Review of Seminar 2 - 'Resolving workplace disputes – employee voice, engagement and representation'

Dr Richard Saundry, Institute for Research into Organisations, Work and Employment (iROWE), University of Central Lancashire.
Dr Gemma Wibberley, Institute for Research into Organisations, Work and Employment (iROWE), University of Central Lancashire.

This paper provides a summary and analysis of the key themes that emerged from the second seminar of the series held at the University of Central Lancashire, 12th December 2012. It is intended to inform, and provide a link to, the rest of the series. It is important to note that the contents reflect the views of the authors and not necessarily the views of those presenters and contributors referred to below.

This seminar explored the role played by employee voice, engagement and representation in the management and resolution of workplace conflict. Since the publication of the Gibbons Review into the UK's system of employment dispute resolution in 2007, substantial policy attention has been paid to the ways in which organisations deal with individual workplace conflict. Surprisingly, within the consequent debate there has been little or no discussion of the potential for employee voice mechanisms to shape workplace dispute resolution. Therefore the seminar aimed to examine a number of key questions:

- *What role do employee representatives play in resolving individual disputes?*

- *What is the attitude of trade unions to alternative dispute resolution?*

- *How can trade unions balance the need for fairness and justice with attempts to resolve disputes?*

- *Do employee engagement and alternative mechanisms of direct and indirect voice have a role to play in dispute resolution?*

1. The role of union voice in individual dispute resolution at work

The existing evidence base examining the relationship between voice and workplace conflict is relatively limited and as Andy Charlwood (University of York) pointed out during his presentation, largely based on literature from the USA and Canada. The theoretical underpinnings arguably start with Freeman and Medoff's classic work that union voice is essential in underpinning workplace fairness which in turn facilitates positive outcomes from dispute resolution. However, the potential contradiction between a union's role in ensuring and enforcing fair treatment and due process, and its contribution to seeking agreed resolutions to individual disputes is potentially much more problematic.

Certainly as both Charlwood and also Gemma Wibberley (UCLAN) explained, there is clear statistical evidence that links union presence and density with different indicators of conflict. For example the decline in trade union density has been argued to be one cause for the steep rise in employment tribunal applications during the 1990s. Furthermore, analysis

of WERS series data has consistently found that highly unionised workplaces are less likely to discipline and dismiss their staff. Of course this may simply be linked to the ability of trade unions to constrain managerial action within the workplace. Indeed, the presentations from both Paul Nowak (TUC) and Steve Stott (UNISON) made it clear that defending their members is the first and most important objective of trade unions in dealing with individual employment disputes. Furthermore, Professor Ralph Fevre (University of Cardiff), in discussing findings from the Fair Treatment at Work Survey (Fevre et al., 2009), reported that union members are more likely to be aware of their employment rights, and therefore to challenge managerial prerogative by identifying problems and raising grievances. Moreover he argued that this knowledge may also lead to union members and representatives labelling disputes as, for example, bullying and harassment, which could escalate conflict and trigger formal procedure.

Whether unions adopt adversarial positions, prioritising rights enforcement over dispute resolution, appears to depend on two main issues. Firstly, delegates suggested that the approach of some representatives was shaped by their personality and also their experience – with less experienced representatives sometimes not having the confidence to look for negotiated resolutions. Secondly, and much more importantly, both speakers and delegates argued that the nature of workplace relations was key – in short where there was little trust between management and unions, disputes were adversarial and handled in strict accordance with written procedures. Managers would often take defensive positions fearing the threat of litigation while union representatives would seek to use any procedural flaws to allow them to secure the best possible outcome for their member.

However, this zero-sum approach could be avoided. Dr Gemma Wibberley's presentation (UCLAN) highlighted findings from a number of case studies (funded by Acas) that emphasised the importance of representation in underpinning social processes of conflict resolution. Jonny Gifford, (Research Adviser, CIPD) re-iterated this, suggesting that informal resolution is possible because: representatives can influence employee action and also managers and representatives can use each other as a 'sounding board' and warn each other of potential problems. In this way, it easier to address issues before parties are entrenched in their views and there can be faster and more timely resolution of conflict.

Wibberley also argued that employee representation offers particular advantages over direct employee voice as individuals may be reluctant to discuss personal or difficult issues with their immediate managers. In contrast, there may be a degree of safety in confiding in representatives, who may also be able to provide a degree of distance and objectivity from the dispute. In addition, representatives and managers often worked together to resolve issues informally at an early stage prior to the commencement of grievance and disciplinary procedures. For managers, representatives provided an early warning system of emerging issues and, crucially a conduit through which potential resolutions could be explored outside the emotion of the situation.

There was also there was broad agreement from delegates and speakers that this relied on the development and maintenance of high-trust relationships between representatives, managers and HR practitioners. However, even here, union representatives could face accusations of collusion or being 'too close' to management due to members' concerns that

their interests may be sacrificed to preserve these relationships. While union representatives may feel that attempting to reach a jointly agreed solution to a dispute is in their members' interests, members seeking 'justice' may be more difficult to convince.

Critically, representational structures that underpin informal, social processes of resolution are under significant strain due to the continuing decline in union presence and the erosion of union organising. In addition, as Paul Nowak explained, even shop stewards and representatives in unionised workplaces are under growing pressure due to the increased demand for representational services (given the impact of austerity and the recession) and the restriction of facility time by employers.

2. Trade unions, mediation and conciliation – building trust or simply resolving disputes?

It could be argued that one way of rebuilding workplace relationships and consequent structures of informal resolution is the extension of the use of mediation. For example the Coalition government sees mediation as offering the potential for transforming the culture of conflict management. A number of delegates argued that the involvement of employee representatives and particularly trade unions within in-house mediation schemes could have a positive impact in creating a focus on early resolution and creating high-trust workplace relations.

However, a number of potential barriers were also identified. For example, Jonny Gifford argued that the key benefit of mediation is the impartiality of the mediator, and for that reason it was problematic for employee representatives to operate as mediators. Delegates argued that there were clear examples of trade union representatives becoming effective mediators and that the involvement of the union with in-house mediation schemes had positive impacts on employment relations. There was perhaps more agreement that the language and skills associated with mediation could be invaluable for both managers and union representatives.

Nonetheless, mediation raises important questions for trade unions. Firstly it implies unions sacrificing a representational role that they have increasingly relied on as collective regulation has been eroded. Secondly, members may be reluctant to enter into mediation, preferring to attempt to enforce their rights through conventional disputes procedures. Finally, for some trade unions, the government's promotion of mediation is tainted by its association with restrictions on employment rights and the access of workers to tribunals.

Against this trade unions are more than aware that even when successful, union members find the process of litigation through the employment tribunals extremely difficult. Steve Stott (Regional Manager for UNISON in the North West) explained that alternative dispute resolution through mediation or conciliation can achieve more desirable results for members, such as continued employment, or even where workers are dismissed they can obtain good references which can help them find alternative work.

Such alternatives are even more attractive given current government policy designed to reduce the risks associated with employment termination through, for example introducing charging for employment tribunal applicants and the increase in the qualifying period for

unfair dismissal. This inevitably poses serious questions over the ability of unions and individual members to pursue legal remedies. However the extension of Acas's conciliation services potentially offers additional channels through which trade unions can help members to achieve satisfactory resolutions without the need for litigation.

Steve Stott from UNISON discussed the participation of his union in a pilot of pre-claim conciliation (PCC) in conjunction with Acas and three local authorities. He explained that their initial findings suggested that for PCC to be successful, four key ingredients were necessary. Firstly, positive attitudes were needed by both parties as resolution was unlikely without a willingness to seek a settlement. Secondly, there needed to be some standardisation in the way in which information was gathered – to avoid unnecessary dispute and misunderstanding over the facts of each case. Thirdly, and perhaps most importantly, both the employee and employer needed to have a realistic view of the realities of litigation. This reinforces the suggestion in seminar one that unrealistic expectations of the potential outcomes from employment tribunal applications can fuel disputes. Stott argued that this could also act as barrier to conciliated settlements. Finally, he suggested that there was a need for training for all parties involved on PCC.

He also identified a number of barriers facing trade unions in engaging with PCC. The pressure on union organisation meant that there was a limited number of trade union representatives with the time and knowledge to guide and advise members through PCC. This was made worse by high levels of disciplinary and grievance case work now being handled by union representatives and officers. Critically there was also a lack of awareness of the initiative among workplace representatives, but this was an area on which UNISON and other unions were working.

This potentially suggests that unions can develop a new and important role in promoting non-litigious forms of resolution. However, this again needs to be weighed against their fundamental mission to protect their members' interests. Despite the work being done by unions like UNISON, the involvement of trade union representatives in alternative forms of dispute resolution remains sporadic. Interestingly, as Gill Dix from Acas pointed out during the seminar discussion, the early evidence suggests that pre-claim conciliation was much less likely to be used by union members and unionised organisations.

3. Non-union voice, conflict resolution and employee engagement

The decline in union organisation and the growing representation gap places an important focus on the role played by employee voice within non-unionised workplaces. Importantly, there is little evidence that non-union workplace representatives have filled this void. Furthermore, even where such representatives are in place fewer than half spend time on individual employment disputes (van Wanrooy et al., 2013).

As a consequence, as Gemma Wibberley pointed out, this means that employee voice is often limited to direct communication by staff with their managers. However, it may be difficult for employees to raise issues directly with managers, fearing possible ramifications. However, Ralph Fevre argued that the Fair Treatment at Work Survey demonstrated that employees also look to their managers for advice and a potential source of resolution within

employment disputes. While this may seem counterintuitive, it reflects findings from the 2011 Workplace Employment Relations Study, which suggested that a significant minority of workers turn to their line managers to help them make a complaint about work (van Wanrooy et al., 2013). Clearly this would be problematic in those disputes involving a line manager and their subordinate but crucially both managers and trade union representatives may have the knowledge, power and/or influence to take action to address the problem. Critically, it is where the worker cannot use either of these routes that they are placed at a disadvantage and resolution, within the workplace becomes problematic.

But, as Andy Charlwood pointed out in his presentation – there is no clear evidence of any link between voice in non-union workplaces and grievance rates. However, research conducted by Charlwood and Anna Pollert, based on Pollert's survey of unorganised and vulnerable workers has shed some light on this important issue (Charlwood and Pollert, 2012). Overall, low-waged and unorganised workers find it difficult to resolve problems at work – in particular they are unlikely to take formal action through workplace procedures and are more likely to respond to problems through exit. Nonetheless, access to voice mechanisms, however, informal, does appear (at least to a small extent) to increase the chances that disputes are resolved efficiently and fairly. Furthermore, the ability of workers to exercise voice are dependent on a number of conditions. Employees need to be able to approach their managers without a fear of recrimination. In addition as a number of studies have suggested, line managers need better training to be able to deal effectively with such encounters. But, perhaps most importantly, there needs to be a degree of trust between employees and employers to create a climate within which difficult issues can be identified, addressed and resolved.

According to many commentators, a key building block of trust is effective employee engagement. Certainly, contributors to the seminar saw having an engaged workforce in both unionised and non-unionised environments as important in preventing the development of grievance cultures. Andy Charlwood highlighted arguments made by authors such as Kochan et al. (1986) that posit a link between employee involvement strategies in non-union workplaces can lead to greater levels of trust which in turn enhances co-operation between employers and employees. This not only reduces the likelihood of grievances but also supports informal processes. However, this is arguably dependent on the nature of involvement – where this is based on teamwork, empowerment and self-managed teams, high trust may well be generated but other high involvement strategies are argued to lead to work intensification potentially triggering greater conflict.

This view of the power of employee engagement was supported by a number of contributors – Mike Green (HR Director, Protective Coatings & Marine EMEA) described how implementing a range of engagement strategies had helped his organisation (which is not unionised) to manage very difficult change with very few disciplinary or grievance cases and low staff turnover. For these reasons he recommends this approach to other companies. The key, he argued, was to fully communicate with the workforce and involve them within key decisions over their working lives. He strongly argued that this helped to prevent conflict to the extent that there was little necessity to spend time and energy on dispute resolution. Wibberley's research, reported above, also found tentative evidence that employee engagement mechanisms such as staff surveys and working groups could play a

role within the effective management of conflict - potentially offering opportunities to raise issues that staff are not confident to do directly.

However, other contributors argued that while employee engagement could provide a valuable tool it was not a universal panacea. For example, Paul Nowak (TUC) argued that while the TUC supports employee engagement, such strategies were more effective when they had the involvement and backing of trade unions. Otherwise, there was a danger that they could mask serious problems and issues - thus engagement strategies should be in addition to trade union voice, rather than a replacement. Peter Monaghan (Acas) suggested that the concept itself could be difficult to define – in particular it was very challenging to identify what engages staff. This placed a focus on the skills of managers – which he argued were often inadequate to effectively deliver an engaged workforce. Furthermore, Ralph Fevre (University of Cardiff) noted that engagement activities can be costly. He argued that in order to be valuable engagement needs to be innovative, focus on developing good people management skills, and recognise that in most organisations one engagement message will not suit the diverse range of staff.

Developing the case for employee voice

Overall, there was broad agreement that structures of employee representation, within the context of high trust workplace relations, provided a firm basis for effective dispute resolution. While there was also a consensus that employee engagement strategies could play a key role in building trust – there was less unanimity over whether engagement alone was enough.

Nonetheless, delegates pointed out that a key problem was that many of the workplaces in which conflict was prevalent or more likely to occur were those that had neither structures of representation nor strategies designed to increase employee engagement. It was particularly felt that small and medium sized enterprises (SMEs) may be harder to convince of the benefits of representation and engagement partly due to the fact that smaller spans of control may allow for more personal employment relations, thus reducing the need for structures of representation and engagement strategies. Therefore, there was a need to develop a case for the promotion of greater employee voice. There was a general call for the government to be involved in encouraging representative structure and workplace engagement. However, while the current administration is in broad support of promoting the latter, there is little sign that the Coalition government has any enthusiasm to boost workplace representation.

A number of delegates argued that there was a need to link the benefits of representation and engagement to the 'growth agenda'. Jonny Gifford (from the CIPD) argued that there are signs of a realisation that management prerogative is not enough, and that there is a need for engagement and partnership with trade unions to enable companies to be more competitive and attract the best staff. However, others were less sure and argued that too much emphasis on promoting the 'business case' could lead to employee voice being ignored and sidelined in challenging times. Instead it was suggested that an ethical case needs to be made based on the need for organisations to be founded on principles of fairness and equity. For example within the NHS it was suggested that was a link between

the ill treatment of staff and failures in care. Therefore, the broader benefits of fairness should perhaps be more widely canvassed.

Conclusion

The main theme of the seminar is possibly best summed up by Andy Charlwood's call for a broader approach to managing conflict, to recognise the importance of relationships, rather than a narrow focus on policy and procedure. Thus, he argues there is a need to look towards institutions that generate co-operation and trust.

It could be argued that this is particularly important in the current economic and industrial environment. Union structures of representation are being progressively eroded. WERS2011 has found that just 21% of workplaces has a recognised union compared to 24% in 2004 (van Wanrooy et al., 2013) and over three-quarters of workplaces have no union members. There is also little evidence that representation gap is being filled by other non-union representative mechanisms. In addition, even where representatives are present, the speed of organisational change and restructuring in many organisations makes the development and maintenance of high-trust relations necessary to sustain informal resolution processes difficult.

For some employee engagement strategies offer a way forward – however, not only is employee engagement contested, there is currently little evidence of its link to levels of workplace conflict. At best, we would argue it may attenuate the development of conflict but it is difficult to see how engagement mechanisms can make a significant contribution to rebuilding the conflict resolution capacity of UK workplaces.

References

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