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Fairness, justice and capability - repositioning conflict management

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Fairness, justice and capability - repositioning conflict management

In this paper, Richard Saundry, Professor in HRM and Employment Relations at Sheffield University Management School Faculty of Social Sciences, uses key insights from Acas research to argue for a new approach to the management of workplace conflict

Just under a decade ago, employment tribunal volumes peaked at close to a quarter of a million claims. At the same time the introduction of a new, streamlined Acas Code of Practice on Disciplinary and Grievance Procedures reflected a significant change in government and organisational thinking. This rejected the growing formalisation of workplace disputes procedures in favour of a renewed focus on early and less formal approaches to individual conflict and the promotion of mediation. Since then, while the pursuit of informal resolution has become a dominant theme within employment policy, the extent to which this has been translated into workplace practice is unclear. Furthermore, the case for strategic conflict management has been made by academics (Saundry et al., 2014) and identified by Acas as one of the 'seven levers of productivity'. This paper assesses the progress in achieving the vision of early informal resolution and, in doing so, asks whether a new approach is needed to encourage organisations to manage conflict more effectively and build positive workplace relationships.

The pursuit of early resolution

The dominant approach to conflict resolution that has developed in the past ten years is encapsulated in figure 1 which represents a model developed by Acas. This suggests a linear process with informal discussion and (in certain circumstances) mediation used to resolve workplace problems prior to the initiation of grievance or disciplinary procedures. Perhaps most importantly the model underlines the potential power of addressing and seeking to resolve difficult issues at an early stage, before conflict escalates and the positions of disputants become intractable.
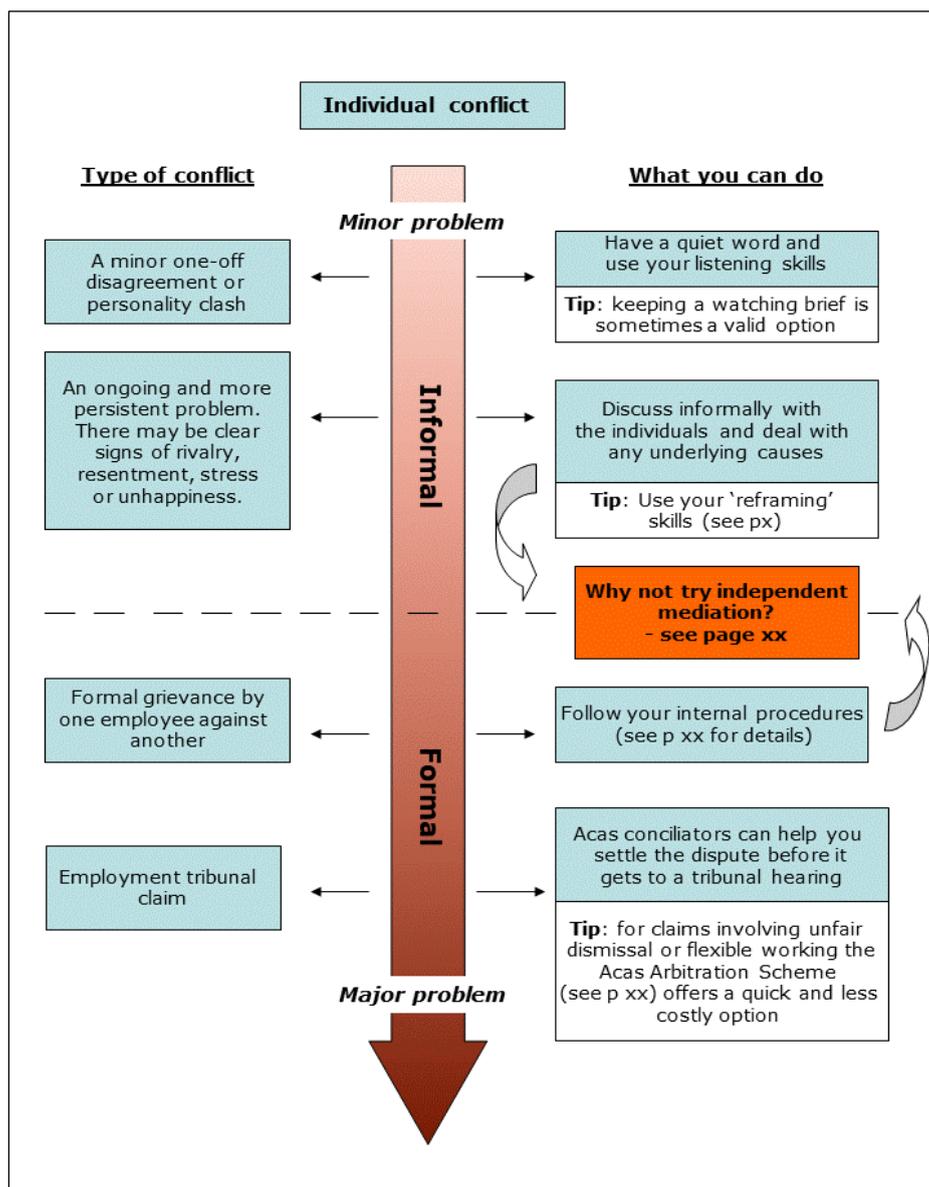
Figure 1 - Process for Managing Conflict (Acas)

This approach certainly seems to have been influential in shaping organisational policy. In the wake of the 2007 Gibbons Review into the UK's system of dispute resolution and consequential changes to Acas advice and guidance, employers streamlined their processes, placing more emphasis on informal resolution within written procedures (Rahim et al., 2009; Saundry and Wibberley, 2014).

At the same time, the importance of 'nipping issues in the bud' through early intervention has become embedded in the discourse of HR professionals (Saundry et al., 2016). More recently, an Acas survey found that more than 8 out of 10 organisations claim that 'line managers and supervisors are provided formal support to resolve employee problems informally whenever possible' (Hann and Nash, 2019).

There is also evidence of increased interest in workplace mediation. While evidence over the provision of mediation in written disputes procedures is mixed (Wood et al., 2015; Hann and Nash, 2019), Hann and Nash (2019) found that more than one-third of the 400 private sector organisations they surveyed had used their own internal mediation service to resolve individual disputes. Furthermore, according to a CIPD survey of employers in 2015, 24% and 32% of employers respectively reported increased use of in-house and external mediation in the previous 12 months (CIPD, 2015a).

The case for conflict management

Although the model outlined above provides a valuable focus on early resolution, 'conflict management' arguably offers a more holistic and strategic approach and for some commentators represents a new 'philosophy of organizational life' (Lynch, 2001:208) and a change in organizational 'mind-set' (Lipsky and Seeber, 2000). Crucially, conflict management it is not centred on the avoidance of formal procedure but instead seeks to target all forms of discontent. Therefore in addition to more clear-cut manifestations of conflict such as disciplinary action, employee grievances and litigation, it extends to issues including absence, work-related stress, bullying and harassment and employee disengagement (Purcell, 2015). Consequently, strategic conflict management aims to not only reduce the costs associated with workplace conflict but to build better workplace relationships, deeper employee engagement and improved organisational performance.

Figure 2 shows how the Acas model could be developed to reflect conflict management principles. This implies the importance of a strategic commitment to conflict management at the top of the organisation. Consequently, conflict competence is a key factor in the recruitment, training and progression of managers. However this also buttressed by HR practitioners who can provide coaching and advice, while mediation principles are built into managerial skills development.
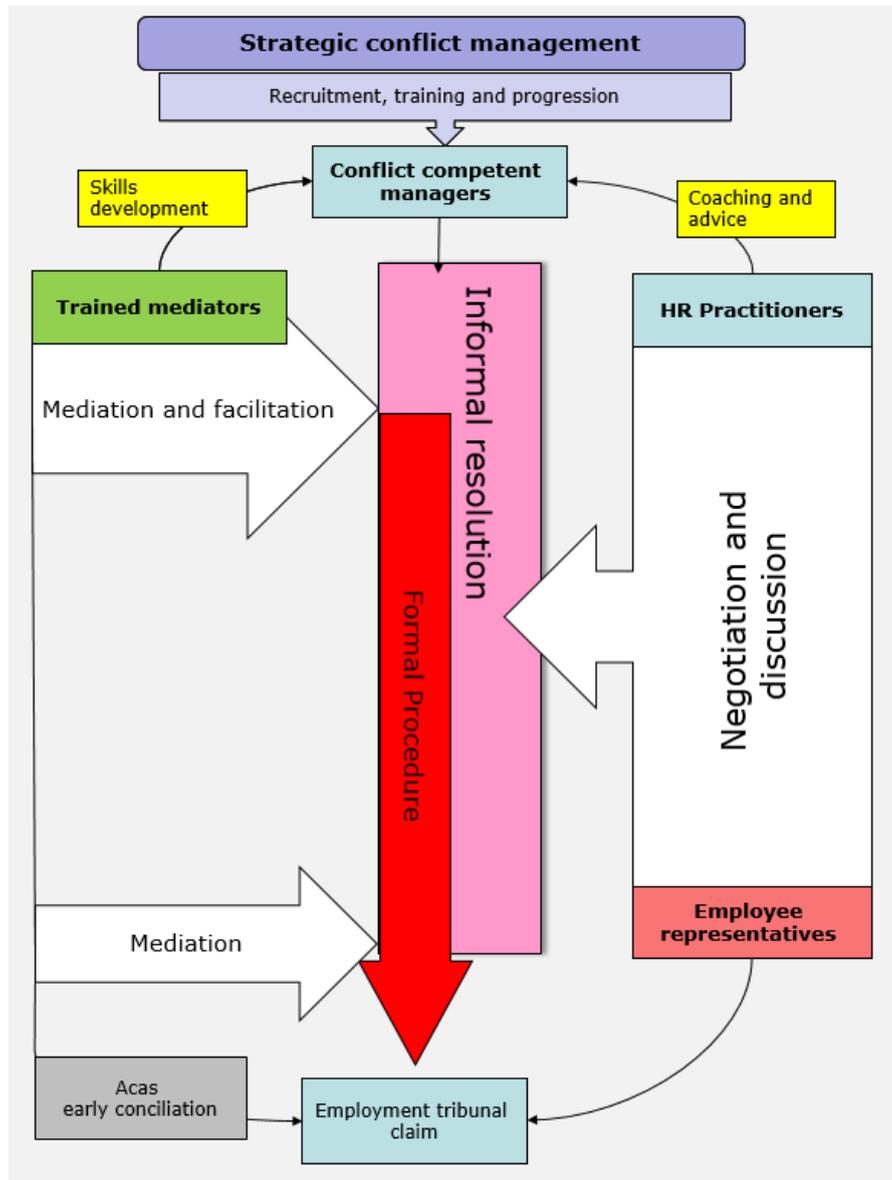
Figure 2 - A Conflict Management Approach

Furthermore, it recognises the potential for conflict management systems which involve the flexible use of multiple interventions at different stages in the escalation of workplace conflict using a combination of rights and interest based processes. For example, trained mediators can be deployed flexibly to intervene in individual cases or work with teams in facilitating the development of more positive relationships where these are under stress or have broken down.

Here, early resolution is not simply seen as an informal stage in a linear process but as a result of developing open cultures which encourage employees to raise concerns and where managers are properly equipped to identify, address and respond to difficult issues at the earliest possible stage. It also highlights the importance of trust between key actors: HR practitioners (located close to the conflict); employee representatives; and managers who have both the skills and the confidence needed to deal effectively with difficult and complex people management issues. This in turn provides the space and capacity to negotiate informal resolutions through the lifecycle of a dispute.

Is anybody listening?

There is evidence of a number of the practices included in figure 2 being adopted by organisations in the UK and Ireland (Roche and Teague, 2012). For example, in a CIPD survey conducted in 2015, 4 in 10 organisations claimed that they had expanded the development and use of mediation skills (CIPD, 2015a:14). Furthermore, Hann and Nash (2019) argue that ADR practices are being used 'fairly widely' in British firms. However, it is much less clear that these innovations are being developed in an integrated or strategic form (Roche et al., 2018). Overall, despite what appears to be a compelling case, the idea of strategic conflict management has failed to gain widespread support among HR practitioners and senior managers in the UK. In one of the largest recent studies into the management of workplace conflict in the UK, the authors found a 'failure of employers to recognise the strategic importance of effective conflict management' (Saundry et al., 2016). This is in stark contrast to the experience of USA, where research conducted by Lipsky et al in 2011 found that one third of Fortune 1000 firms had integrated conflict management systems, an increase from 17% in 1997 with over four in five companies using workplace mediation.

Perhaps more worryingly, it could be argued that the reality of managerial and HR practice does not even match the aspirations of the Acas model described in figure 1. The largest qualitative exploration of the management of conflict in UK workplaces to date concluded that: 'the rhetoric of early resolution does not appear to have transferred to the reality of managerial practice. Instead, our findings suggest that conflict management and dispute resolution in British workplaces are increasingly dominated by notions of procedural compliance' (Saundry et al., 2016:46). This, the authors argued was driven by three factors: the erosion of employee representation; increasingly remote HR advice; and a lack of managerial confidence and capability. Thus, it is rare for managers to have the 'reframing' and 'listening' skills assumed by the Acas model. Indeed, management action or inaction is a common trigger for workplace conflict. Recent research conducted by myself, Virginia Fisher and Sue Kinsey into the work of HR practitioners has found that while most HR professionals embrace the idea of managers intervening to resolve difficult issues at an early stage, in reality this is unrealistic. Hence they often feel the need to step in to ensure that issues are handled in a fair and consistent way, formalising informal processes through the use of checklists, flowcharts, and templates (Saundry et al., 2018).

Conflict, what conflict?

How do we explain the seeming reluctance of UK organisations to embrace more strategic and creative approaches to conflict management? I'd argue that there are four key barriers, which prevent UK organisations recognising that conflict is a problem they need to address.

1. **Unitarism and the problem of image.** Unitarist perspectives of the employment relationship have become increasingly dominant within the study and practice of HRM (Harley, 2015). From this viewpoint, conflict is not an inevitable part of organisational life but an aberration, caused by

misunderstanding or organisational 'dissidents' intent on causing trouble. Consequently, employers are reluctant to engage with ideas that acknowledge that they have a 'problem' with conflict. Furthermore, we know from research that managers tend to underestimate their need for training (Sadun et al., 2017) and recognising a need for conflict management skills in particular may be seen as an admission of failure.

2. **The UK's system of dispute resolution provides little incentive for organisations to invest in conflict management**. We pointed out above that the UK lags well behind the USA in terms of conflict management innovation. One of the key explanations for the development of integrated and strategic approaches in the USA is the relatively high costs of employment litigation. One estimate put the average cost of defending and settling an employee lawsuit at an average of £125,000 ($160,000) (Hiscox, 2017). In contrast, the Federation of Small Business claim that the average amount spent by their members defending an employment tribunal is approximately £8,000 while the median compensation for sex discrimination claims in 2016/17 was £8,381 (Pyper et al., 2017). Therefore, the relatively low risks attached to litigation makes the business case for significant investment in conflict management capacity in the UK less compelling.

3. **The gradual erosion of trade unions has reduced the risk of conflict.** In the UK the erosion of trade union influence and the decline in the number workplace representatives (van Wanrooy et al., 2013) means that managerial discretion is less likely to be challenged, reducing the need for more innovative approaches to conflict management. In contrast, in the USA the all or nothing nature of union recognition creates much higher stakes for employers in accepting or resisting union influence. This, in turn, creates greater incentives for employers to invest in non-union conflict resolution mechanisms.

4. **Conflict is difficult to define and effective conflict management is even harder to see.** Our recent research into the attitudes of HR practitioners also suggested a definitional problem with most respondents connecting conflict with the enactment of process and procedure rather than broader notions of discontent (Dix et al., 2009) or disengagement (Purcell, 2016). This in turn leads to a widespread view that conflict management represents 'day-to-day' HR practice, divorced from the strategic priorities of HR. Even when HR practitioners see the need for investment in conflict management capacity developing a business case is made difficult due to the invisibility of informal processes of conflict resolution and a lack of counterfactual evidence.

Changing the direction of the debate?

While there is a strong case to see conflict management as a strategic imperative, there is little evidence that this is cutting through into organisational practice. It could be argued that a focus on the type of sophisticated conflict management system envisaged in figure 2 is unrealistic and over-ambitious. Perhaps there should be less emphasis on systems and an acknowledgement that different organisations may have different triggers for

investing in bundles of conflict management practices. For example, it could be argued that such investment may be triggered by high levels of grievances or where strong trade unions increase the visibility of conflict. In the NHS, bullying and harassment has significant resonance, partly due to the fall-out from the Francis Report but also the fact that there it is a key measure in the annual NHS staff survey. This was a major factor in the development of a highly innovative system at Northumbria Healthcare Trust (Latreille and Saundry, 2016). The finance sector has also seen a relatively high level of investment in conflict management arguably as a result of the level of regulatory scrutiny over organisational misbehaviour and the potential cost implications of workplace conflict involving very highly paid employees. However, the problem with such an individually tailored approach is that its lack of coherence inevitably limits the dissemination of the core concepts that underpin conflict management. Moreover, this is likely to result in the piecemeal adoption of a disparate range of practices.

Deconstructing conflict management

An alternative response is to focus on these core concepts by deconstructing conflict management, isolating its main components and developing a more positive framing.

i)   Managerial competence – the art of conversation

The main difference between conflict management and dispute resolution is that the former focuses on minimising or avoiding disputes by creating environments and cultures which encourages managers to address, contain and resolve conflict at the earliest possible stage (Lynch, 2003). At its most basic level, this revolves around the ability of managers to have quality conversations with their staff. While this may sound quite simplistic, it reflects the reality that 'good managers' are constantly negotiating and renegotiating their relationships with staff and other colleagues (Edwards, 1994). If they are to avoid or minimise conflict, they need the same skills and techniques that form the basis of workplace mediation - listening, communication, influencing, reframing, negotiation and coaching; an emphasis on interests rather than positions; and a willingness to explore the potential for mutual gains (Walton and Mckersie, 1965; Fisher and Ury, 1981). In this way we can reframe conflict management from a more positive perspective – in essence the capacity of organisations to develop and sustain positive relationships.

This new framing also has the potential to broaden the reach of key conflict competencies in two ways. First, the skills outlined above are transferable across a range of managerial activities. For a new generation of managers 'negotiation skills' do not have connotations of collective bargaining and industrial relations but are vital to commercial, operational and career success. Nonetheless, whatever the selling point, developing such capabilities will provide managers with the skills they need to not only manage potential grievances and disciplinary cases but also extend this to a wider range of complex personnel issues including performance management, bullying and harassment and health and mental health.

Furthermore, there is growing evidence that these skills are going to be more, and not less, important as a result of the development of new technology. Frey and Osborne (2013) argue that jobs requiring 'human' skills including negotiation persuasion will be particularly difficult to replicate through automation. Citing this work, Acas research conducted by Patrick Brione (2017) points to the potential for new communication technologies to increase workplace conflict and sees no substitute for face-to-face conflict resolution skills. If anything, the skills needed to negotiate positive relationships are likely to become more significant in managing people as organisations flatten out hierarchical structures.

ii)   Fairness and organisational justice

Effective, interest-based conversations are also unlikely to be sustainable if they are not underpinned by fairness, both in terms of process and outcome. Consequently, the role of fairness at work has been side-lined by foregrounding the need for resolution, sometimes at all costs. Attempts to promote conflict management to sceptical organisational leaders have inevitably been based on a fairly narrow business case, comparing practices like mediation with costly and inefficient formal processes. But even this is a very hard sell given the invisibility of successful conflict resolution, the difficulties of generating robust evaluative data and a general squeamishness about acknowledging conflict.

However, the current debate over 'good work' places fairness centre-stage. In an article in the New Statesman on 14th August last year, Peter Cheese of the CIPD defined 'good work' as:

> '...work that is engaging, gives people a voice, treats them fairly, is good for their wellbeing, and helps them to progress. It should be positive for individuals, but also lead to wider positive organisational and economic outcomes: higher levels of productivity and output, and greater innovation and adaptability.'

Moreover, recent Acas research has found that while conflict management was seen as a transactional activity within most organisations, HR practitioners still highlighted their role in ensuring consistency and fairness. Furthermore they saw no contradiction between sound process and a commitment to early informal resolution (Saundry et al., 2018). In the USA, proponents of conflict management systems argue the need for a combination of rights and interest based processes. At a basic level this reflects the fact that certain issues may be more suitable for mediation, while perhaps cases of serious bullying, harassment and discrimination may require a process of formal investigation and adjudication.

Responses to revelations over bullying and, in particular, sexual harassment in the UK Parliament have highlighted the need for robust procedure and the key role played by HR. Therefore, rather than ducking the issue of fairness in an attempt to remain 'business-friendly', perhaps the time is ripe to promote the ways in which robust and effective mechanisms to address and resolve conflict underpin fairness and equality at work. Written procedures are important for a number of reasons. First, they ensure a degree of fairness and equity, which builds trust in the way that the organisation approaches conflict. Second, they

incentivise managers to invest time in managing conflict effectively and resolving issues at the earliest possible stage.

However, rather than see procedures per se as a barrier to the early resolution of conflict – the focus should be on the nature of those procedures and the way they are implemented. In the hands of a manager who lacks the necessary skills, rigid procedure can hamper potential solutions. In contrast, where there are good relationships between managers, HR and representatives, the enactment of formal procedure does not preclude informal discussion and resolution (Saundry et al., 2011). But most importantly, if organisations can develop managers with the confidence and capability to manage people effectively, procedure will be the last resort and not the default.

Conclusion

We know from the influential World Management Survey (Sadun et al., 2017) that low relative productivity in the UK can be explained, at least in part, by the absence of basic management practices. But Sadun et al. go further and point to a need for an emphasis on managerial capability in addition to wider notions of leadership and strategy. The approach outlined in this paper offers a direct link between managerial competence and organisational performance while also addressing the growing demand for a focus on good (and better) work. While skilled managers can contribute to improved productivity by handling conflict more efficiently, combining improved managerial capability with fairness has the potential to enhance effectiveness by increasing perceptions of organisational justice (see Colquitt et al., 2013). Organisational justice, which rests on managers using fair processes, arriving at equitable outcomes and facilitating employee voice, arguably underpins trust which in turn shapes employee engagement (Purcell, 2013). At the same time there is also evidence that perceived unfairness has a negative impact on health and well-being. Indeed, guidance from National Institute for Health and Clinical Excellence (NICE) to improve health and wellbeing at work stresses the role of fairness, justice and trust, recommending that management training should include: 'communication skills, including how to have difficult conversations with employees [and] developing people's skills and resolving disputes' (NICE, 2015:12).

As figure 3 suggests, managers who are able to listen, negotiate and influence are more likely to both enhance voice and organisational justice by creating a culture in which employees feel able to express their concerns and in which staff feel confident that problems will be managed fairly. By having quality conversations, it is more likely that performance issues will be addressed and any conflict between staff will be resolved at an early stage. This will not only mean improved performance but fewer disputes and a greater likelihood of positive working relationships. Of course, in some larger organisations, a focus on managerial competence will be part of a more integrated conflict management system involved internal mediation capacity, but the principles represented in the model above can be applied in any setting.
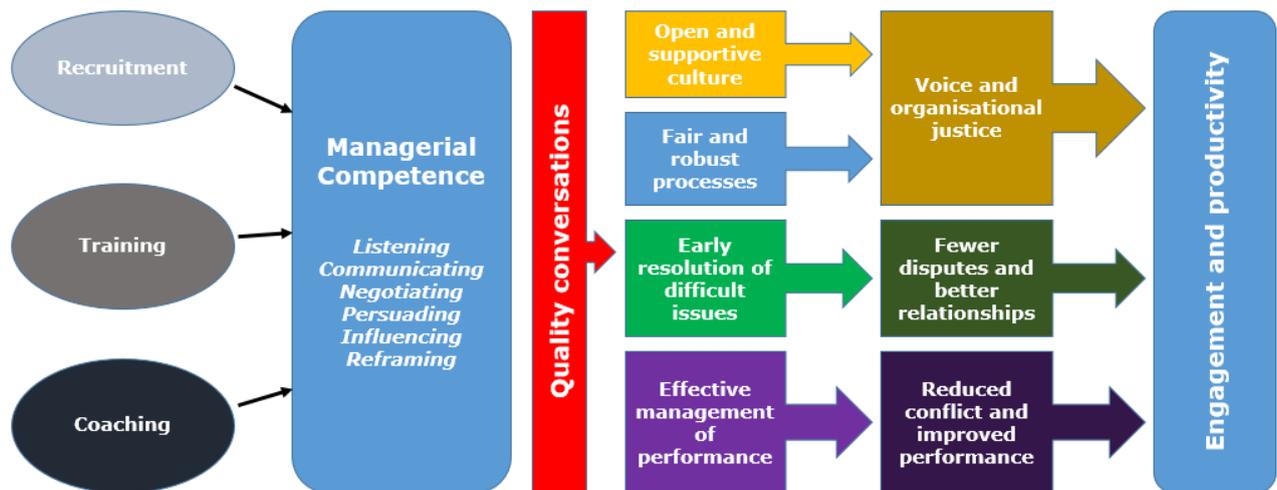
Figure 3 – Competence, resolution and performance

Overall, a focus on managerial capability and procedural fairness provides a new framing for the management of workplace conflict which has the potential to resonate with key organisational actors and gatekeepers. For managers, developing skills in negotiation and influencing can have a positive impact which extends beyond dealing with difficult workplace issues. For HR practitioners, the reconstruction of competence infrastructures offers to provide the strategic role that they aspire to but also has the potential to free them from having to 'handhold' and regulate managerial behaviour. Instead it allows them to position themselves as advocates of fairness. Importantly, if managerial capability is developed the need for process to act as a proxy for guidance disappears - the scope for informal resolution expands and procedural application is reserved for a smaller range of serious issues.

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