own notions of justice had been violated by their employer (Moorhead et al., 2009). Importantly, whilst all three types of organisational justice have been linked to claiming behaviour, procedural and interactional justice have been found to compensate for low levels of distributive justice. In other words, if an employee perceives they are treated fairly (either by virtue of the process employed or the interpersonal treatment received), the likelihood of legal claiming in response to an unfavourable outcome is reduced (e.g Goldman, 2003).

In addition, research by Lind et al. (2000) has suggested that the greater the magnitude of unfair treatment (rather than the magnitude of unfair outcomes), the increased likelihood of claiming. They report a 'vendetta effect` such that

the incidence of claiming accelerates as unfair treatment becomes more extreme. The logic here is informed by relational theories of justice, which suggest that 'the sting of unfair experiences comes from a feeling that unfair treatment carries a message of social exclusion` (Lind et al., 2000; p.561), a message that can threaten both social identity and self-esteem. In this context, unfair treatment can be perceived as resulting in a loss of something important to the individual, and may give rise to a reframing of the relationship with the employer as one of 'deep and continuing opposition` (Lind et al., 2000; pg 582), and to revenge behaviour aimed at restoring what has been lost.

The organisational justice literature suggests two reasons for the importance of procedural justice to employees. First, it suggests that it represents a social norm. Second, the 'voice effect` argues that employees value procedural justice as it provides the opportunity to have their opinions heard. Indeed, there is some Canadian research that suggests usage of organisational dispute resolution systems decreases with the availability of other employee involvement initiatives (eg Colvin, 2003, taken from De Dreu et al., 2008). Prescriptions for achieving procedural justice include a procedure that allows for employee input, provides for consideration of that input, as well as being remedial in nature. Inaction in response to discontent voiced by an employee is likely to exacerbate feelings of injustice.

Unions and employee representation

Burgess et al. (2001), in their analysis of factors affecting the rise of employment tribunal claims, found that a rise in the number of unfair dismissal cases was associated with the decline in trade union membership. Other analyses of large-scale survey data suggest the importance of trade union presence in determining disciplinary outcomes. The evidence suggests that trade union presence is associated with lower dismissal rates (Millward et al., 1992; Knight and Latreille, 2000).

Potential explanations for the effect of trade unions on disciplinary outcomes range from the fairly simplistic - unions restraining managerial action - to the more nuanced, ie unions promoting self-discipline amongst members and facilitating the early and informal resolution of disputes. However, the influence of trade unions is likely to be affected by the nature and quality of their relationships with managers. In the absence of high-trust relations, union representatives may adopt more adversarial approaches in defending members.

In the absence of trade union representation, other forms of employee representation may have developed. However, there are question marks over their impact. Charlwood and Terry (2007, taken from Pollert and Charlwood, 2008) found that workplaces with non-union representatives were likely to have higher dismissal rates. There is also evidence that unrepresented workers find it particularly difficult to resolve workplace problems and disputes (Pollert and Charlwood, 2008).

Although little is known about the way in which employee representatives interact with formal and informal disciplinary processes in contemporary

workplaces, the above findings suggest that the available avenues and nature of support available to an employee in addressing a dispute are likely to affect behaviour.

Extraorganisational factors influencing employee behaviour and decision-making

Advice and guidance

Information on whether sources of advice are accessed by employees facing employment problems, and what these sources might be, was provided in chapter 3. However, the terms of reference for this review warrant a consideration of which sources of advice are most influential.

Goldman argues that conflicts tend to escalate gradually, and that not all valid and unresolved claims are taken outside the organisation. Indeed, he argues that even individuals who believe they have valid claims may be hesitant in seeking legal redress as taking such steps can incur risks, stress and sacrifice for the claimant. In order to help further explain the transition from in-house dispute to actual legal claim, Goldman argues that an employee will interact with other people before making a decision to claim. His own research (Goldman, 2001) indicated that social guidance, that is, advice and information from friends, family and co-workers, increased the likelihood that an individual made a legal claim. The research did not, however, look at the relative importance or impact of advice and information from the different sources. The importance of social guidance is consistent with other research that has suggested that someone other than the claimant often comes up with the idea to pursue a legal claim (Harris et al., 1984; Hensler et al., 1991; both taken from Groth et al, 2002), and with exploratory qualitative work by Moorhead in the UK, which found that claimants appeared motivated to claim after encouragement from family, peer groups or a trade union. Evidence from SETA 2008 (Ibid.) suggests that just under half of claimants received help in completing an ET1 form. The most common source of advice for claimants was a lawyer of some kind (45%), although one in six sought help from a trade union and Citizens Advice. One in five sought help from friends and family.

Building on this earlier research, Groth et al. (2002), investigated the impact of social guidance on commitment to legal claiming. They argued, based on social information processing theory (SIP) (Salancik & Pfeffer, 1978, taken from Groth et al, 2002), that social guidance matters to potential claimants when they are confronted with situations that are novel or ambiguous, and when the source of information is perceived as credible. They found support for their hypothesis that when employees are unsure about the causes of workplace events, they are more likely to be influenced by the opinions of other people.

Bonaccio et al. (2006) reviews the evidence from the decision sciences literature on advice utilisation (ie the extent to which a 'decision-maker` follows advice from an 'advisor`) in contexts in which a decision is made by an individual after consulting with, and being influenced by, others ie the situation

in which an employee may find themselves when considering initiating a tribunal claim. The evidence reviewed is drawn from experimental settings and therefore whether, and to what degree, it translates to the specific situation of an employee considering a tribunal claim is unclear. However, it may provide some ideas about what types of advice are likely to be most influential.

One of the most robust findings of the decision sciences literature is that of egocentric advice discounting. This refers to the tendency for the decision-maker to give more weight their own opinion relative to that of their advisor (eg Yaniv and Kleinberger, 2000 taken from Bonaccio, 2006). Decision-makers even display this egocentric bias when they are making judgments about novel situations (Krueger 2003, taken from Bonaccio, 2006). However, less egocentric discounting is displayed by decision-makers who are less experienced or knowledgeable relative to their advisors (eg Dalal, 2001 taken from Bonaccio, 2006). Whilst experience or knowledge often refers to task-relevant expertise, research has also shown that decision-makers tend to be more responsive to advice from those with greater age, education and life experience (e.g Feng and MacGeorge, 2006 taken from Bonaccio, 2006).

The presence of performance-contingent financial incentives have also been found to influence the extent of advice discounting. In other words, if an individual pays for a good or service, they are more likely to value it than if it is free of charge. This means, for example, that decision-makers are less likely to discount paid-for advice. This behaviour is consistent with the tendency to escalate commitment to a 'sunk cost` (a course of action in which one has previously invested time, money or effort; Arkes & Blumer, 1985, taken from Bonaccio, 2006).

Other findings on advice discounting of potential relevance to the circumstance of an individual considering making a tribunal claim include the following:

- decision-makers who request advice are more likely to follow subsequent recommendations than those who receive advice without asking for it;

- individual differences in decision-maker autonomy influence the extent of advice acceptance from expert advisors; and

- discounting increases as the distance, in terms of content, between the decision-maker's initial opinion and the adviser's recommendation increases, and that this effect is more pronounced for more knowledgeable decision-makers. Bonaccio (2006) suggests that a cost-benefit perspective on advice discounting is likely to be a useful framework, although not a sufficient one (decision-makers are only partially sensitive to perceived advantages and disadvantages relating to costs and benefits). In essence, this framework would suggest that where, for example, financial rewards are available, decision-makers are more likely to follow advice, especially when the advisor is known to be expert and is trusted.

The role of economic incentives

An econometric analysis (Burgess et al., 2001) sought to explain the increase in employment tribunal claims at an aggregate level in the UK between 1972 and 1997. Using an economic model, they found that economic variables appeared important in explaining the rise of in applications to tribunals. More specifically, the probability of winning a case was significantly associated with the number of unfair dismissal cases, the number of Wages Act cases and the number of redundancy cases; and the amount of money awarded in discrimination cases was significantly associated with the number of discrimination cases.

Organisational justice researchers in the US have also investigated the influence of economic and quasi-economic factors on the propensity to bring wrongful termination claims at the individual level, including the anticipated award and the magnitude of financial hardship resulting from the termination of employment. Lind et al. (2000) found that economic factors, ie the potential economic gains from winning a tribunal case, induced individuals to both think about claiming and also increased their willingness to take action on these thoughts. However, the influence of economic factors was not as strong as feelings of injustice and poor treatment on inducing individuals to think about claiming.

Summary

This chapter has explored the influence of situational factors on how employees behave when conflicts and disputes arise in the workplace. Looking firstly at organisational factors, it examined organisational justice and principally distributive, procedural and interactional justice, and how perceptions of these types of justice influence behavourial responses to conflict. One of the main findings here was that procedural and interactional justice can compensate for low levels of distributive justice, meaning essentially that an employee perceives that they are treated fairly (either by virtue of the process employed or the interpersonal treatment received), the likelihood of legal claiming in response to an unfavourable outcome is reduced. Procedural justice is more likely to be perceived to be present where employees have had an input into procedures, and where discontent has been dealt with swiftly.

Trade union presence in an organisation also appears to play a role, being associated with lower dismissal rates. This may be due to issues such as trade unions restraining managerial action, although it should be stressed that the quality of the relationship between the union and the organisation will affect the influence on conflict management and outcomes.

In terms of extraorganisational factors influencing employee behaviour and decision-making, guidance from sources such as colleagues, family and friends appears to increase the likelihood of claiming in terms of encouraging individuals to take further action to resolve their problems. However, the most common source of advice for claimants was a lawyer, followed by trade unions and Citizens' Advice. Further, over the past few years, there has been an increase in those with employment problems using the internet to try to find

information, advice and guidance. Overall, research has found that when employees are unsure about the causes of workplace events, they are more likely to be influenced by the opinions of other people.

In terms of following advice, there is evidence to suggest that individuals are more likely to give more weight to their own opinion than that of their adviser, although they tend to be more responsive to advice from those with greater age, education and life experience, or if they have paid for advice.

The review has also found that economic factors – ie economic rewards from winning a case or losses – play a role in decisions to make a claim. However, the influence of economic factors was not as strong as the influence of feelings of injustice and poor treatment.

7. Conclusions

Evidence from the Civil and Social Justice Survey (CSJS) suggests that a relatively high proportion of those experiencing employment problems who did nothing to try to resolve them, did however want to act. Further, it has been suggested that unrepresented workers may find it particularly difficult to resolve workplace problems. Taken together, the evidence suggests the existence of barriers for some groups for resolving workplace problems.

The evidence also suggests that the majority of employees experiencing workplace problems do something to address their problems. Compared with other types of problem, those experiencing workplace problems are more likely to seek advice or support.

However, only a small proportion (3% according to the 2008 Fair Treatment at Work Survey) of employees experiencing problems at the workplace go on to register employment tribunal (ET) claims. The profile of employees experiencing workplace problems is different to that of those who register ET claims. The former tend to be younger, newer employees and female. The latter tend to be male, older and with longer tenure.

Understanding the behaviour and decision-making of employees at an individual level in the period before a claim is made, and potential influences on that behaviour, was the main aim of this review. To provide potential explanations, a wide range of literature from a variety of disciplines has been considered.

Research on conflict management styles suggests that employees are inclined to adopt problem-solving and compromising strategies where there is a desire to reach an agreement, and the anticipation of achieving one. These factors are more important than power differences within an organisation. Importantly, the use of engagement and problem-solving strategies by managers has been linked to trust and therefore the style adopted by managers may influence employees' perception of likelihood of reaching an agreement. Whilst it has been argued that individuals have a preference for certain conflict styles, there is also evidence to suggest that individuals can change conflict style. There is evidence that disputants may shift from a problem-solving strategy to one based on inaction, and then contending (arguing persistently for one's own needs) as the perceived likelihood of reaching an agreement decreases. Research has also found that supervisors and managers have been most successful in resolving disputes when using problem solving strategies.

Attributions of responsibility appear to play a role in the development of conflict, and prospects for resolution. The role of attribution of intent (ie attributing unfavourable events to the wilful acts of others or the organisation) has been linked to the experience of anger, retaliatory acts and the escalation of conflict, and the choice of mechanism for resolving a dispute. On the latter point, evidence from procedural choice research drawn from experimental settings suggests that people tend to prefer arbitration over mediation where wrongdoing is perceived as intentional. Psychological research has

demonstrated systematic bias in the way people attribute causes to events, with individuals tending to attribute the causes of negative events to the dispositional characteristics of others. Whilst this research does not appear to be drawn from the employment context, or to the specific case of ET claims, it may be the case that such generalised psychological processes also play a role in the development of conflict at work.

Employee perceptions of justice appear to be key in determining whether a conflict escalates, and how employees seek to resolve disputes in the workplace. They also appear to be key in determining claiming behaviour (although this research is drawn from the US). Three types of justice are identified in the literature: distributive justice refers to the perceived fairness of outcomes; procedural justice refers to the perceived fairness of the procedures by which outcomes are determined; and interactional justice refers to the perceived fairness of interpersonal treatment. Whilst all three appear important, it also appears that procedural and interactional justice can compensate for low levels of distributive justice. The impact of breaches of organisational justice on retaliatory acts and claiming behaviour may be explained by what Kahneman and Tversky have referred to as 'enhanced loss aversion`. Loss aversion refers to the tendency of individuals to gamble when faced with a sure loss, even if the expected loss from the gamble may be greater. 'Enhanced loss aversion` refers to a certain type of loss, one of rights and entitlements. An individual who feels their rights have been violated may be inclined to gamble by initiating a claim in an effort to restore what has been lost.

An analysis of SETA 2008 also suggests the operation of a psychological bias referred to as optimistic overconfidence in the initiation of ET claims. Optimistic overconfidence refers to the fact that 'on average, people are often overconfident in their predictions concerning the outcome of future events` (Korobkin, 2006). Evidence from an analysis of SETA 2008 shows that a quarter of claimants and a third of employers who thought their case was likely to prevail were in fact wrong. In addition, when comparing responses in relation to the amount parties thought claimants would receive at a hearing relative to the (final) offer made, almost half of claimants thought they would get more than the final offer, compared with just 13 per cent of employers.

Research has demonstrated that the majority of employees experiencing employment problems seek advice or support. Evidence suggests that in the majority of cases, employees choose, at some point, to contact a workplace source compared with an external provider. Workplace sources were favoured as the first point of contact over external sources. This does suggest that in most cases, employees seek to resolve their problems internally first, before seeking help from outside the organisation. Where external sources of help are sought, the most common sources identified were a trade union, Citizens Advice or a solicitor, or Acas.

Goldman (2001) argued that social guidance, ie advice and information from friends, family and co-workers, was important in explaining the transition from an in-house dispute to an external legal claim. He found evidence to support this hypothesis. However, the research did not look at the relative importance or impact of advice or support from family, friends or co-workers. The

importance of social guidance is supported by qualitative work in the UK, which found that claimants appeared motivated to claim following encouragement from family, peer groups or a trade union. Further, evidence suggests that individuals are more likely to seek social guidance in novel, ambiguous situations and where the source of information is seen as credible. Other research, generally conducted in experimental settings, has suggested that individuals are likely to follow advice where they have paid for advice, and the advisor is known to be expert and trustworthy.

Gaps in the evidence base

There did not appear to be any evidence which followed individual employees through the course of a conflict at work up to the point of registering a tribunal claim. Explanations as to why actions were taken (such as claiming) are therefore retrospective and subject to post-hoc rationalisation and recall bias. There appeared to be a lack of evidence at the individual level about the influence of economic incentives in the period prior to a claim being made. Equally, relatively little evidence was uncovered on the impact of personality on decisions about how to resolve a dispute. In addition, one of the questions set for the review sought information on variations in responses to incentives amongst different sectors of the population. Again, this appeared to be an evidence gap based on this review.

8. Policy implications

The issues outlined in this review have a number of potential implications for policy concerning dispute resolution at the workplace.

Encouraging realistic expectations

The review suggests that expectations of the outcome of a employment tribunal claim can be unrealistic. In particular, optimistic overconfidence suggests that disputants may be overconfident both about their likelihood of success and the potential value of a claim. Indeed, there is evidence from an analysis of parties' expectations in relation to ET claims (unpublished, Paul L Latreille) to support this.

More realistic expectations of the outcome of a claim may result in employees deciding to resolve their dispute at an earlier stage or in a different manner. Ways to encourage more realistic expectations include:

- reviewing existing advice and guidance to improve its effectiveness in countering the tendency of both parties to be overoptimistic.

- providing potential claimants with advice that is well-grounded, impartial and expert that enables them to make a realistic assessment of their case, including information that would help them to understand its possible strengths and weaknesses. Independent advice can also serve to counter the potential negative effects of potential claimants being encouraged by unrealistic advice from colleagues, friends and family who may not be well informed;

- ensuring that employees have access to information about external services such as Acas or Citizens Advice, or helping them to provide advice in other forms, such as in-house employee helplines or counselling services.

- dissemination of accurate information on the employment tribunal process and likely outcomes more widely so that informal advisers (family, friends etc who potentially have an influence on employees) are better informed about the outcomes of employment tribunals

- improving existing advice and guidance so that it gives individuals and employers clear information on the different routes available to resolve a dispute and the costs and benefits of each approach, for instance using mediation versus making an employment tribunal claim. Individuals should also be given accurate information about what is involved in the process of taking a tribunal claim and the alternative ways to resolve conflict (possibly through the use of case studies and testimonies)

- encouraging the development of trust in the workplace. Trust is an issue that recurs throughout this review. If the parties involved in a dispute have

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a basis of trust, any conflict that they enter into is more likely to be resolvable without escalation: individuals are less likely to be concerned about protecting 'face' and therefore less likely to adopt a confrontation approach to resolving an issue. Trust can be built up in an organisation by promoting good employment relations and an open and honest environment, which in turn leads employees to believe that their organisation is a just and fair place to work. Ways to achieve this include:

- encouraging organisations to have good and clear employment relations policies in place that are made available to employees, covering issues such as equal treatment, harassment and bullying and discipline and grievances. If employees have been involved in the formulation of these procedures, for example, through the input of a trade union or employee representatives they will feel that they own the processes and will be are more likely to view them as fair and therefore accept them, even if they do not agree with the outcome. Procedures should not be a tick-box exercise, but should attempt to empower the parties as far as possible in order to deal with potential conflict situations;

- ensuring that organisations actually implement those policies. It may, for example, be helpful to draw organisations' attention to the Acas Code of Practice on disciplinary and grievance procedures;

- encouraging organisations to have an effective communications system in place, in order to ensure that employees feel that they know what is happening in the organisation and can air any concerns they have.

These types of actions will not prevent workplace conflict from arising, but they will help to ensure that when conflict does arise, the parties to the conflict are operating in an environment that is supportive and based on trust and good faith. Organisations should therefore be encouraged to put into place and build on these good practice measures.

Building empathy

This review has found literature that suggests that where an individual attributes a negative action to the personality or character of the perpetrator, this is likely to result in anger. The perpetrator in turn may then be likely to interpret this angry response from the harmed party as unwarranted and in turn may retaliate, thus escalating a dispute. Building empathy between individuals may help to avoid this, and there are ways in which organisations can be encouraged to try to create greater empathy among its workforce:

- targeted team building events, such as away days for particular groups of workers may help. The emphasis here is not especially on the subject matter of any particular event, but on enabling colleagues to spend time together in the same room, away from the workplace, and in a more relaxed environment, where they may have an opportunity to chat in a more relaxed way. This will encourage individuals to see the 'more human' side of their colleagues. While this may not prevent conflicts from arising, it

may help to establish a basis of trust and empathy that may help in future conflict situations;

- helping line managers to spot potential clashes between employees. More generally, the role of line managers in managing disputes is key: the evidence presented suggests that the way in which employees may seek to resolve disputes is more a factor of the perceived likelihood of success than power differences. Managers capable of using open, collaborative, problem-solving approaches are more likely to be successful in resolving disputes.

Avoiding escalation

Escalation of conflict is, naturally, to be avoided whenever possible, as this review has shown that escalation tends to focus effort away from problem solving and towards hostile acts to the other party. Employee perceptions of justice appear to be key in avoiding escalation, and how employees seek to resolve disputes in the workplace. They also appear to be key in determining claiming behaviour (although this finding derives from the US context). Three elements of organisational justice have been identified relating to outcomes, procedures and interpersonal treatment. Importantly, whilst unfavourable outcomes may be unavoidable in certain situations, evidence suggests that procedural (ie fair processes) and interactional (ie interpersonal) justice can compensate for low levels of distributive justice.

The procedural justice literature offers a number of prescriptions for ensuring that processes are fair and consistent. Prescriptions for achieving procedural justice include a procedure that allows for employee input, provides for consideration of that input, as well as being remedial in nature. Inaction in response to discontent voiced by an employee is likely to exacerbate feelings of injustice. In addition, clear explanations for unfavourable outcomes (the type and adequacy of explanation can mitigate against negative reactions) are seen as important. Ensuring interactional justice relies on managers, and managerial training. Where possible, organisations should be encouraged to:

- ensure that procedures are in place to deal quickly and effectively with employee grievances. The training of line managers here is key;

- develop systems whereby feedback is given clearly and quickly when outcomes of grievances are negative

Further, while it is not always possible to avoid escalation of a conflict, 'catching it early' may be beneficial and give the parties a chance to resolve an issue before it becomes entrenched. Ways to encourage organisations to do this include:

- helping organisations to ensure that line managers are aware of what is going on in the workforce. Targeted line manager training in areas such as conflict management, having difficult conversations and mediation skills may help to give line managers the confidence to spot potential trouble spots and to intervene early. Procedural elements such as regular one-to-ones between line managers and their staff may give employees the

- encouraging organisations to promote an open organisational culture in which employees feel that they have access to senior management. If employees believe that they have the "ear" of senior management, this may help to keep any issues from escalating beyond the organisation and therefore needing to be resolved externally;

- organisations should therefore be encouraged to invest in training and building the confidence of their line managers in dealing with workplace disputes and to try, as far as possible, to ensure that there is some kind of meaningful 'open door' policy in terms of the accessibility of senior management to the workforce.

Finally in this section, this review has found that individuals who feel that they have nothing to lose by escalating a conflict have been found to be more likely to do so. This is more likely to be the case for employees with long service, who have greater emotional investment in an organisation. This may apply particularly to employees in the public sector, where there is a greater number of employees with long service. It may also apply to small businesses, where employees may have a strong degree of emotional investment in their workplace. In the case of these employees, therefore, it is even more essential that company procedures are seen to be transparent and fair.

Valuing the offer from the other party

This review has shown that in some cases, individuals do not value an offer (of a proposed solution to a dispute, in the employment relations context), from the other party, fearing that that party may possess information that they do not, and that the offer is more beneficial to the other party rather than them. The review has also shown that, under the concept of advice discounting, the decision-maker gives more weight to their own opinion relative to that of their adviser. However, they will be more inclined to listen to advice if it is deemed to be credible, ie coming from someone perceived to be more experienced or knowledgeable or with greater age, education and life experience, or if that advice is paid for.

Ways to ensure that potential claimants value offers from the other party and also listen to advice from reliable sources include:

- encouraging organisations to build trust between the parties, both on a historical basis, if possible (see above, under 'encouraging the development of trust'), and during the period of the dispute in question; and

- encouraging organisations to ensure that employees involved in a dispute have access to advice and guidance that they feel they can trust within the organisation. Where this is not feasible, ie maybe in the case of some SMEs, it is important to offer organisations and employees access to a neutral third party, such as a mediator, who can vouch for the good faith of

offers made by each party. This could either be an individual in-house or an external mediator. Private mediators can be found on the Civil Mediation Council's register.

The value of employee voice

The literature consulted in this review stresses the influence of employee voice, which can have a positive influence on employee perceptions of procedural and interactional justice, and issues such as fair treatment and due process. Even if the final outcome of a process is negative, employees are more likely to feel positively about it if their perception is that the process has been fair. Consequently, in workplaces where trade union and employee representatives exist, their active involvement in supporting employees during in the context of workplace disputes should be encouraged. However, the influence of trade unions is only positive in cases where the relationship between the union and the organisation is positive. Therefore, if a trade union is recognised in an organisation, efforts should be made to ensure that the relationship is positive and that the company and the union can work together.

How to ensure that advice and guidance is followed?

There are existing sources of information, advice and guidance for organisations and individuals on how to manage workplace conflict. One of the key challenges is therefore how to ensure that organisations and individuals actually follow this information, advice and guidance. This is a difficult question and one that needs much thought on the part of policymakers. Issues such as presentation, profile and dissemination may play a part here.

There is a substantial amount of information, advice and guidance on these issues already available to individuals and therefore it may be more appropriate to think about how existing information can be presented and framed in order to ensure maximum impact. This could take the form of giving information on successful alternative dispute resolution procedures, from personal testimonies and case studies, or clear information on the median awards from tribunal hearings, and the average length of taking a claim. This information could, for example, be usefully placed on the front to the ET claim form (as proposed in the January 2011 BIS consultation document).

There may also be scope for organisations such as Acas to offer early and impartial information, advice and guidance to the parties to a dispute (again, as proposed recently by BIS).

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Glossary

Attribution theory: considers how people attribute causal meaning to behaviour.

Distributive justice: refers to the perceived fairness of outcomes.

Egocentric advice discounting: refers to the tendency for a decision-maker to overweigh their own opinion relative to that of their advisor in experimental settings.

Egocentric or self-serving bias: describes the tendency for people to take credit for positive events and to blame the situation or other people when things go wrong.

Enhanced loss aversion: concerned with the notion of the loss of rights or entitlements.

Fundamental attribution error: refers to the tendency of people to attribute the behaviour of other people to disposition, rather than situation, to a greater extent than is warranted.

Framing: describes the tendency for people to evaluate options not simply on their tangible features (as rationalist decision theory would suggest), but also on how those options are described or classified, ie how they are 'framed'.

Hostile attribution bias: a tendency to assume that annoying behaviour from others is done with hostile intent.

Illusion of control: refers to the tendency for people to believe they have more control over events than they actually do.

Interactional Justice: refers to the perceived fairness of interpersonal treatment.

Loss aversion: describes the tendency for individuals, 'when faced with a sure loss, to gamble, even if the expected loss from the gamble is larger' (Mnookin, 1993).

Organisational dispute resolution system (ODR): term used in the US literature to refer to a range of practices for resolving disputes within organisations (these range from an open door policy to a multi-step) grievance procedure.

Procedural justice: refers to the perceived fairness of the procedures by which outcomes are determined.

Reactive devaluation: refers to the tendency for individuals involved in a dispute to diminish the attractiveness of an offer or proposed exchange simply because it originated with a perceived opponent.

Reference point: refers to the standard selected by the disputant against which possible outcomes are evaluated.

Social information processing theory: proposes that work attitudes and behaviours are largely the result of processing information from the social environment rather than individual predisposition.

State anger: anger experienced in response to a particular set of events.

Trait anger: individual differences in the propensity to experience state anger.

Type A personality: described as a person with a sense of time urgency and as being competitive and impatient.

Appendix 1:Search terms

Adversarial mirror

ADR

Alternative dispute resolution

Attitudes

Behaviour

Cognitive dissonance

Conciliation

Conflict

Conflict resolution

Decision-making

Dispute

Dispute resolution

Distributive justice

Employ*

Employee attitudes

Employee engagement

"Employment Tribunal"

Expectations

Financial incentives

Incentives

information and advice

lawyers

legal

loyalty

Modern workplaces

Motivation

Organisational culture

Personality

Procedural justice

Psychological contract

Reactive devaluation

Recall bias

risk

Self-serving bias

trade union

trust

Work*

"work conflict"

"work dispute"

Workplace mediation

Workplace

Appendix 2: Data extraction form

Table 2: Data Extraction Form

Endnote ID	Note unique Endnote code
Source of reference	Note electronic database, consultation with experts/stakeholders, reference checking, personal communication, citation analysis
Bibliographic details	Author, year, title, publisher, place
Focus of study	Brief description
Re-check study meets inclusion criteria	1=yes; 2=no; 3= uncertain
Background of study	1=academic; 2= Government (agency); 3= representative organisation; 4= other
Study characteristics	Brief overview of type of research ie Quant/Qual; survey; sample size and characteristics; longitudinal/cross-sectional etc.
Quality overview	Note resulting code (Red, amber or green) and reasons for code, including notable features or flaws.
Main findings	Brief summary of findings
What does the research tell us about employee behaviour and decision-making from when a conflict or dispute arises in the workplace up to the point of making a tribunal claim (if made), including what incentivises employees to behave in a particular way?	
What does the research tell us about influences on employees' (decision-making) behaviour from when a conflict or dispute arises in the workplace up to the point of making a tribunal claim (if made) including personality and attitudes? ie this may include factors such as perceived	

financial incentives, sources of influence such as family, legal advisers, trade unions etc., organisational culture, institutional processes, social and organisational context, etc	
What does the research tell us about information and advice-seeking behaviour by employees from when a conflict or dispute arises in the workplace up to the point of making a tribunal claim (if made)? Does the research tell us anything about the impact on decision-making of advice seeking behaviour?	
What does the research tell us about differences in attitudes, behaviours and responses to influences/incentives with respect to handling conflicts or disputes at work amongst different sectors of the population?	
Does the research shed light on any (psychological) theories that may contribute to our understanding of handling disputes in the workplace?	
What does the research tell us about the extent to which behaviour in other types of civil dispute is different from behaviour in employment disputes? Does the research offer any insights or theories that could be applied to employment disputes?	
Reviewer name	
Review date	
Comments	Note any general comments, reminders or questions reviewer may have about study

Appendix 3: Quality assurance of empirical studies

Table 3: Quality assessment criteria for the empirical studies selected for this review

Name of study	Quality assessment
Arnold J and Carnevale P (1997) Preferences for Dispute Resolution Procedures as a Function of Intentionality, Consequences, Expected Future Interaction and Power Journal of Applied Social Psychology, 27, 5, pp371-398	Green
Brockner, J., Fishman, A.Y., Goldman, B., Reb, R. and Spiegel, S. (2007) "Procedural fairness, outcome favourability, and judgements of an authority's responsibility", Journal of Applied Psychology Vol.92, No.6 1657-1671.	Amber
Burgess, S., Propper, C., Wilson, D. (2001) ' Explaining the growth in the number of applications to industrial tribunals, 1972 -1997`. Employment Relations Research Series, No.10. DTI	Green
Chan, KW., Huang, X., Ng, PM (2008) 'Managers' conflict management styles and employee attitudinal outcomes: The mediating role of trust`. Asia Pacific Journal of Management, Vol 25: p 277-295.	Green
Goldman (2001) Toward and understanding of employment discrimination claiming: an integration of organisational justice and social information processing theories. Personnel Psychology vol54 pp361-386	Amber
Goldman (2002) The application of Referent Cognitions Theory to legal-claiming by terminated workers: The role of organizational justice and anger. Journal of Management vol29 pp705-728	Amber
Goldman B, Layne Paddock E and Cropanzano R (2004) A Transformational Model of Legal-Claiming, Journal of Managerial Issues, Volume XVI Number 4, Winter 417-441	Amber

Groth, Goldman, Gilliland, Bies (2002) Commitment to legal claiming: influences of attributions, social guidance and organisational tenure. Journal of Applied Psychology vol 87 pp781-788   Amber

Knight and Latreille (2000) Discipline, Dismissals and Complaints to ET. British Journal of Industrial Relations vol38:4 pp533-555   Green

Lind, Greenberg, Scott, Welchans (2000) The winding road from employee to complainant: situational and psychological determinants of wrongful-termination claims. Administrative science quarterly vol45 pp557-590 Johnson Graduate School of Management, Cornell University   Amber

Moorhead, R., Cumming R. (2009) 'Something for nothing? Employment Tribunal claimants' perspectives on legal funding`. Employment Relations Research Series No.101. Department for Business Innovation and Skills.   Green

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- http://www.bis.gov.uk/publications

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118 *2009 Compendium of Impact Assessments.* Labour Market Analysis and Minimum Wage. URN 11/735. March 2011

117 *Information and Consultation under the ICE Regulations: evidence from longitudinal case studies.* Mark Hall, Sue Hutchinson, John Purcell, Michael Terry and Jane Parker. URN 10/1380. December 2010

116 *2008 Compendium of Impact Assessments.* Labour Market Analysis and Minimum Wage. URN 10/1115. December 2010

115 *International Review of Leave Policies and Related Research 2010.* Peter Moss, Institute of Education, University of London. URN 10/1157 – September 2010

114 *Review of the default retirement age: summary of stakeholder evidence.* URN 10/1018 - July 2010

113 *Survey of Pay and Work Rights Helpline Callers.* URN 10/1128 – September 2010

112 *Vulnerability and adverse treatment in the workplace.* Helen Bewley and John Forth, NIESR. URN 10/1127

111 *Union Modernisation Fund – Round 2 Evaluation Report* URN 10/1084 – July 2010

110 *Second survey of employers' policies, practices and preferences relating to age, 2010.* URN 10/1008 - July 2010

109 *The Fair Treatment at Work - Age Report Findings from the 2008 Survey.* URN 10/813. March 2010

108 *Evaluation of the Vulnerable Workers Pilots Year 2* (Final) *report.* Katie Shearn, Ben Knight and Ashvinder Kaur Matharoo, Opinion Leader Research. URN 10/775. March 2010

107 *Findings from the Survey of Employment Tribunal Applications 2008.* Mark Peters, Ken Seeds, Carrie Harding and Erica Garnett. March 2010

106 *Implementing information and consultation: developments in medium-sized organisations. Mark Hall,* Sue Hutchinson, John Purcell, Michael Terry, Jane Parker. URN 09/1544. December 2009

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