

# Research Paper

## Managing Individual Conflict in the Private Sector A Case Study

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## **PREFACE**

This report is one in a series of papers exploring innovative approaches to conflict management in the workplace. It follows an earlier paper on the introduction of mediation in a public sector body (see Acas Research Paper 01/11).

Acas is grateful to Shop Direct Group for its participation in the study, and to researchers from the Lancashire Business School for their work.

## 1. INTRODUCTION

Recent years have seen mounting concern over a perceived increase in individual workplace conflict and consequent employment disputes. The government's recent consultation on 'Resolving Workplace Disputes' cites research claiming that employees in the UK spend an average of 1.8 days per week dealing with conflict at a total annual cost to the UK economy (in 2008) of £24 billion (BIS, 2011:19). More recently, in 2009/10, the number of employment tribunal claims in the UK increased to a record level of 236,100. While this was partly due to a significant increase in multiple claims, the number of single claims has steadily increased over the last four years to a total of 71,000 (Ministry of Justice, 2010). Accordingly the ability of organisations to manage conflict and resolve workplace disputes has been brought into stark focus.

In 2007, following concern within government over the extent of individual employment disputes and the consequent burden on the Employment Tribunal system, Sir Michael Gibbons was asked to conduct a detailed review of the UK's system of dispute resolution. His conclusions placed a significant degree of blame on 'inflexible, prescriptive regulation' (Gibbons, 2007:5). It argued that this hindered early and informal attempts to address and resolve actual or potential individual employment disputes. The recommendations of the review led to a number of important reforms (through the Employment Act 2008) - statutory dismissals and grievance procedures were abolished; a shorter and less prescriptive Acas Code of Practice on Disciplinary and Grievance procedures was introduced; and Acas introduced a service offering conciliation to parties in potential employment tribunal cases (known as 'pre-claim conciliation' or 'PCC').

The government's recent consultation over dispute resolution claims that these changes have, *'have helped parties to avoid resorting to an employment tribunal (ET) to resolve a dispute, and have delivered significant savings to business'* (BIS, 2011:15). Nonetheless, they also concede that there is a continuing need to *'achieve more early resolution of workplace disputes so that parties can resolve their own problems, in a way that is fair and equitable for both sides'* (BIS, 2011:5).

This suggests that organisational practice does not yet fully reflect the importance of developing and sustaining more informal processes of dispute resolution. Indeed the government has joined others in highlighting a perceived shortfall in the ability of line managers to handle conflict and have the 'difficult conversations' necessary to resolve issues *'before they become full-blown discipline or grievance matters'* (BIS, 2011:17). Other commentators have argued that despite policy reform there is a continuing dynamic towards formalisation (Jones and Saundry, 2011) and that organisational culture remains a major barrier against earlier and more informal resolution (Rahim et al., 2011).

Policy solutions to this have tended to focus on the application of systems, processes and procedures to enhance dispute resolution. However, it could be argued that more emphasis needs to be given to the avoidance of such disputes through more effective conflict management and improved workplace relations (Dix and Oxenbridge, 2004; Dix et al., 2009). In short, can managers (and other key actors such as HR practitioners and employee representatives) develop ways in which the conditions that lead to formal disciplinary and grievance issues are either averted or remedied? This report seeks to explore this question in greater detail by examining the ways in which a large UK retail organisation manages workplace conflict and seeks to resolve individual employment disputes.

The company, Shop Direct Group (SDG), provides a unique setting to explore these issues – it operates within the retail sector which is not only responsible for a significant and growing proportion of the UK workforce but one that is also characterised by a relatively high propensity for disciplinary disputes (Kersley et al., 2006). SDG encompasses a number of very different work environments and work processes with distinct workplace and workforce characteristics, and it has a very high level of trade union density which is unusual within the sector.

Therefore this report:

- Provides a brief discussion of relevant conceptual issues and research evidence;
- Considers the way in which disputes are managed through formal disciplinary, grievance and other procedures;
- Examines the nature and extent of individual employment disputes within SDG;
- Explores the way that informal processes are used to manage conflict and resolve disputes;
- Examines the roles played by key participants – operational managers, HR professionals and trade union representatives – within both formal and informal processes of dispute resolution;
- Assesses the extent to which mediation is currently used and the potential for its development within SDG.

In addressing these issues, the report is structured as follows. In the next section we provide a brief review of the main conceptual and evidential issues that underpin our analysis. The methodology used in this research is then outlined and the background and organisational context of the study is set out. The findings are presented in three parts: firstly, the nature and pattern of conflict and individual employment disputes is examined and the informal and formal processes of conflict management and dispute resolution are explored. Secondly, we look at the roles played within these processes by key organisational actors – line managers, HR professionals and trade union representatives. Thirdly, we examine the way that mediation is used within SDG and the potential for the introduction of in house mediation provision. Finally we discuss the main themes arising from the research and set out the main implications for policy and practice.

## 2. KEY THEMES AND ISSUES

Recent policy debates have been dominated by a drive to find more effective means of resolving individual employment disputes (Gibbons, 2007). The government's current review of workplace dispute resolution claims that *'more needs to be done to support and encourage parties to resolve disputes earlier – where possible, in the workplace...'* (BIS, 2011:2) in order to maintain employment relationships, reduce costs to the employer and ultimately increase economic efficiency and growth. Underpinning this argument is an analysis which suggests that the way in which employers address disciplinary and grievance issues has become over-formalised in the face of an increasingly complex regulatory framework.

The last three years has seen a range of measures designed to provide employers with greater flexibility and scope for early informal resolution. These have included the abolition of the three-step statutory disputes procedures introduced by the previous administration in 2004; the introduction of a shorter, less prescriptive Acas Code of Practice on disciplinary and grievance procedures; and the extension of the Acas pre-claim conciliation scheme. In addition, there has been increased attention given to workplace mediation which has been argued to offer *'a pragmatic, flexible and informal way of providing both parties with positive outcomes'* (Gibbons, 2007).

However, we would suggest that there are a number of key issues that the debate has so far overlooked. Firstly, there is a degree of conceptual ambiguity over the nature of individual employment disputes. This, in turn, tends to lead to generic and arguably simplistic prescriptions to enhance 'dispute resolution'. Secondly, while the 'problem' of line manager confidence and competence has been identified (BIS, 2011; CIPD, 2007), the roles played by other key actors such as employee representatives and HR practitioners and the importance of workplace relations has been underplayed. Thirdly, the emphasis on mediation takes insufficient notice of some of the potential barriers to its adoption and its applicability to different types of disputes.

### 2.1 Conflict and disputes, discipline or grievance – a problem of definition?

All too often there is a lack of conceptual clarity within policy, practice and academic discussions over workplace conflict and dispute resolution, which can both confuse any consequent analysis and result in broad and vague policy recommendations. We would argue that there are two main problems: firstly, a tendency to conflate 'conflict' and 'disputes' and secondly, a failure to adequately distinguish between different types of individual employment disputes.

In regard to the former, Dix et al (2009) draw a vital distinction between conflict which they define as *'discontent arising from a perceived clash of interests'* and disputes which are *'manifest expressions'* of that discontent. This is important because conflict and disputes have different triggers and therefore may require different solutions. Furthermore separating conflict and disputes in this way allows us to examine the dynamic way in which discontent is formed and how this in turn becomes manifest in a formal dispute. For the purposes of this report we suggest a relatively simple distinction whereby a dispute is defined as where either a formal employee grievance has been filed, or formal procedures enacted in relation to conduct, capability and absence. Consequently, conflict refers to discontent over an issue or issues that have not yet developed in to a dispute.



Importantly, we can then explore the impact of particular interventions at different points in time. In particular we can examine whether organisations can manage conflict in order to prevent discontent developing into individual employment disputes in the form of grievance or disciplinary cases. Therefore drawing a distinction between conflict management designed to prevent the development of disputes and the resolution of those disputes once they have become manifest is crucial.

A further problem is caused by reference to generic 'disputes' since different types of disputes have distinct causes and solutions. In the workplace, most formal disputes take one of two forms: a grievance brought by the employee; or disciplinary action taken by the organisation against an employee. The extent to which conflict becomes transmitted as disciplinary action is a function of the degree to which behaviours contravene rules and norms and how managers respond to this. Whereas a grievance is initiated by an employee, disciplinary action is fundamentally subject to managerial prerogative. This distinction is not simply theoretical but is crucial in understanding the way in which different types of disputes are resolved and therefore the efficacy of policy instruments designed to facilitate or encourage resolution.

The importance of distinguishing between employee grievances and disciplinary disputes is reinforced when one examines their determinants. Analysis of WERS2004 suggests that the incidence of employee grievance cases was more likely in larger workplaces in the public sector, with higher levels of unionisation (Kersley et al., 2006). In contrast, high rates of dismissals and disciplinary sanctions are associated with lower levels of union density (Knight and Latreille 2000; Antcliff and Saundry, 2009). In addition, while there is little evidence linking workforce composition to the incidence of employee grievances, this would appear to be a central factor in determining the disciplinary profile of workplaces. In particular, a range of studies analysing data from the WIRS and WERS series found that rates of disciplinary sanctions and dismissals are likely to be higher where a greater proportion of the workforce is women (Knight and Latreille, 2000; Antcliff and Saundry, 2009). Furthermore, higher numbers of employees from minority ethnic groups are associated with higher rates of dismissal and workplaces with higher concentrations of older and more skilled, professional workers are less likely to discipline their employees (Edwards, 1995; Knight and Latreille, 2000; Antcliff and Saundry, 2009).

More broadly, Kersley et al. (2006) point out that those industries with low levels of individual employee grievances tend to be characterised by higher rates of disciplinary action. Interestingly the wholesale and retail sector (in which this case study is located) is illustrative of this pattern. Therefore, it would appear that key variables impact upon employee grievances and disciplinary disputes in very different ways, making generic prescriptions problematic.

## **2.2 Organisational actors, workplace relations and informal resolution**

An important consideration in understanding the way in which conflict is managed and disputes handled in GB workplaces is the roles and relationships of those parties who regularly deal with such issues. Here, attention has focussed on operational managers whose confidence and competence in addressing 'difficult issues' has been widely questioned (BIS, 2011; CIPD, 2007). However, within both the Gibbons report (2007) and the government's current consultation document (BIS, 2011) there is little mention of the influence of either HR

practitioners or employee representatives. Furthermore, the potential impact of radical changes in the nature of the HR function and the erosion of union organisation have received little notice.

Traditionally, 'personnel' took a relatively interventionist stance in dealing with individual employment disputes. However, the gradual devolution of people management issues has seen both discipline and grievance becoming jointly-regulated with operational management taking charge of the day-to-day responsibility for both discipline and grievance, with HR practitioners increasingly providing an arms-length advisory role (Hales, 2005; Hall and Torrington, 1998). HR practitioners now routinely act as procedural and legal experts to ensure consistency and compliance (Cooke, 2006; Hunter and Renwick, 2009). Arguably, the devolution of responsibility in relation to managing conflict is part of a wider progressive strategic shift of the HR function (Ulrich, 1997; Pritchard, 2010) reflected in the increasing use of remote and outsourced HR services.

This shift has significant consequences for the way that conflict is managed – it represents, in a relatively short period of time, a wholesale transfer of people management responsibility to operational managers. Unfortunately, inexperienced line managers not only lack necessary skills and confidence but are reluctant to address 'difficult issues' because they fear both internal criticism and the possibility of litigation if the problem escalates (Jones and Saundry, 2011). In this context, HR practitioners and their relationships with operational managers remain crucial, particularly given the changing nature of the HR function within many organisations. In particular Jones and Saundry argue that high-trust relations between line managers and HR practitioners underpin informal processes of dispute resolution.

The role played by employee representatives and the influence of employee voice is also neglected in the policy discourse. As discussed above, trade union presence and organisation has been consistently linked to lower levels of disciplinary sanctions and dismissals (Millward et al., 1992; Knight and Latreille, 2000; Antcliff and Saundry, 2009) and to higher incidence of employee grievances (Kersley et al., 2006). This could reflect the ability of strong unions to challenge managerial authority (Edwards, 1995; Moore et al., 2008). Nonetheless, evidence suggests that union representatives can play a more nuanced role in brokering informal resolutions, managing employee expectations and instilling self-discipline amongst their members (Batstone et al., 1977; Edwards, 1994; Saundry et al., 2008). However, the mere presence of trade unions is not enough – the effectiveness of informal processes of conflict management and dispute resolution are dependent on the development of constructive workplace relations between union representatives, HR practitioners and operational managers (Oxenbridge and Brown, 2004; Saundry et al., 2011).

This also suggests that the erosion of trade union organisation over the last thirty years may have important consequences for the pattern of individual employment disputes and the way in which organisations seek to manage and address such issues. Pollert and Charlwood (2009) have argued that workers who are not represented find it particularly difficult to resolve employment problems through workplace procedures. While non-union employee representation is a growing feature of UK workplaces it is limited to less than five per cent of workplaces. Overall, around two-thirds of workplaces and around 50% of employees have no access to either a union or non-union representative (Kersley et al., 2006).

Therefore, we would argue that any analysis of how conflict is managed or disputes are resolved by an organisation must consider how this is shaped by the roles played by key actors and the changing nature of workplace relations.

### 2.3 Mediation – benefits and barriers

Mediation has become a central focus of the policy debate surrounding workplace dispute resolution. In their current consultation document, 'Resolving Workplace Disputes: A Consultation', the government argues that:

*'there is significant scope for encouraging parties to resolve workplace disputes at the earliest opportunity. There is evidence to show that where a problem has arisen that could not be resolved by discussion between the parties (and that should always be the first step), inviting a mediator – an independent and impartial third party – to work with the two people involved can bring about a swift resolution of the issue.'* (BIS, 2011: 19)

Indeed, the promotion of mediation would seem to represent a central strut in the government's thinking as to how early and informal resolution can be promoted. While much of the literature to date that has examined mediation has emanated from the USA, there is a growing evidence base within the UK that points to its potential benefits (Sergeant, 2005; CIPD, 2008; Johnston, 2008; Harris et al., 2008; Latreille, 2010, 2011). Certainly, mediation is generally found to be an effective way of resolving certain types of disputes that might otherwise escalate into complex and costly conflict and in some instances, damaging litigation. In this respect it is seen as having clear advantages over traditional procedures (Latreille, 2010; 2011). However, the relevance of mediation beyond inter-personal disputes and particular its applicability to disciplinary disputes has been questioned (Saundry et al., 2010). For example, managers may be sceptical about offering mediation in disciplinary cases (CIPD, 2008). It is a widely held view that it is unsuitable in cases involving overt bullying, harassment and other situations where formal sanctions should be used (Bellman 1998, La Rue, 2000). This reflects the importance outlined above of distinguishing between different types of disputes.

If mediation only has the potential to resolve a relatively limited sub-set of disputes, then its wider impact is inevitably brought into question. However, it has been argued that the introduction of internal mediation schemes may have a positive impact on broader processes of conflict management (Saundry et al., 2010), employer-employee relationships (Sergeant, 2005) and the development of organisational culture and improvements in employee relationships (CIPD, 2008).

However, the evidence as to the uptake and application of workplace mediation is mixed. A recent CIPD survey claimed that the use of mediation was increasing (CIPD, 2011). Importantly, this may well cover a wider range of different types of, and approaches, to mediation. As Latreille's (2011: 7) review of Acas and CIPD research showed, there is a wide spectrum of mediation from '*ad hoc facilitated discussion*' undertaken by a single HR professional to '*established formal schemes*' involving trained and accredited mediators.

The latter appears to be concentrated within the public sector and larger organisations. Moreover, research undertaken by Acas found that just five per cent of private sector businesses had used mediation, falling to just four per cent in small and medium sized enterprises (SMEs) (Williams, 2011). While there is evidence of enthusiasm for mediation amongst SMEs, the personal nature of small firm employment relations and the cost of mediation are undoubted barriers to its use (Harris et al., 2008; Johnston, 2008; Rahim et al., 2011). Therefore,

despite its benefits, the potential of mediation to trigger a step change in dispute resolution within different organisational contexts remains open to question.

## **2.4 Summary**

Given the issues discussed above, this case-study is of particular interest. Shop Direct Group (SDG) is a large, private sector organisation operating in a sector (retail) in which disciplinary issues as opposed to employee grievances predominate (Kersley et al., 2006). In this way it provides an ideal setting to examine the way in which different types of disputes are addressed. Furthermore, within SDG trade union density is relatively high and unions play a significant role within employment relations. In addition, there has been significant change to the HR function in recent years, with responsibility for conflict management devolved to operational management. Therefore we are able to explore the influence and significance of relationships between key stakeholders. Finally, SDG has no formal system of in-house mediation. This allows us to examine the extent to which informal processes of conflict management and dispute resolution can operate in the absence of in-house mediation.

### 3. METHODOLOGY

This research is based on an in-depth case-study. The broad aim of the research is to examine the way in which Shop Direct Group (SDG) manages conflict and handles individual employment disputes. In particular, it seeks to examine the dynamics of informal processes of resolution within SDG. Accordingly, the methods employed within the research revolve around the experiences, views and perceptions of key members of management, HR and trade union representatives. In order to understand the complex reality of conflict management and workplace dispute resolution, it is important to explore the social processes on which this rests (Dickens et al., 2005; Hyman, 1994). As Yin (2003) has argued, case study method is well suited to studying such 'complex phenomena'. In addition it also allows us to examine the impact of key contextual factors (Bryman, 1989).

The research had two main elements:

- Examination of documentation regarding existing policies for dealing with individual employment disputes and relevant collective agreements.
- In-depth interviews with key informants including operational managers, HR practitioners and trade union representatives.

Firstly, existing documentation regarding individual dispute resolution was examined. Initially, this included policies and procedures relating to grievance and discipline. However it became clear that the management of absence was an important issue and therefore the absence policy of the organisation was also studied in detail.

Secondly, a total of thirty nine semi-structured interviews were conducted with forty one key organisational actors. These were located across the four main functional areas of the business and seven different sites. Importantly, the focus of the study was not primarily on how individual cases were conducted but on the formal and informal processes that constitute the management of conflict within the organisation. Accordingly, interviews were neither sought nor conducted with individuals who had brought formal grievances or were subject to disciplinary action. It is important to note that given the high level of union organisation within the organisation it was felt that the views of trade union representatives would provide a relatively accurate representation of the broad views of employees within the organisation. In addition details of individual cases were not requested.

The sample of respondents was made up of the following:

- An initial interview was held with a senior manager responsible for Employee Relations within SDG. This interview provided a broad overview of the issues within the study. This manager then also provided contact details for managers, HR practitioners and trade union representatives, who were approached independently by the research team.
- A total of 16 HR practitioners were interviewed. This included six HR Business Partners drawn from each of the main functional areas and ten senior HR advisers.
- Sixteen operational managers were interviewed. Managers were interviewed from all main functional areas and from six of the seven locations. Management respondents represented different levels of authority, but, the sample focussed on those who had either day-to-day involvement in, or responsibility for, disciplinary and grievance issues.

- The research team were provided with the details of eleven trade union representatives again covering each of the functional areas and geographical locations. In total six interviews were conducted with eight trade union representatives. In two cases, union respondents elected to be interviewed together with a colleague. Respondents represented three of the four functional and four of the seven geographical locations.

As noted above, interviews were not conducted with non-management employees, save for trade union representatives. This reflected both ethical issues and access considerations, given the sensitive and confidential nature of grievance and disciplinary proceedings. Given the high level of union density within SDG, it may be argued that trade union representatives were well placed to provide the employee perspective. Nonetheless, the fact that employees were not interviewed needs to be borne in mind when considering the findings, analysis and conclusions outlined below.

The majority of the interviews (31) were conducted in person in the respondent's workplace. However for logistical reasons, eight interviews were conducted by telephone. The interviews were semi structured but based around a broad topic guide that highlighted key issues for discussion as follows:

- Background – role in the organisation and nature of workplace
- Experience/training in dealing with discipline and grievance
- Perceptions as to main purpose of a) disciplinary procedures b) grievance procedures
- Nature and extent of individual employment disputes
- Operation and effectiveness of existing procedures
- Extent of informal resolution of disciplinary disputes and employee grievances
- Role played by HR practitioners within disciplinary and grievance processes
- Role played by line and operational managers
- Role played by companions and/or employee representatives
- Views as to use of mediation.

Interviews lasted between 35 minutes and 90 minutes – but most lasted for approximately one hour. In total just under 40 hours of interview data was recorded. All respondents were assured anonymity, and interviews were transcribed and returned to respondents for approval and amendment.

In addition the following statistical data was provided:

- i) numbers of disciplinary and grievances cases for 2010/11 in respect of three locations;*
- ii) absence data for the organisation between 2009 and 2011;*
- iii) data from the organisation's employee attitude survey.*

This data was used to inform the analysis in the report but has not been explicitly used within the text to ensure confidentiality.

It is important to note that as a single organisational case study, the analysis provided below cannot be generalised to a wider population. Nonetheless it does seek to provide insights which may be relevant to, and inform, broader organisational practice and policy.

## **4. BACKGROUND – STRUCTURE, CONTEXT AND EMPLOYMENT RELATIONS**

Shop Direct Group (SDG) is a retail organisation which largely specialises in selling a range of goods, products and financial services online, by telephone and by post. In recent years the structure of the organisation has undergone significant change with activity concentrated in a smaller number of locations. Most of SDGs operational activities are conducted through a number of contact centres, which are supported by a warehousing and returns function. Senior management, HR, marketing, finance and design are located within the organisation's head office.

### **4.1 Workforce composition**

At the time of writing, SDG had approximately 7,000 staff. Fifty seven per cent of the workforce is female and 43 per cent male. In terms of ethnicity, 71 per cent are white, 17 per cent come from black and minority ethnic communities and 12 per cent did not declare their ethnicity. In terms of age, there are significant differences between businesses and sites. Over time, workforce composition within operational areas has also shifted towards younger staff, often students, and away from women with family responsibilities who traditionally tended to make up the bulk of the workforce.

### **4.2 Employment Relations at SDG**

Traditionally, employment relations within SDG have been highly regulated and revolved around strong relationships with the organisation's trade unions. Terms and conditions were subject to collective bargaining. Management respondents explained that the nature of employment relations within SDG had traditionally been such that:

*'...the unions felt absolutely involved in every single thing and felt part of those decisions and had a lot of perceived power if you like as a result of that.'* (HR Manager)

Restructuring and the development of a more business focussed approach within the organisation had meant that this had changed. From a trade union perspective, there was a view that they had less influence than in previous years. Nonetheless, the vast majority of staff are still covered by collective bargaining arrangements with union density ranging from 60 to 90 per cent depending on location. Furthermore, in recent years, partnership between management and unions had been reconstructed and in general union-management relationships were *'based on trust'* (HR Manager):

*'I think we had a period sort of in-between where it was like we'd come from the partnership situation and then that seemed different whereas I think they are moving more towards that type of thing now although they don't have the word 'partnership' written into it'.* (Trade union representative)

Accordingly, respondents generally agreed that employment relations within SDG were good:

*'Fortunately within this business there's a really good relationship between the union and management and HR. It's exceptionally good to be fair.'*  
(Trade union representative)

At an operational level, most managers reported positive working relationships with their local union representatives. SDG operates a comprehensive system of information, consultation and collective bargaining. Each site has its own site forum which is attended by trade union representatives, HR staff and managers. These meetings are held on a regular, often monthly, basis and examine site specific matters, including issues relating to conflict and individual employment disputes. In addition, each business area has a national forum, which in turn feeds into a Collective Bargaining Group which is in effect the negotiating body for SDG and deals with most changes to employment terms and conditions, as well as collective consultation on business change activity, particularly redundancies. A number of interviewees saw these forums as vital in developing a partnership approach to working:

*'lots of work was done to kind of get us working together...if we were looking at pay negotiations...in years gone by what would happen is we'd never talk about pay negotiations other than at the time...What happens now is we have more regular meetings with them... we have national forums, we have bargaining group and the agenda item for every one is about the state of the organisation. So when pay next comes along the conversation's much easier to have... So it's much more open,...there's a lot of 'we' and 'us' and meeting much more often than we used to do. So it's probably a better partnership, although it's not called a partnership'.*  
(HR Manager)

SDG has also invested significant time and resources in a range of employee engagement activities. These include:

- Employee newsletters
- Notice boards
- Intranet
- Team briefings
- Communication champions
- Bi-annual awards programme
- Customer service initiatives
- Employee attitude survey
- 'Temperature checks', to assess staff attitudes
- 'Listening groups', to follow up on the issues raised in the employee attitude survey
- 'Staff Forums' - meetings that enable any employee to discuss any issue within SDG with managers
- Awards for employees.

Respondents felt that these tools created extensive opportunities for staff to discuss concerns with management and engage with the organisation. On the whole, they felt that this was having a positive impact:

*'So we're trying our best to [be] 'engaging'... We have, like, listening groups. So we'll say 'the survey said this'...we're going to invite twenty people every month for the next six months to come and say 'what do you think that meant? I know you might not have said that, but why do you*



*think maybe your colleagues do?’ So we’re trying to be much more again engaging with them and that’s made a difference I think.’ (HR Manager)*

### **4.3 Management of Individual Employment Disputes**

In relation to individual employment disputes, grievance and disciplinary issues had traditionally been dealt with in a relatively formal manner through relatively complex written procedures. These contained much more detail than the Acas Code of Practice on Disciplinary and Grievance Procedures, prior to its revision in 2009. In particular, they provided for multiple layers of appeal and specifically set out the role to be played by HR practitioners.

However, in recent years, a number of steps have been taken to deal with individual employment disputes in a more consistent and efficient manner. Firstly, increased emphasis has been placed on the need to resolve issues informally where possible. Secondly, uniform group-wide disciplinary and grievance procedures have been introduced recently which simplified and streamlined processes, in particular by reducing the number of appeals employees could raise. Thirdly, line and operational managers have been given much greater responsibility for both handling disputes and making disciplinary and grievance decisions, while HR practitioners have adopted a largely advisory role.

Under the current grievance procedure, if a formal complaint is made, the line manager has responsibility for investigating and hearing the grievance unless the complaint is against them. If the employee disagrees with the hearing decision they have up to two appeals to more senior managers. Cases of alleged bullying or harassment are dealt with within the scope of the grievance procedure. However, there is a separate procedure for whistle blowing cases. While the procedure encourages the informal resolution of disputes, there is no specific reference to mediation and no separate mediation policy or internal mediation scheme within SDG.

The SDG disciplinary procedure aims to *‘clarify and standardise management procedure for dealing with the minority of employees who do not follow company rules or conduct standards’*. The policy emphasises the importance of trying to resolve problems through informal discussion, but provides a clear formal procedure where this is not possible. It is important to note that there is no compulsion for a member of HR to be present at disciplinary hearings and line managers have responsibility for conducting hearings and levying sanctions up to a final written warning. More senior managers then have the authority to dismiss.

Respondents saw the disciplinary procedure as having four main functions: firstly it provided a basis for fair and consistent treatment across the organisation; secondly it set clear expectations as to standards of behaviour and performance; thirdly it provided a corrective mechanism through which behaviour and performance could be improved; and finally, where there was no improvement or where misconduct was so serious, it provided a means of terminating employment.

While the disciplinary policy and procedure addresses issues of both conduct and capability, absence is dealt with under a new policy which was implemented around two years ago to streamline all existing policies across the business. Most significantly, the policy targets persistent short-term absence by introducing a series of trigger points under which an employee can receive a verbal warning, a final written warning and ultimately dismissal. This represented a significant tightening of absence policy.

Importantly trade unions play a significant role within both the management of conflict and the handling of individual employment disputes. Employees have the right to accompaniment at all stages of the disciplinary, grievance and absence procedures. Notably this includes investigatory meetings, thus extending beyond the statutory right to accompaniment. Furthermore, trade union representatives are routinely involved in attempts to resolve issues through informal channels, particularly through their relationships with HR practitioners and senior managers.

Overall, both disciplinary and grievance procedures were seen to have a broader function in sending a clear message to employees that the organisation will treat them equitably, and with natural justice. While respondents were under no illusions that all staff were familiar with these policies of procedures, respondents argued that handling issues in a fair and consistent manner had a positive impact on staff engagement and consequently on employee conduct and performance.

#### **4.4 Summary**

SDG has gone through a significant transformation in recent years experiencing radical restructuring and a high pace of change. Consequently, this degree of flux might be expected to provide conditions in which conflict would appear. In this context, the organisation has invested heavily in a range of employee engagement strategies. At the same time, the system of collective employment relations has remained relatively stable and relatively close relationships with the main trade unions have been sustained. These relationships are also central to the way in which conflict and individual employment disputes are managed. This is particularly important given the devolution of responsibility for grievance, discipline and absence to line management and the increased emphasis on informal processes of resolution.

## **5. MANAGING CONFLICT AND RESOLVING DISPUTES AT SHOP DIRECT GROUP**

There was limited detailed statistical information regarding the precise level of grievances and disciplinary issues within SDG. Nonetheless, interviews revealed a consistent picture of: the nature and pattern of conflict and disputes within the organisation; the key factors underpinning the effective management of conflict; and the ways in which informal processes and formal procedures were used to resolve individual employment disputes.

### **5.1 Patterns of conflict and individual employment disputes**

Our findings suggested that the pattern of individual conflict within SDG was shaped by two main sets of factors: the nature of the work process; and the composition and characteristics of the workforce. However, the extent to which conflict developed into individual employment disputes in the form of employee grievance cases or disciplinary action, depended on the ability of the organisation to manage that conflict and managerial imperatives in relation to performance and efficiency.

#### **5.1.1 Individual conflict – autonomy and expectations**

The appearance of conflict over employment issues was clearly related to the nature of the work process and how this clashed with employee expectations and non-work commitments. Within operational areas, the pace of work was generally high and productivity and performance were closely monitored. Key performance indicators were examined by managers on an on-going basis and behaviour was regulated by detailed policies and procedures. This was largely to maintain high levels of customer service – for example, within contact centres, calls would be monitored and strict rules were applied in relation to issues such as swearing and the use of mobile phones. However, some newer employees could find this environment difficult to cope with:

*'The people who are newer to us, some of them have never worked in this environment before and... they struggle with meeting some of our expectations. They don't necessarily always have realistic expectations about what it's like to come and work in a contact centre environment... and some of them not only have they not got much experience of working in this environment they haven't got much work experience either.... a lot of it can be around those standards and those expectations and people not necessarily being used to having to be regulated like that.'* (HR Manager)

In addition, the use of flexible shift patterns within operational areas of the business brought specific challenges, particularly with regards to absence:

*'I think the shift patterns don't help as well... when we're quiet you'll be on a twenty five hour week but when we're busy ...you might do six forty-five hour weeks on the roll and they'll be nine [and] a half or ten hour days. People do struggle with that and it manifests itself in quite high absence rates and some behavioural issues.'* (HR Manager)

In other parts of the organisation and particularly head office, staff were given more autonomy and broader performance measures were used. Employees generally enjoyed a significant amount of discretion both in terms of how they completed their tasks and the management of working time. Staff were:

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

Consequently, there was relatively little conflict over employment issues. Overall, therefore, conflict was related to the degree to which the actions, values and expectations of employees clashed with workplace rules, norms and priorities.

Respondents also suggested that the composition of the workforce was an important factor. Younger (and particularly male) members of staff were seen to be more likely to breach policy and norms in respect of conduct and performance. The following explanation provided by an operational manager was typical of respondents' views:

*Because they've never really done a job before and, you know, this is a bit of a laugh and they don't really know what their career is at this point in time. A lot of them have got their degrees, it's hard to get jobs. Or they're students who are still at university and they're still in that mind-set.'* (Operational Manager)

This suggests that commitment to the job and the organisation may be influential. Indeed, it was argued by some managers and union representatives that staff with longer service and employees in positions of greater responsibility were less likely to come into conflict with the organisation. Three possible explanations were put forward for this: firstly, their long tenure meant that they had very clear expectations of their role; secondly, they saw their work as a career; and thirdly, they often had more to lose due to external personal and financial commitments.

Therefore, the development of conflict was shaped by a complex blend of factors. These included: the nature of the work process; the way in which labour was regulated and managed; and the expectations and attitudes that employees brought to the workplace. However, managerial approaches and employee behaviours are also affected by external product and labour market conditions. For example, increased competitive pressures may lead managers to seek and expect improved performance from employees whose response will be conditioned in part by economic uncertainty, employment opportunities and their own personal circumstances, values and aspirations.

### **5.1.2 Individual employment disputes – responding to conflict**

The process through which conflict is converted into disputes, in the form of employee grievances or the application of disciplinary and absence procedures, is a key question for this report. Perhaps the most notable feature of the pattern of disputes within SDG was that while employee grievances were relatively rare, disciplinary cases were much more common.

Crucially, respondents argued that a major reason for the relatively low number of formal grievances was the emphasis on managing conflict and addressing issues at the earliest possible stage. We discuss this in greater detail below. Those grievances which were raised were more likely to come from established staff, who while less likely to be involved in conflict in general, were more aware of the company's procedures, had the confidence to raise a complaint and who felt the pace of change within the organisation most keenly. Interestingly, those (often younger) staff who perhaps did not see their long term future in the organisation were more likely to respond to conflict by exiting the organisation rather than submitting a grievance.

The nature of employment relations within specific locations also appeared to be a factor in determining whether conflict was expressed as a grievance. In one part of the organisation, the level of grievances had been significantly higher than in other areas. Management here claimed that this reflected a culture in which it had been accepted practice to use formal procedure to express discontent over an issue.

*'...if the relationship between the manager and the individual isn't great, the individual sees the grievance process of their way of having their say...It's like, there's a grievance, that's my advice and I'm raising it, and that was the ethos.'* (HR Manager)

Of course, it could be argued that low levels of grievances may simply reflect an environment in which employees feel unable to raise issues. However, results from the organisation's engagement survey showed that more than six out of ten staff responding to the survey agreed with the statement *'I think it is safe to speak up and challenge the way things are done in my business area'* with 24% disagreeing. Notably, there was little difference in this score across the business.

While grievances are dependent on employees bringing a formal complaint, disciplinary disputes arise as a result of managerial responses to conflict. In short, it is the manager who decides to initiate disciplinary action. Therefore within SDG differences in the level and type of disputes largely related to management approaches to conflict. Relatively high levels of disciplinary action were concentrated within operational areas in which procedures were applied more stringently. This partly reflected the close monitoring of work which provided very clear evidence of misconduct or poor performance. In these circumstances, respondents suggested that disciplinary action of some sort was unavoidable.

However, the way that procedure was applied was itself influenced by three main factors. Firstly, some managers lacked the confidence and capability to handle conflict in a creative and informal way and were therefore prone to implement rules in a rigid manner (this is examined in greater detail below). Secondly, this was also driven by organisational imperatives in relation to performance and efficiency. For example, high levels of absence led to the introduction of a new policy, which (according to respondents) led to an increased number of sanctions and dismissals but had a positive impact in reducing absence rates.

*'I think where we've also seen a step change is because we've tightened up our internal application of the policy within management of long-term absence...[Now] we have reduced our absence significantly over the last few years as we've focussed on it...I think that before we ignored it so it was very rare to take somebody down a disciplinary... So the increase is actually now because we're applying the actual policy.'* (Operational Manager)

In this sense, low levels of disciplinary disputes may simply reflect managers 'turning a blind eye' to difficult issues. Conversely, high numbers of disciplinary cases may be indicative of management attempting to get to grips with low levels of performance and poor standards of behaviour.

Thirdly, external regulatory pressures meant that certain policies had to be applied and to be seen to be applied. For example, some work was overseen by the Financial Services Authority (FSA). Here, interviewees stated that staffs' conduct needed to be monitored closely because SDG could face severe penalties if regulations were breached. For example, there was a strict policy which

prohibited mobile phones or any other piece of personal equipment that could be used to record data being taken into contact centres.

*'Obviously we have a licence to sell financial products. If we're not compliant we'll lose our licence... We have to make sure that they follow all the data protection guidelines and all of that.'* (Operational Manager)

Inevitably this led to a more formal approach than might otherwise be the case and a greater likelihood of disciplinary action if rules were breached.

In contrast, within the head office environment, relatively low levels of disciplinary disputes were explained, in part, by the fact that strict application of procedure was seen as inconsistent with a more relaxed and creative culture:

*'...if somebody's half an hour late do we punish them? Do we not pay them? Do we kind of immediately put them on some kind of warning? No... It's a fairly relaxed environment.'* (HR Manager)

Therefore there was a combination of more relaxed workplace rules and a more flexible approach to their enforcement.

Overall, within SDG, the incidence of disciplinary disputes was generally much higher than that of formal grievances. More importantly, the triggers for these different types of disputes were markedly different. This illustrates the difficulty in seeing 'disputes' and consequent policy responses as generic. Furthermore, the findings above suggest that the incidence of disciplinary disputes is not a simple function of employee behaviour and managerial response but also reflects the tension between external conditions and the internal organisational imperatives of efficiency and performance.

## **5.2 Managing conflict – preventing the development of disputes?**

It can be argued that one way of reducing the incidence of disputes is by effectively managing conflict – resolving issues before they develop and escalate. For example, the main explanation for low levels of grievances given by both management and union respondents was the emphasis placed on early informal resolution. We identified three main routes through which conflict was managed in this way: initial action by line managers; constructive relations between unions, HR practitioners and line managers; and employee engagement mechanisms.

### **5.2.1 Line managers – a critical role**

Line managers played a key role in identifying and addressing conflictual issues at an early stage. Management respondents all claimed that staff were encouraged to discuss problems with their line manager:

*'The approach has been ... if somebody comes to speak to you and says I've got a complaint, then we'll try and sit them down and talk to them about it and try and understand what the issues are and try and resolve it in an informal manner first... Obviously if somebody wants to raise a grievance they'll raise a grievance but we'll try and nip it in the bud before it got to that stage.'* (Operational manager)

One recent development which management respondents cited as being extremely helpful in allowing them to address issues in a less formal manner was the introduction of recorded or documented conversations, whereby managers would raise an issue with a member of staff who may have committed a minor

breach without entering into formal procedure. This was explained by an HR manager as follows:

*'...if I go back to when it [the system of documented conversations] was first set up these swearing incidents, it was gross misconduct and people would be dismissed. And then you've got to look and say well hang on you'll end up with no workforce and the cost of recruitment and training and everything, is there a different way? So we decided to take more of an approach where 'Do you know I heard you swearing, luckily the customer didn't hear you, let's make a note of it, this record of interview so that they're clear something wrong has taken place but the company is giving them an opportunity'' (HR Manager)*

Respondents placed significant emphasis on the importance of the performance management process, which provided regular opportunities whereby potential performance or conduct issues can be raised with employees and employees have the chance to raise any issues with their manager:

*'managers will have a monthly one to one with each member of their staff...and at that meeting they'll discuss the KPIs, so how they've been performing on the phones, they'll both listen to calls both good and bad calls and they'll get feedback on it and then they'll about behaviours. So there's that opportunity on a monthly basis for anything to be raised so rather than people sitting and festering or something' (HR Manager)*

As noted in the previous section, workplaces in which performance is closely monitored may have higher levels of conflict, however, we also found that conflict in such locations was managed more proactively as issues were clearly identified and addressed at a very early stage. In general respondents claimed that this prevented problems escalating into full blown disputes.

However, respondents admitted that not all line managers had the confidence and/or the competence to address conflict in this way. Here again, performance systems were important in trying to ensure that line managers had 'difficult conversations' with their staff. First line or team managers would have monthly one-to-one meetings with senior management, who in turn would have access to performance indicators and information. As a result, it would be difficult for first line managers to avoid having conversations that ignored aspects of poor performance with their staff, as this would inevitably be picked up their own managers.

Therefore effective conflict management at SDG was not simply about so called 'soft skills'. Instead 'hard' measures of performance were crucial in both identifying potentially difficult issues and in ensuring that line managers attempted to address them.

### **5.2.2 Trade unions and HR practitioners – enabling informal resolution**

The second strand of conflict management strategies was based on constructive relationships between management and trade unions. Respondents described this as having an 'open culture' in which different parties felt able to raise difficult issues in a direct and informal manner. For example, at each site within SDG, managers, HR and union representatives meet at least once a month. This was seen as vital in both providing a space in which emerging issues could be discussed and also trust built between unions and management:

*'...it's an ideal opportunity to make sure that the union reps are fully informed. And you'd be surprised at how much value that can add in nipping things in the bud. But also it enables us to give a heads up to any*

*potential changes that may cause staff some sort of stress.'* (Operational Manager)

*'We make our best endeavours here at [name of site] to try and resolve everything at its very lowest level and site forums, to be fair, are quite useful for that.'* (Trade Union Representative)

Secondly, even outside these structures ongoing contact between site union representatives and management provided the opportunity to resolve issues informally. Furthermore, this helped to embed high-trust relations between the parties:

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

As this implies, within SDG, trade union representatives and in particular the triangular relationship between trade unions, HR practitioners and operational management was key in perpetuating and developing informal processes of resolution. If an issue emerged but had not yet become subject to formal procedure, the HR practitioner or (less frequently) the relevant manager may raise the issue with trade union representative to see how the matter should be approached. Alternatively trade unions will quite often flag up issues. An HR manager explained that the union takes the following approach:

*'...an employee who would feel much more comfortable going to speak to somebody in the union and they are great because what they do is say 'Well, listen, I can't give you the answer here? Do you feel comfortable with me speaking to [HR]? I've got a good relationship with her. She'll be confidential,' all that kind of stuff...they'll pop down, have a chat or you know e-mail, 'Have you got five minutes?' And it's a very much a kind of informal basis and that often resolves a lot of the issues.'*

In this way the union plays a key role both in identifying conflict that may become manifest in a formal dispute but also in looking for an informal resolution to these issues.

However, this raises the question as to whether resolving issues in this informal manner is fair and equitable. Inevitably, this relies on the parties involved and particularly union representatives to ensure that they approach such matters with a degree of consistency. Nonetheless, trade union involvement in conflict management can lead to accusations of complicity and a failure to fight the corner of their members. In response to this, union representatives were very clear that resolving issues at their lowest possible level was beneficial to their members:

*'I think that there is a definite will to try and resolve things at its lowest level. Nobody wants to put an individual through unnecessary pain and suffering because that's what they go through especially if it's a managing underperformance type issue, and I certainly don't want to cause that expense to the business or time consuming for HR. So it's about, for me, it's about having the conversations, fully appreciating what needs to be done...and ensuring for my member that it's done in the very best way*



*...And it's all about sorting it out at its lowest level and best possible outcome for that individual.'* (Trade union representative)

### **5.2.3 Employee engagement and conflict management**

As outlined above, a range of employee engagement mechanisms provided an additional source of employee voice to that offered through trade union structures. Management respondents argued that engagement strategies played an important role in attenuating the development of formal grievances. They claimed that the extension of engagement mechanisms had given employees greater scope to voice concerns without resorting to procedural channels, as had previously been the case in some parts of the business:

*'When I first came into (this site), there were two or three grievances every week... the story that taught me was, people aren't talking. It's like, 'there's a grievance...and I'm raising it'...because those relationships weren't there...Because the process gets them an audience...Because we didn't have the [employee attitude] survey. We didn't have the engagement...if I was on the shop floor and I wanted to raise something, maybe the grievance process was the best way to go about it.*

***And do you think that focus on engagement was a reason for countering that sort of culture?***

*I do yes, absolutely, yes. And I think it's working as well. We get less grievances now than we did before, and when we do, they're normally genuine. They've tried to be resolved but it's come to a dispute that we just can't get around.'* (HR Manager)

Therefore, there was a belief amongst most respondents that engagement activities helped to avert disputes through improving commitment to the organisation and consequent employee behaviours. However, respondents also argued that specific engagement mechanisms provided an additional source of employee voice through which nascent conflict could be identified and managed. In some cases these had been developed as a result of discussions between trade unions and management in response to problems within a particular department or area of work:

*'I think they're necessary, not just useful... staff don't come out and say everything that they'd say to us...I've just negotiated with a new department to have staff forums once a month because they had a lot of teething issues and things...We [the union and HR] got together, we had a discussion, what's the best way to move forward, and one of them resolutions was doing the staff forum. The first one was last week and it went really well, the staff were really pleased.'* (Union representative)

In others, existing engagement activities identified areas of concern with management developing specific localised responses in order try to resolve issues at an early stage. In one case, issues had been identified through the employee attitude survey. From this it was decided to introduce an 'issues log' through which if a member of staff identified a particular problem this could be placed on the team notice board. Following on from this, the manager would discuss these issues in a monthly meeting with staff to see whether they had been addressed. For management, this was an attempt to promote joint problem solving and an open approach to managing difficult issues:

*'... it shows a bit more engagement between staff and the managers trying to resolve problems together...and it's a lot more open so the staff have taken to that really well.'* (Operational Manager)

This would seem to underline the importance of employee voice in enabling the development of open channels of communication through which emergent conflict can be picked up and addressed. Furthermore, the evidence also suggests that in the absence of engagement and effective representation employees may be forced to resort to formal procedure as the only way of getting their voice heard.

### **5.3 Resolving individual employment disputes – informal process and formal procedure**

Where attempts to manage conflict and ameliorate discontent fail, organisational attention inevitably shifts to trying to resolve those disputes that emerge in the form of employee grievances and/or disciplinary action. By definition, therefore, disputes will normally involve enacting formal procedures. Certainly, respondents indicated that once a grievance had been filed or disciplinary proceedings enacted, some type of formal action was often inevitable. However, we found that even in such cases, there was still a potential to use informal means to find a resolution and avoid a further escalation of the dispute.

#### **5.3.1 Informal resolution – a window of opportunity?**

In respect of employee grievances, even once a specific complaint was made there was still an opportunity to seek some sort of informal resolution. Indeed, the current written *grievance procedure* stresses that informal resolution is the preferred method for resolving complaints. In fact the formal element of the grievance procedure appeared to be rarely used and was something of a last resort as respondents argued that most grievances were resolved informally. On some occasions, line managers relied on informal interventions from HR practitioners, who themselves were strongly of the view that managers should wherever possible attempt to resolve disputes without recourse to formal procedure.

*'I would tend to advise the managers if we can deal with it informally let's deal with it informally...for example we may get a letter from someone who says I'm aggrieved around I've been off sick and I did have pre-booked holidays, the company won't give it me back...In that instance what we try to do is deal with it informally to say okay, what can we do? Is there something outside? Can we feed it back through the union? Is there something we can do to try and sort out?' (HR Manager)*

The relationships between managers, HR practitioners and also trade union representatives were seen as crucial in facilitating resolution of this type. Importantly it was commonplace that once a grievance had been received that there would be some sort of contact or informal discussion between trade union representative and HR and in some cases operational managers to explore the nature of the dispute and whether an informal route was possible and appropriate.

In terms of workplace discipline, the window of opportunity for informal action was much narrower. While there were opportunities to address issues of performance, conduct or absence before disciplinary sanctions were contemplated, once a decision was made to initiate the disciplinary or absence procedure, then a formal process was normally followed. Furthermore, the notion of resolution in relation to workplace discipline was complex and covered a wide range of outcomes. Managers had a general desire to use disciplinary procedures

to correct behaviour, develop staff in the longer term and to prevent disputes from escalating:

*'...it's about correcting either the behaviour or the performance....highlighting to the individual that actually some aspects, whether it's attendance, performance or conduct, isn't to the standard that we require and to point that out ...hopefully...you would actually not see that deteriorate any further.'*

Importantly, this could mean formal disciplinary sanctions. For example, warnings were sometimes seen by managers as necessary in order to resolve issues in the longer term. However, respondents also explained that where misconduct was very serious or there was no prospect of improved performance, dismissal may be the only satisfactory 'resolution' from the organisation's perspective.

### **5.3.2 Formal procedures and informal process – off the record**

While respondents believed that informal resolution was difficult once disciplinary or grievance procedures had been enacted, parallel informal discussions could still take place. This was with a view to either seeking a quicker resolution, ensuring that a fair decision was reached or, in some cases, moderating the outcome and avoiding dismissal. For example, HR respondents reported that it was fairly normal practice to make contact with union representatives prior to formal disciplinary and grievance hearings, although this did depend on the nature of the relationship between the representative and the HR practitioner:

*'I would absolutely meet with him beforehand to have a chat with him, make sure that we're on the same page; is he aware of what we're aware of? And just try and get a bit of feel for it really.'* (HR Manager)

Respondents argued that this helped to manage the conduct of the meeting but also could lead to a resolution or an agreed path forward even if a sanction was levied (in the case of disciplinary issues). A number of respondents cited the example of where union representatives might negotiate an employee's resignation where dismissal was seen as inevitable.

*'...if I'm saying to you...I think you are looking at dismissal, I would say would you rather resign because not everyone wants to have dismissal on their record so it's talking through that option. I wouldn't tell anybody what to do but I'd say, this is your worst case scenario: you could be dismissed.'* (Trade Union Representative)

While managers were not always prepared to accept this, it could offer benefits in terms of avoiding the need for a formal hearing and protecting the organisation from possible legal challenge. Moreover, there was a view expressed by some respondents that union involvement within informal resolution provided an important degree of legitimacy:

*'... in the example of grievance, if we say let's try and resolve this informally that we're trying to brush it under the carpet, that there's a sinister reason behind that. But if the union suggests that it would be seen as something that is a positive.'* (HR Manager)

However, there were limits to the scope of informal resolution and also a number of barriers. Firstly, management and union respondents agreed that in some cases there was little possibility of informal discussion or action because of the serious nature of the case or the clear-cut nature of the underlying facts. Secondly, as suggested above the fact that certain business operations were

subject to regulatory scrutiny meant that the organisation was compelled to be seen to be taking firm and decisive action. Thirdly and perhaps most importantly, respondents suggested that some managers had a tendency to revert to formal process as opposed to seeking to try to resolve issues informally.

#### **5.4 Summary**

The findings outlined above suggest that levels of conflict within the organisation were critically linked to the nature of the work process and also the composition of the work force. However, both these factors are inevitably intertwined with external socio-economic factors which influence the way in which labour is managed and the values and expectations of employees. The extent to which conflict is converted into concrete disputes in the form of employee grievances or disciplinary action depends on very different factors – with a given level of conflict, grievances are more likely where staff have the confidence and the long-term commitment to the organisation to make a formal complaint. Furthermore, adversarial management-union relationships will tend to lead to discontent being expressed through formal channels. In contrast, disciplinary action would appear to be largely a function of managerial responses to conflict and driven by production and competitive imperatives. Perhaps the main way in which disputes were prevented within SDG was through the management conflict at an early stage. This was dependent on the roles played by key organisational actors and in particular line managers, union representatives and HR practitioners. The relationships between these groups were also central to informal processes that facilitated the resolution of those disputes that did occur and the avoidance of extreme outcomes such as dismissal. Therefore the next chapter looks at roles played by line managers, HR practitioners and trade union representatives in greater detail.

## **6. THE ROLE OF ORGANISATIONAL ACTORS – THE IMPORTANCE OF TRUST AND WORKPLACE RELATIONS**

As previously argued, the interaction between line managers, HR practitioners and trade union representatives underpinned informal approaches to both managing discontent and in resolving specific disputes. However, as in many other organisations, the relationship between these groups has undergone significant change as people management has been devolved to the line and the nature of management-union relations has been renegotiated. This chapter looks at these important issues in closer detail.

### **6.1. Difficult Conversations – The Role of Line and Operational Managers**

Until relatively recently, a significant proportion of day-to-day disciplinary and grievance management was carried out by HR staff. It was routine for HR practitioners to conduct investigations, be heavily involved in the conduct of hearings and consequent sanctions at all levels. However, responsibility for the management of conflict and handling disputes had been progressively devolved to operational managers.

#### **6.1.1 Devolving conflict management to the line**

Both HR respondents and senior managers were generally of the view that it was important that line managers should have ownership over the handling of disciplinary and grievance issues:

*'... it gives that responsibility to the managers around that end to end management of their people. So they have that understanding that it is their responsibility to look after their people whether that be in terms of reward or whether that is a disciplinary issue. They become accountable.'*  
(HR Manager)

The extent of devolution differed markedly between locations. This was largely a function of the volume of issues. Managers within parts of the business where disputes were common, such as contact centres, were seen by HR to be relatively adept at handling such issues simply because they had significant exposure and therefore experience. Thus there was a clear element of learning-by doing within the organisation. Moreover, at those sites at which there tended to be more grievance and disciplinary disputes, it was not practicable for HR staff to be present at every stage of the disciplinary or grievance hearing process. In contrast, where there were fewer disciplinary and grievance issues, HR were routinely involved. Here, managers had less experience of managing conflict and handling disputes and were seen as needing greater support:

*'...the majority of cases that I deal with... I'm dealing with a manager who's never dealt with something like this before, or have dealt with it in a previous organisation, previous life etc. So it's not something that they've come across and therefore they spend a lot more time with us, I guess, trying to make sure that they get the right guidance and advice, and support through the process.'* (HR Manager)

### **6.1.2 Line managers – a question of confidence?**

Irrespective of location, there was a generalised perception that operational managers and particularly first line managers sometimes lacked the confidence and sometimes the skills needed to address emerging issues at an early stage. This tended to have two effects. Firstly, some managers would simply avoid addressing issues as long as possible. This often resulted in discontent escalating into serious disputes which required formal action. Secondly, when issues were addressed there was a tendency to seek the protection of rigid procedural adherence, with little attention given to mitigating factors or the circumstances of the case.

Respondents cited a number of underlying reasons for this. Training tended to be limited to a knowledge of policies and procedure and broader conflict handling skills were largely accumulated 'on the job'. A number of managers that we interviewed pointed out that it was often problematic to have 'difficult conversations' with members of their team:

*'It's very difficult, particularly if it's your own [call centre] Adviser that's concerned and as a manager it's very difficult when you go from a scenario that you've got this person that you've had to motivate, encourage, get to know really well to get the best out of, that you're suddenly in a situation where actually you're investigating them potentially.'* (Operational Manager)

Furthermore, for some managers who were very much at home dealing with technical and production matters, discussing 'people issues' in an informal manner was seen to be outside their 'comfort zone':

*'that's the bit that I think managers will struggle with, because they like the fact that they can hang their hat on a process. They like the fact because they are very process driven in their role out there. It's all widgets and as you've seen from when you've been outside it's all production orientated.'* (HR Manager)

This was exacerbated by a number of factors, for instance many managers were not comfortable about having to deal with trade union representatives who were often more experienced and knowledgeable in terms of policy:

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

In addition, line managers were often reluctant to explore informal avenues of resolution due to a fear of the ramifications if they were found to have failed to follow a fair process. Partly this reflected the fear of employment tribunal action. However, it is important not to overstate this as most respondents argued that a more powerful constraint was the possibility of a potential appeal and the internal scrutiny that may follow. An HR respondent explained that some managers thought that *'this is the policy and I've got to follow it because I don't want to get in trouble with my manager'*.

### 6.1.3 Managing performance and developing skills

A number of potential remedies for this problem were suggested by respondents and explored through the interview data. More senior managers suggested that the high level of monitoring of the production process (in certain parts of the business) allied with a comprehensive performance management system meant that it was difficult for managers to completely ignore difficult issues:

*'...we can see which departments are not performing or not doing their jobs as they should be doing...it's an indicative tool to suggest where there may be any process issues or people problems...we would be having a two way discussion with the manager about their department's performance. And we can kind of see it so we can say your PIs are very low...So it's like we can see from a high level all their team and their performance. They can't hide anything away.'* (Operational Manager)

While this may be seen as a relatively uncompromising approach, it was also used to identify development needs for particular managers. How these were to be met was more problematic. While there was a view that there was a deficit in the conflict handling skills of line managers, there was also scepticism about the value of classroom based, training courses. However, there was a clear feeling that there was a need for the development of 'soft skills' through role-play and real-life scenarios.

*'...when our new team managers come in, they come in on a four week induction plan and then they're out there doing the job...they don't get training around different experiences...one of the things that I wanted to do with HR is get some workshops with real life scenarios.'* (Operational Manager)

*'There was the basic training around this is what you do. I think where we perhaps lack, if I'm being honest, and I'm quite happy to say this to anybody, is around the soft side of it. You could almost do with a bit of role play.'* (Operational Manager)

HR staff in certain locations did conduct workshops and briefing sessions with managers on specific topics such as investigations and suspensions. However, while managers saw these as very valuable, they appeared to be ad hoc and depended on the availability and workload of HR practitioners of the HR function. Perhaps more importantly, HR Business Partners and Advisers were also seen as having a key role in increasing the confidence of operational managers by offering both support and informal coaching when providing advice over specific disputes.

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

In one location HR staff had constructed 'toolkits' for managers and at the same time had created an informal buddying system whereby less confident managers would be paired with a more experienced colleague who they could go to for advice or observe on a particular case. Senior managers also used the disciplinary and grievance cases that they were involved in to try to give junior managers more experience, through observing the hearings the senior manager was conducting. One senior manager explained this as follows:

*'...they routinely will observe me delivering hearings at dismissal level...if we're in here and we're calling a final adjournment while we make the*

*decision, and usually [name of HR representative] from HR is with me, we always say to whoever is observing, right now what decision would you make?...and then we will talk them through what my decision will be and the reasons why. So I think that's helped to build their confidence. They understand that thought process.'* (Operational Manager)

Traditionally line managers are often thought to have a preference for informal management approaches. However, the evidence here suggests that relying on managers who lack the necessary skills and confidence to manage conflict and handle disputes will tend to result in greater formality. Therefore the role played and the support provided by the HR function becomes increasingly important and it is to this we now turn.

## **6.2 HR practitioners – instilling confidence and underpinning informality?**

The main role of HR Business Partners and Advisers in relation to the management of conflict and dispute resolution was to provide advice and expertise to operational managers. Although the extent to which they were relied on by managers varied between sites, HR provided on-site support at all main locations, but had no direct involvement in making disciplinary and grievance decisions.

### **6.2.1 Ensuring compliance and achieving consistency**

A key aspect of their role was to ensure that formal processes were applied by managers consistently across the organisation and in compliance with legislation. To this extent managers relied on HR practitioners for specialist legal and procedural advice. According to one manager:

*'They're my sounding block, they're my support for any legalities because I wouldn't pretend to know all of the legalities around disciplinaries etc., so there may be certain things that I want to do and it's not a legal thing that you can do. So they're there really, they're like my almanac.'*

This was seen as particularly important when employees were facing dismissal or appealing against previous decisions:

*'I'm absolutely expecting the HR guys to have nailed down anything that might have happened previously and anything that is happening at that point at that (the appeal) level to make sure that it is absolutely reasonable fair and appropriate and consistent with how we've behaved on other sites in previous cases and reasonable within what we would consider employment law. Because whilst we have all these policies and rules we don't necessarily absolutely follow them. Things happen that are outside of them and we would look to see what would be reasonable to do in a set of circumstances.'* (Operational Manager)

From this perspective, HR practitioners within SDG were concerned with managing risk, or assisting operational managers, to do so, while trying to ensure that the organisation was protected against legal challenge. In this way, a large part of their activity revolved around trying to regulate managerial behaviours. This would seem to be consistent with a widely held view that HR practitioners can be a force for greater formality in managing conflict. However, within SDG their regulatory role did not appear to prevent HR from encouraging informal resolution where appropriate.



### **6.2.2 HR practitioners – balancing informal resolution and organisational risk**

In fact, all those HR practitioners that we interviewed saw informal resolution as a priority and its promotion as a key objective. Indeed, HR staff themselves had a slightly broader view of their own role. This was summed up by the following quote:

*'I would say my role is about the relationships and communication with the operational managers, it's about relationships with the unions and it's about dealing with issues efficiently and with little risk...it's about doing the best for the business but also something that's fair as well for the employee.'* (HR Manager)

Therefore, HR practitioners played a nuanced role, trying to tread an important but fragile balance between promoting informal paths of resolution while at the same time protecting the legal position of the organisation. In order to achieve this, developing and sustaining relationships with both operational managers and trade union representatives was crucial. Operational managers saw their rapport with their HR Adviser or Business Partner as extremely important:

*'...they [managers] need that relationship with HR because they're a little bit nervous about going into a disciplinary. So they're their back- up. They're the person who will be there if they start floundering or they're stuck with anything... the relationship you should have with anybody who is in something like that was you could just have the look with each other which means, 'call an adjournment, let's have a bit of a breather. Let's talk about it and then we can move forward,'* (Operational Manager)

Many respondents talked about HR having an 'open door' policy and while this may sound trite, the importance of line managers having the support of HR staff was repeatedly stressed by respondents. Where managers and the HR team had relationships built on trust, the former were much more likely to ask for advice and attempt to pursue address issues informally and at an early stage.

Some concern was expressed that certain managers could become over-reliant on HR practitioners. As discussed above, line management capability, and therefore the need for HR support, varied across the organisation. In this context, discussing issues with an experienced HR practitioner was seen by most respondents as crucial in building their own confidence and that of other managers. A senior manager explained this as follows:

*'I think that obviously our HR have got a wealth of experience and knowledge and I think it's through HR that has made me the way I am based on the fact that I do think things through. So I wouldn't go into a hearing with a pre-formed view of what I'm going to issue.'*

***So do you think...that having HR within meetings and the discussions that you have with HR, that's added to your confidence in terms of dealing with these issues?***

*'Definitely, absolutely definitely.'*

Another senior manager explained how she felt HR played a role in developing the competency of team managers through the ongoing review of cases:

*'...our HR's pretty good because what she'll do is throw it back to the team manager so get them to build their knowledge. So 'you tell me what you think', you know, so it's not about just going to HR for HR to make that decision. It's throwing it back to you. 'So you tell me, talk me through*

*what your thought process is, and then we'll have a look at it.'*  
(Operational manager)

Strikingly, the vast majority of respondents suggested that these relationships and the developmental role played by HR were vital in helping line managers to avoid conflict escalating into formal disputes. While there was general support for the devolution of people management responsibilities, it was argued that it was important that line managers were supported by HR practitioners who could not only provide specialist advice but also had a knowledge of the context within which they operated:

*'...I think that for me is what makes the difference of why to me, my areas have moved forward leaps and bounds...They [HR] know the team and they know the structure of the team but also know the pressures on the team...'* (Operational Manager)

### **6.2.3 HR – a key link with trade union representatives**

HR practitioners within the organisation also provided a critical link with trade union representatives. On the whole relationships between HR managers and the unions were good. Indeed, HR practitioners saw this as a priority and put considerable effort into developing this. Importantly, it was almost impossible for trade union representatives to have working relationships with all managers in a particular site due to the sheer number of managers. Therefore their relationship with HR took on even more importance, as HR acted as the conduit between representatives and managers who were often wary of union involvement. HR input was crucial in brokering informal resolutions with trade union representatives. From a union perspective having a good relationship with HR was seen as important in supporting informal resolution because it *'enables you to sort things out at its lowest level. Without that being there I believe you'd see a lot more grievances'*. Another representative explained this as follows:

*'...we do have a good relationship with HR...it's something you build on and I think it's about trust as well. As daft as it sounds they've got to trust that we're there not to cause trouble. We're there to support the company as well as the staff. It's getting that balance and once they realise that's what our aim is they started relaxing and they do come and tell us stuff what's going on and we do the same to them, because we're the ear on the ground out there...So we can go up to HR or the site manager and say, look this is rumbling, you know.'* (Trade Union Representative)

However, developing this relationship was not always straightforward. In some instances, new HR advisers found themselves dealing with highly experienced union representatives and were viewed with some suspicion. To a large extent, this was overcome by working on specific cases and having an open dialogue over disciplinary and grievance cases. One HR Adviser explained that she had built a rapport with union representatives through:

*'sharing upfront information, spending time with them at the end of a disciplinary for example: 'So how did it go? What things went well? Any lessons learnt? Right we'll take that feedback, but potentially you need to do this as well'. So it's just that open dialogue'*.

Overall, despite their withdrawal to a more advisory role, HR practitioners retained an important influence over the way in which conflict was managed and disputes resolved within the organisation. This was particularly so given the lack of line manager confidence outlined above. While the maintenance of compliance and consistency was a key consideration for HR practitioners, this was balanced

against a central role in developing the ability of line managers to consider a range of approaches to conflict and disputes and in sustaining crucial relationships with trade union representatives.

### **6.3 Employee Representation at SDG – Facilitating Resolution?**

As discussed above, levels of union density within SDG were very high with staff represented by two unions. Representation within discipline, grievance and absence processes was a major aspect of the union function and was commonplace through all procedural stages, including investigation. It was fairly rare for individuals to attend a formal hearing alone (outside senior management) or with a work colleague.

#### **6.3.1 High-trust relations and conflict management**

Good relations between trade unions and particularly HR practitioners appeared to be vital in managing conflict. Union representatives were able to pick up on emerging issues which could then be addressed and hopefully resolved before they escalated into formal disputes:

*'I can go up to her office and say 'How are things? Are you hearing anything on the grapevine?' And she will say "yeah [...] I've heard X, Y and Z. There're a few rumblings over there, you might want to look at that.' So I very much can find things out and be able to nip things in the bud earlier by that relationship...We have a weekly meeting with all the trade union reps and that is about us bringing anything to the table that we're thinking about or that we've noticed and about them raising their issues. And that is really beneficial to us because it really does give us indications of potential issues or the way people are feeling much sooner that we would realise normally and it does avert the formal process sometimes.'* (HR Manager)

It was clear that the trusting relationships which were generally found within the organisation between management and unions had been developed over time. This not only shaped the way that conflict was managed but was also influenced by the approach taken by parties to disputes. In short, trust could either be built or shattered by the way in which the parties dealt with individual cases. Both management and union respondents accepted that in the past disciplinary and grievance issues had been handled in an adversarial manner. However, significant progress had been made in developing trusting attitudes. For many respondents the key to this was a degree of reciprocity and openness from both sides of the employment relationship.

*'We very often look to them to support us with things and they expect us to reciprocate by being quite honest and open with them and respectful of their position really as well...personally I find that keeping the relationship with them positive is very beneficial and I try wherever I can to work with them as much as possible.'* (HR Manager)

#### **6.3.2 Facilitating resolution – managing expectations and ensuring fairness**

Where conflict escalated to the point of formal procedures, representatives would tend to be involved as a matter of course at an early stage, providing a vital window for informal resolution:

*'...they will be involved right from the very beginning. They'll often know about the grievance before we do and you know, they'll often come to see us and say you've got this grievance, what are your intentions basically? What are you going to do?' (HR Manager)*

Furthermore, management respondents found that within formal grievance and disciplinary hearings trade union representation was generally helpful for two reasons. Firstly, they would assist employees in articulating their case and so ensure a fair hearing:

*'It is a help if you've got a member that is particularly unresponsive. Because sometimes you just look at the union rep and they'll go, 'right I'll call an adjournment' and they'll take them out the room and go, "you're going to have to say something". (Operational Manager)*

Secondly, managers found that employees would often confide in their union representatives as opposed to their managers. As a result, possible mitigating factors were more likely to come to light if staff were represented. Furthermore, it was generally accepted that unions were able to manage the expectations of members facing disciplinary action. Union representatives explained that it was important that members understood the consequences of their actions:

*'...so he's not going in that room thinking, 'I'm going in with the unions, I'm going to be fine'...We're not going to say to him, 'oh we'll get you off for that''. (Trade Union representative)*

Inevitably, this blurred the line between defending members' interests and a desire to seek a pragmatic resolution to a dispute. Union representatives were clear that where members had been treated unfairly it was their role to hold management to account. However they also believed that in most cases informal resolutions were in their members' best interests.

The approach taken by the union, while seen as generally constructive, did depend on the individual representative. In particular, experience was seen as crucial – both management and union respondents reported that inexperienced representatives could adopt a more confrontational stance at formal hearings and may not have the knowledge or confidence to discuss issues informally with management. This underlined the importance of the relationship between representatives, managers, and particularly HR, which provided the basis for shared understandings as to how issues were handled.

## **6.4 Summary**

Therefore in relation to both the management of conflict and dispute resolution processes, personal relationships between individual representatives, managers and HR practitioners were critical. Within SDG, union representatives represented a conduit through which issues could be identified and discussed outside both formal procedure and also the emotion of the situation. In particular, communication between HR practitioners and union representatives was important as both were able to provide a degree of distance from the issue or dispute at hand. Accordingly, while positive relationships between key actors created an environment in which informal processes thrived, the data also suggests that without effective structures of representation and HR expertise, line managers and employees would be more likely to retreat to formal procedure.

## 7. MEDIATION – INFORMALITY AND RELEVANCE

Workplace mediation has become a key theme within debates over how organisations can improve the way that they manage conflict and resolve disputes. Much of this attention has centred on provision of mediation from accredited external providers or through in-house schemes. However within SDG, there was little appetite for a 'formal' mediation scheme or perceived need for trained mediators. Instead, respondents argued that 'mediating' between employees in dispute, was part and parcel of the way in which conflict was managed in the organisation.

### 7.1 Mediation as an informal process

For managers, HR practitioners and union representatives within Shop Direct Group (SDG), mediation represented an important way of resolving particularly difficult disputes, especially those involving the breakdown of staff relationships. Indeed almost all those managers and HR practitioners interviewed reported that they had 'mediated' between colleagues and/ or between managers and their team members to resolve conflict and specific disputes. However, 'mediation' within SDG differed significantly from the conventional models of mediation generally referred to within the academic literature and current policy debates.

There was no formal mediation scheme within the company and according to interviewees there were no formally trained mediators on whom they could draw to mediate in the event of a dispute. Moreover, none of the respondents were able to recall any cases in which an external mediator had been brought into the organisation to try to resolve a specific dispute. Instead, managers saw mediation as a flexible and, above all, informal intervention. Importantly, it was seen as a way of resolving a dispute at an early stage and certainly prior to the onset of formal procedure.

The way in which this was undertaken varied. However, a typical example was given by a senior manager who had dealt with a complaint from a member of staff regarding their manager:

*'I sat down with the [employee] in question and said, 'right, there's two ways you can do this: you can make a formal complaint or we can sit down and we can discuss it'...I took them both into a room and said, 'right, okay, I'll read the letter and then let's talk through it step by step'...We talked through it step by step and put a resolution in place and absolutely fine at the end of it...The [employee] was happy with the actions that we'd taken in the meeting and the team manager felt more engaged with [the employee].'* (Operational Manager)

Therefore the distinction between what was seen in SDG as mediation and more conventional forms of informal resolution was the presence of a third party who was seen, in terms of the dispute in question, as an 'honest broker'. Of course this may be potentially problematic as it appeared that managers tended to mediate between their own staff, raising questions over impartiality and also whether disputants may feel obliged to take part. One way in which this was addressed was to call on HR managers to 'mediate'. While none of the HR staff that we interviewed were trained mediators they were still seen by managers as having a degree of expertise and neutrality:

*'I suppose it depends on the issue we're trying to resolve. It could well be me going to see an individual and saying, 'Right okay, we've got an issue with this. How do you think we'd best resolve it'. Or it could well be that I do that in the first instance and then maybe get the parties together to mediate and act as a sort of facilitator of conversation as well.'* (HR Manager)

Interestingly, this is an echo of the traditional personnel role of HR professionals. For the most part HR practitioners did not resist being involved in this way and saw it as 'part of the job'. Indeed, this reflected a belief amongst respondents that this type of mediation was something that they had always done and was not particularly different or innovative. However, there was also a danger that the involvement of HR will have connotations of formal procedure and action.

In other cases 'mediation' followed a structured pattern more akin to accepted models of mediation with the use of separate individual meeting prior to a joint meeting:

*'...we've met with the line manager to kind of go through what the structure of the mediation should look like...We've met with individuals on their own. We've met with the individuals with their line manager and then potentially we've brought them people together to have an open discussion and like I said that has been quite successful.'* (HR Manager)

## **7.2 'Mediation? Just something that we do'**

Overall, for most managers, mediation was seen as an integral part of managing a team – something that a good manager should be able to do. In this sense, issues of neutrality, impartiality or power relationships between disputants (key issues in conventional models of mediation) were considered but viewed as secondary to the more pragmatic concerns of getting a quick and efficient settlement. For the most part respondents felt that this approach worked well. However, there were also some failures whereby individuals, despite coming to an agreement within the mediation, reverted to their original behaviours when back in the workplace

*'...once the mediation had happened these two individuals went back out and didn't carry on with that and it just kind of went from bad to worse, if you like. So they say the right things to each other and come up with something but as soon as they leave that mediation environment it didn't continue so the relationship didn't get any better.'* (HR Manager)

One might suggest that this may be the result of individuals entering into discussions with no real intention of seeking a resolution. Mediation tended to be initiated by line managers and there was little evidence that the implications or the alternative options open to disputants were discussed in any detail as would normally be the case within more structured mediation schemes. Furthermore conventional mediation schemes would tend to screen out cases in which disputants were unwilling participants. Therefore while the more informal style of mediation practised at SDG may have failures it does not necessarily mean that it is less effective than conventional mediation models.

Perhaps, the most important concern was that managers who lacked mediation skills may become involved in very sensitive issues and exacerbate the problems they were seeking to resolve:

*'One thing I will say about mediation is it requires a lot of skill and we do it fairly frequently. But even we are often in situations that we don't necessarily feel that we've got the right skills to deal with it properly because it can very often be fraught. People's emotions can run very high and whenever managers talk to me about it...it always makes me feel very nervous when I hear it because it can very often make a situation worse rather than better...So that sort of quite knowledgeable person who's got specific skills in mediation will be very beneficial I think. Because I often think people try it with the best intentions but if you don't approach it in the right way it really can backfire quite seriously.'* (HR Manager)

However, we must be cautious in drawing conclusion regarding the success or otherwise of the mediation discussed above. Our research did not examine specific mediated cases or the views of employees who had experience of this type of mediation. In addition, the informal nature of mediations that took place within SDG meant that there was no record or evaluation of outcomes and there was little evidence as to the longer-term sustainability of the settlements reached.

### **7.3 Barriers to conventional models of mediation**

When asked about the viability of introducing a workplace mediation scheme, the overwhelming majority of respondents were sceptical as to whether it was necessary within SDG. Some argued that the organisation experienced relatively few grievances (as opposed to disciplinary issues) and therefore questioned whether such an investment could be justified. Furthermore, there was a general belief that most of those complaints that became formal grievances were resolved at an early stage. While it was accepted that within organisations with a grievance culture, the introduction of an internal mediation scheme may act as a trigger for cultural change, there was a general belief that SDG was:

*'...way past that point. If you'd looked at this business 10 years ago you might have seen some of that, but we are way, way beyond the point of recognising that actually this is a collective effort and if we don't work together to find common ground we fail.'* (Operational Manager)

In particular, relationships between management and unions were such that most issues could be resolved in an informal and constructive way:

*'I'm not sure that we would benefit from that at this point because I think we're able to resolve things, our relationship with the union isn't bad. We are able to talk and to achieve things. I guess in terms of devolving activity to the line it would probably be good support training for them.'* (HR Manager)

Interestingly, respondents felt that developing an in-house mediation scheme using trained mediators would represent an additional formal process as opposed to a source of informal resolution. However, there was also a sense in which requesting mediation would reflect a lack of managerial competence and invite a degree of (unwelcome) external scrutiny. Thus rather than mediation being seen by managers as a useful tool to help them resolve disputes, the prospect of its introduction reinforced existing insecurities:

*'Would I feel that it was a good thing to go outside of the family to have mediation? No, I would personally feel that I had failed in my role if I*

*wasn't able to find an adult solution to a situation, no matter what it was.'*  
(Operational manager)

This partly reflected a concern that mediation threatened to undermine managerial authority – a worry that asking for mediation would be a way that employees could short-circuit attempts to manage performance.

*'It [mediation] sort of feels as though it's failed...we should have been able to resolve this in another way.'* (HR Manager)

Trade union representatives also saw the introduction of an internal mediation scheme as a potential threat to their existing representational role. For them mediation was seen as a replacement for union representation:

*'Do I believe that mediation as opposed to union representation would work on this site? No. No, because of the history. If we were to say we'll go for mediation as a business as opposed to having a union rep. there as a supporting colleague, on this site it wouldn't work.'* (Trade Union Representative)

#### **7.4 Summary**

Overall, the data raised two substantive issues in regard to workplace mediation. Firstly, it highlighted the extent to which organisational actors already 'mediate' between disputants. While this may take place without the benefit of training and the structures and protocols that typically surround more conventional approaches, there would appear to be some benefits. It is extremely flexible and responsive and importantly tends to be used prior to the onset of formal procedure. However, there are inevitable concerns over impartiality and the extent to which disputants enter into mediation may feel obligated to take part. In addition, whether line managers and even HR practitioners have the necessary skills to deal with potentially sensitive and emotive issues can be questioned. Secondly, the findings above illustrate the substantial barriers against the spread and development of conventional models of mediation. In particular, there may be significant resistance from both line managers and employee representatives who see the roles as being potentially undermined by introducing what they perceive to be an additional formal process.



## **8. DISCUSSION AND CONCLUSION**

The Gibbons Review (Gibbons, 2007) into the UK's system of Employment Dispute Resolution heralded a significant shift in policy emphasis in respect of the handling of individual conflicts within the workplace. In the four years that have followed we have seen the abolition of statutory disputes procedures, the introduction of a shorter and less prescriptive Acas Code of Practice on Discipline and Grievance, the development of the provision (again by Acas) of pre-claim conciliation, and the promotion of workplace mediation. The main aim of these initiatives has been to encourage employers and employees to resolve disputes at the earliest possible stage and so avoid the cost, stress and inconvenience of conventional formal grievance and disciplinary procedures and also employment tribunal applications.

Early assessments of the impact of this has revealed tentative evidence that employers have attempted to promote informal resolution (Rahim et al., 2011) through changes to existing policies and procedures and also broad suggestions that the use of workplace mediation has increased (CIPD, 2011). However, significant barriers remain: there is little sign of any clear impact on employment tribunal applications; research undertaken by Acas has found that just 5 per cent of private sector businesses have used mediation (Williams, 2011); and it is claimed managers in UK workplaces lack the skills needed to have 'difficult conversations' with their employees (BIS, 2011).

This suggests that we perhaps need to look not simply at the way in which disputes are resolved – how managers react to either disciplinary issues or employee grievances – but also at the way in which organisations seek to manage conflict and therefore prevent the development of disputes. This report provides a detailed analysis of the issues faced by one organisation and the way in which managers, HR practitioners and union representatives deal with conflict. In doing so it provides key insights into: the pattern of conflict and the trajectory of disputes; the importance of employee voice in underpinning informal processes of resolution; the challenges raised by the devolution of people management to line and operational managers; and the key challenges facing practitioners and policy-makers looking to develop and embed informal processes of dispute resolution.

### **8.1 Nature and pattern of conflict and employment disputes**

We have argued that in order to develop a nuanced analysis of individual employment dispute resolution, it is important to distinguish between the management of conflict and the resolution of disputes. As Dix et al. (2009) have argued, conflict may be seen as discontent arising from a clash of interests. Within SDG this was reflected in the tension between the nature of the work process and the values, expectation and aspirations of employees. In broad terms, higher levels of conflict were found in parts of the business in which work was closely monitored, regulated and routinised as the organisation sought to maximise efficiency, maintain quality of service and adhere to regulatory requirements. This environment was seen to be particularly challenging for those workers who were new to the labour market, with relatively limited external commitments and/or saw their longer-term futures elsewhere. Consequently, within these locations, most of the conflictual issues revolved around younger (and male) workers, mirroring previous research (Knight and Latreille, 2000; Antcliff and Saundry, 2009). For more experienced employees, who typically had more extensive personal and financial commitments, the potential risks and costs

of conflict were much higher. As a result it was suggested that they were more likely to adhere to organisational rules and norms.

Not surprisingly disputes were also predominantly found in those locations and amongst those groups where conflict over employment issues was common. However, the relationship between conflict and different types of disputes was complex. For example, SDG experienced relatively few employee grievances. There were perhaps three reasons for this. Firstly, while less experienced staff tended to be at the centre of conflict over employment issues, it was argued that they were unlikely to express discontent through a formal grievance – instead they would be more likely to simply leave the organisation. Secondly, if employees were to raise formal grievances, the support of their union was key. Thus grievance levels reflected the nature of management-union relationships. Thirdly, one might suggest that formal grievances represent a failure of conflict management – certainly within SDG it was argued that grievances were rare because managers, unions and HR practitioners generally worked effectively to nip such issues in the bud.

It was more usual for conflict over employment issues to develop into disciplinary disputes, a pattern typical of retail organisations (Kersley et al., 2006). This reflected how managers applied policy and managed the performance of their staff and this, in turn, was shaped by organisational imperatives and external competitive pressures. For example attempts to increase efficiency, in response to product market competition, had led to an increased focus on performance and the introduction of more robust management of staffs' behaviour and attendance which inevitably led to an increase in disciplinary disputes.

Thus, individual employment disputes within SDG followed very different trajectories depending on: the nature of the dispute; where in the organisation it was located; and the staff and organisational actors involved. While the emergence of disciplinary disputes was largely dictated by the way in which conduct or capability was managed, the development of employee grievances was influenced by the extent to which employees felt able to air concerns and resolve problems through informal channels. This not only suggests generic prescriptions for improving dispute resolution are problematic but highlights the importance of employee voice in managing conflict.

## **8.2 Facilitating conflict management – employee voice, performance management and workplace relations**

The importance of employee voice in underpinning the management of conflict was a recurring theme within the research. The main source of this within SDG was through trade union representation and there was clear evidence that union representatives provided a vital channel through which problems could be identified at an early stage and informal resolutions could be brokered (Saundry et al., 2011). In addition, employee engagement mechanisms offered a chance for employees to vent their feelings and also an opportunity for managers to address conflicts before they escalated into employee grievances and/or disciplinary issues (Harris et al., 2011). This was supported by a comprehensive performance management system based around monthly meetings between individual employees and their managers. This again gave employees a regular opening in which they could air concerns, while managers were able to try to informally resolve any problems regarding conduct, capability or attendance which might otherwise require formal disciplinary action. Paradoxically, the high degree of monitoring involved in many parts of the business, made such issues more transparent and therefore easier to 'catch early' and 'nip in the bud'. In

addition, the performance management system also provided senior managers with a way of ensuring that line managers were not shying away from holding difficult conversations.

Conflict management within SDG was also strengthened by a clear commitment to informal resolution from all key organisational actors. While previous research has suggested that HR practitioners can sometimes be a formalising influence (Jones and Saundry, 2011), this was not the case within SDG. HR Business Partners and Advisers were fully aware of the need for compliance and consistency, but there was a clear emphasis on avoiding formal procedure wherever possible. This was seen as time consuming, costly, and associated with outcomes that had the potential to damage existing employer-employee and employer-union relationships. This view was mirrored by senior management and trade unions who saw that in general informal resolution tended to provide better outcomes for members. It is perhaps for this reason that there was some scepticism over the possibility of training mediators within the organisation. Whilst there was no objection in principle to this, there was a general view that the widespread use of informal processes of resolution removed the need for a more structured approach to workplace mediation.

Finally, informal resolution processes were underpinned by the nature of workplace relations within the organisation. The research suggested that there was a relatively high degree of trust and mutual respect between key actors with regular meetings between trade union representatives, HR practitioners and senior managers to try to identify and address emerging disputes. While the precise role played by individual trade union representatives was seen to depend on their level of experience, they generally played a constructive role. The relationship between the union representative and HR practitioners was particularly important. While union representatives had good relationships with certain (often more senior) managers, line managers were sometimes wary of union involvement. Therefore the link between the union and HR staff provided a crucial degree of continuity, keeping informal channels of resolution open.

### **8.3 Barriers to effective conflict management - line managers and the devolution of dispute resolution**

However, the research also suggested that there were two related issues that threatened to undermine the informal processes outlined above. Firstly, respondents questioned whether operational managers had the necessary confidence and experience to manage conflict and handle disputes (BIS, 2011; CIPD, 2008). Secondly, managerial capability was increasingly important given the devolution of responsibility for conflict management from HR to the line (Jones and Saundry, 2011).

Within SDG, responsibility for disciplinary and grievance issues was being progressively transferred to operational managers. While most managers had been trained in the application of procedures, few had received training in relation to conflict management or dispute resolution. For some managers this was not seen as a particular problem – certain managers were seen as having a natural aptitude for handling conflict. In addition, managers working in areas that experienced very high levels of conflict were more likely to develop skills through ‘doing’. However, there was a general view that a significant proportion of the managerial community had neither the confidence nor the ability to manage conflict and ‘nip issues in the bud’. Consequently less experienced managers tended to either ignore developing problems altogether or to adopt very rigid approaches whereby procedures were applied with little sensitivity to the merits

and circumstances of the case. In this way increased managerial autonomy over people management issues threatened to lead to increased formality in the way that conflict and disputes were handled.

In this context, HR managers played a crucial role in underpinning informal processes of resolution. They not only gave advice and support to managers but they also provided informal coaching as they assisted managers with cases. This was seen as an important source of increased managerial confidence and competence. In addition, regular contact between HR specialists, operational managers and union representatives helped to develop high-trust relations and an environment in which emerging grievances and disciplinary issues could be identified and addressed at an early stage. Accordingly, any erosion of these relationships could lead operational managers to revert to more rigid and formalised approaches to conflict.

#### **8.4 Implications for policy and practice**

While we must be cautious about making generalisations based on a single case study of this type, we would suggest that the findings have a number of implications for practice and policy as follows:

- Effective employee engagement and systematic approaches to performance management can provide a way of identifying conflictual issues and a channel through which they can be addressed informally at an early stage. The central issue here is not necessarily the design or sophistication of the system but the fact that there are regular opportunities for staff and managers to meet and discuss potential problems.
- High-trust relations between key organisational actors are crucial in developing and embedding informal resolution. In large organisations, there is a potential 'golden triangle' of Manager, HR and employee representative – regular contact and constructive approaches on the part of these three groups help to maximise the chances of averting disputes in the first place but also provide informal channels through which both formal grievance and disciplinary cases can be resolved or at least managed effectively.
- HR practitioners have a key role to play in sustaining informal processes of resolution and developing the competencies of line and operational managers. Therefore, in determining the structure and the strategic direction of the HR function, consideration should be given to the impact on the relationships between HR practitioners and key stakeholders and also the abilities of operational managers to manage conflict. In particular, organisations should avoid creating a 'resolution gap' between managers who lack the confidence to address and manage conflictual issues and an HR function focussed on procedural and legal compliance.
- The confidence and capability of operational managers is a significant barrier to more effective dispute resolution. This is brought into stark relief by the changes in the nature of the HR function outlined above. We would argue that this accentuates the need for an increased emphasis on skill development for line and operational managers. While there is scepticism amongst managers that 'classroom' training is the answer, there is a clear need to enhance practical skills in conflict management and dispute resolution and develop structures whereby best practice can be disseminated.

- The generic focus on disputes within current policy debates leads to broad brush policy approaches which fail to take into account the fundamental differences between grievance and discipline and the nuanced way in which varying patterns of disputes will develop in different contexts. While workplace mediation may have a significant impact in transforming dispute resolution in organisations with adversarial work relations and a culture of grievance, its application in environments with few grievances but high numbers of disciplinary disputes is much more questionable.

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