

# Research Paper

Small firms and workplace disputes resolution

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Prepared by:

Lynette Harris, Alan Tuckman and Jereme Snook (Nottingham Trent University)  
and Stephanie Tailby, Sue Hutchinson and Janet Winters (University of the West of England)

On behalf of Acas Research and Evaluation Section

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# **Small firms and workplace disputes resolution**

A report commissioned by Acas Research and Evaluation Section

March 2008

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## **DISCLAIMER**

The views in this report are the authors' own and do not necessarily reflect those of Acas.

## TABLE OF CONTENTS

<b>ACKNOWLEDGEMENTS.....</b>	<b>2</b>
<b>FOREWORD .....</b>	<b>3</b>
<b>EXECUTIVE SUMMARY .....</b>	<b>4</b>
<b>1. RESEARCH AIMS, BACKGROUND AND METHODS.....</b>	<b>8</b>
1.1 Background to the research: the public policy context .....	8
1.2 SMEs and disputes handling .....	9
1.3 Research methodology.....	11
<b>2. THE CASE STUDY COMPANIES AND THE FOCUS GROUPS .....</b>	<b>13</b>
2.1 Size .....	13
2.2 The sector and product market .....	13
2.3 External labour market .....	16
2.4 Nature of the workforce .....	16
<b>3. DISPUTES HANDLING IN PRACTICE .....</b>	<b>18</b>
3.1 The legal context .....	18
3.2 Different conflict situations.....	20
a) <i>Employee grievances</i> .....	20
b) <i>Performance and behavioural issues</i> .....	22
c) <i>Diversity issues</i> .....	24
d) <i>Managing change</i> .....	25
3.3 Dimensions of dispute resolution practice .....	26
a) <i>A formal or informal approach</i> .....	26
b) <i>Human resource procedures</i> .....	27
c) <i>Communicating procedures</i> .....	29
d) <i>Responsibilities for dispute handling</i> .....	29
3.4 Key influences .....	30
<b>4. CURRENT SOURCES OF SUPPORT AND EXPERTISE .....</b>	<b>32</b>
4.1 Internal HR resources .....	32
4.2 External support .....	35
4.3 Contracted services: trade or employers' association membership.....	36
4.4 Contracted services: HR consultancies and insurance providers .....	38
4.5 Other services, including Acas.....	40
<b>5. WHAT IS NEEDED TO HELP EMPLOYERS .....</b>	<b>42</b>
5.1 Type of support .....	42
5.2 A place for third party intervention .....	45
5.3 The role of Acas.....	48
5.4 Paying for support.....	49
<b>6. CONCLUSIONS.....</b>	<b>53</b>
<b>REFERENCES .....</b>	<b>55</b>
<b>APPENDICES .....</b>	<b>56</b>
Case Study 1 Waste Management.....	56
Case Study 2 Stationery Manufacturer .....	58
Case Study 3 Food Processing.....	59
Case Study 4 Shopfitters Ltd .....	61
Case Study 5 Environmental Consultants.....	62
Case Study 6 Marketing Services.....	64
Focus Group 1.....	65
Focus Group 2.....	67
Focus Group 3.....	69
Focus Group 4.....	71

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## **FOREWORD**

The challenge of managing conflict at work is one familiar to workplaces of all sizes. But it is likely that the burden is felt especially acutely in smaller workplaces without the formal HR backup enjoyed by their larger workplace counterparts.

The question, then, facing Acas is how best to support SMEs in their efforts to manage and resolve conflict. This study provides new evidence in this area. It was commissioned in the wake of the 2007 Gibbons Review of Dispute Resolution in Great Britain. A strong message from the research is that while the desire in SMEs for early and informal resolution of disputes at work is strong, it not always matched with the know-how for adopting such an approach. Equally, SME's interest in alternatives to legal redress is not matched by experience or exposure to strategies beyond the most formal routes. In spite of this, third party intervention, including mediation, found considerable favour.

Acas is moving forward rapidly in responding to the challenges set by the Gibbons agenda by vastly augmenting its advisory service, and employing new methods for promoting early resolution of workplace disputes. As emphasised by Gibbons, one size does not fit all. This research provides valuable pointers in ensuring the services we provide to SMEs are a good fit with the needs of this important sector of the economy.

This research was commissioned under the new Acas Research Partnerships programme and was carried out by Nottingham Trent University Business School and the University of the West of England. I am grateful to the researchers at these institutions for the insight they have brought to this study.

Ed Sweeney  
Chair of Acas

## **EXECUTIVE SUMMARY**

This report presents the findings from a qualitative study into the handling of conflict resolution among owners and managers in small businesses in two areas of the UK, South West England and the East Midlands. The research was undertaken for Acas by the Nottingham Trent University Business School and the University of the West of England between October and December 2007. The purpose of the research was to explore management practices in handling individual employee grievances and disciplinary issues, their sources of internal and external support in resolving such disputes in the workplace and what additional support they identify is needed. The main findings from this study are summarised below.

- Handling employment conflict is viewed as a difficult area by SMEs, particularly in the light of the expansion of individual employment rights which are seen as disproportionately impacting on the smaller business. There was a reported need for more publicly funded support services for dispute resolution for smaller businesses that do not have access to internal HR expertise and are, therefore, more reliant on external sources of advice and support.
- There was considerable variety in the approaches to resolving conflict adopted by our small businesses. The dominant influences are the nature of the industry, its labour market, the background of the owner/manager(s), the maturity of the business and any past experiences of employment tribunal claims.
- The voluntary sector reported the most difficulties in dealing with workplace conflict and the strongest and most consistent support for publicly funded, independent advisory and support services.
- The case study evidence revealed a consistent concern with handling disputes at an early stage within the work place. However concerns about potential litigation have led to a practice of using formal procedure in any early interventions when handling disciplinary issues as a means of providing a defence against potential litigation and to demonstrate consistency of treatment. This is despite a continuing reported perception among all our case study organisations and many focus group participants that an informal approach to managing employment relationships works better in a small business environment.
- Articulated employee grievances were identified by owners and managers in the case studies to be at a low level. This was variously attributed to early attention to potential issues and labour market demand for certain skills that are in short supply. Grievances are more likely to be addressed by informal means for a longer period of time than disciplinary issues. Yet employee grievances are the conflict situations where the evidence suggests that employers are most likely to encounter sensitive issues and where external third party support could be of particular value. This is particularly the case for small business employers experiencing an increasingly ethnically diverse workforce.

- There was criticism of the 2004 dispute resolution regulations but this was articulated, in the main, by those employers' representatives who had some familiarity with the public policy debate. Managers of some case study firms did not seem especially familiar with the Regulations.
- Each of the case study firms had formal grievance and disciplinary procedures. In many instances these had been drafted with the external assistance of a lawyer, or a private HR consultancy, or a trade or employers' association. Although the requirements of the statutory procedures were found to be embedded in the majority of their procedures and practice, the actual knowledge of these by our owners and managers was very limited. Their knowledge reflected the provisions of the *Acas Code of Practice on disciplinary and grievance procedures* rather than those of the 2004 statutory requirements.
- In practice there were no identified difficulties in providing an internal appeals stage although this is more likely to be an issue in very small businesses. There was generally found to be a relaxed approach among our SME employers to employee representation and the issue of accompaniment, even though their written procedures widely limited this right to a fellow employee or a trade union representative, although there were reported problems when friends and family members were involved.
- External systems for advice and legal cover have been put in place by many smaller employers. These seem to be working satisfactorily although the approach is one of ensuring penalty avoidance rather than a problem solving approach to resolving workplace conflict.
- The major criticism of the present advisory services is that the advice provided is insufficiently tailored to the needs of smaller businesses and is often seen as impractical in terms of operational realities and the need to resolve issues as quickly as possible to ensure minimum disruption to a business heavily reliant on a small work force. SME employers' preference would be to have dedicated advisers familiar with their organisation, industry sector and small business context who are able to give 'hands on' customised advice in accessible 'non legalistic' language.
- There was an identified tension between seeking out advice that was practical and took account of operational realities and receiving advice that was highly risk adverse and took account of a range of legal eventualities.
- Reported forms of insurance cover which provide legal support if a claim proceeds to tribunal requires a complete adherence to the advice provided. This is seen at times as leading to impractical advice and can be a barrier to employers seeking out or considering alternative work based approaches to resolving workplace issues in case these render their insurance cover invalid.
- First line managers are seen to play the vital role in early work place dispute resolution and a number of owner/managers identified the need to develop internal expertise among line managers in 'softer' people skills and, more specifically, in conflict resolution.

- Despite this, there was no evidence of training to develop managerial skills in dealing with people issues and conflict resolution. The dominant view was that this is needed but that it should be free, or heavily subsidised, and provided by Acas as the recognised standard bearer of good workplace practice.
- For managers lacking expertise in 'people skills' entering into formal procedures are seen as less risky and an easy way of dealing with individual conflict than informally trying to resolve an issue.
- When issues reach a certain stage, mediation by an internal third party may well be inappropriate in a small business context. An external third party is more likely to be acceptable to the parties involved because of their distance from the organisation, making relationships easier after any such intervention.
- Alternatives to seeking legal redress for resolving disputes in the workplace are very rarely known. The employer's association representatives in our focus groups were knowledgeable about mediation. But there was no experience among our owner/managers in using mediation to resolve employment conflicts and very little knowledge about what this might involve.
- Nonetheless, the concept of third party intervention was viewed positively by the majority where a difficult situation could not be internally resolved in certain situations. The nature of such situations could not be specifically identified because of a lack of insight into what these might be although there was some suggestion that these might be those involving sensitive employee relations issues.
- Although not universally the case, Acas, on the grounds of its independence and neutrality, was generally identified as the best potential provider of such services. It is widely held in high repute for its standards of impartiality and as the standard bearer for 'good workplace practice'. As a consequence third party intervention by Acas is seen as the most acceptable to both parties although some employers regarded Acas as too 'pro employee'.
- Acas as an organisation and the services it provides are not regarded as being sufficiently visible. The view is that it should be more closely linked with organisations and their web sites which provide services to small businesses, for example Business Link, Chambers of Commerce, Regional Development Agencies. It is felt that Acas needs to publicise its services to employers, using a range of media and also provide a general updating service about changes in the law.
- Whilst there might be a willingness by some employers to pay for mediation services in certain circumstances, the dominant view in the focus groups and among the case study owners and managers was that any support services to assist work place resolution should be free to smaller businesses who have less resources to deal with such issues and, in particular, not for profit voluntary sector organisations. A point emphasised by some focus group participants was that third party

mediation would not be viewed as neutral unless it was free (publicly funded) for both parties in dispute. This perception again does need to take into account the lack of knowledge about alternative approaches to dispute resolution and what could be involved.

## **1. RESEARCH AIMS, BACKGROUND AND METHODS**

This qualitative research was conducted in the last quarter of 2007 among owners and managers of small businesses and organisations representing the interests of small business in two Acas areas of the UK. Its focus was to specifically provide insights into:

- management approaches and practices in the small firms sector in handling employee grievances and disciplinary issues,
- the types of internal and external support that the owners and managers of small businesses currently draw on in the management of these matters,
- what owner/managers perceive their needs to be in handling dispute resolution,
- the form of additional support services they would prefer and would be the most likely to use.

The background to the research is outlined in this introductory section, in terms of the extant legislation on workplace dispute resolution procedures and proposals for reform. The research design is described and the structure of the report is explained.

### **1.1 Background to the research: the public policy context**

Among workplaces in Britain the long term trend has been towards formalisation of procedures for handling individual disputes. This is recorded by the Workplace Employment Relations Survey (WERS) series that dates from 1980 and in 2004 found that among workplaces with ten or more employees, 88 per cent had formal procedures for handling employee grievances while 91 per cent had formal procedures for disciplinary matters. Kersley *et al* (2006: 215) discuss the trend as 'one of the hallmarks of contemporary employment relations' and note that one explanation is the growth and significance of the law. Britain's 'voluntarist' system of industrial relations has been substantially changed and in the 1980s and 1990s a main change was the decline in trade unions' workplace 'presence' and the coverage of collective bargaining. Legislation regulating dismissals dates from 1971, and the framework of individual statutory employment rights expanded subsequently, in particular from 1997. Employment Tribunals are the principal means of enforcement and as Kersley *et al* (2006: 227) note there are currently over 50 'jurisdictions' under which an employee can bring an Employment Tribunal (ET) claim.

Before October 2004, ET judgments on what constitutes an employer's reasonable handling of dismissal situations were based on the principles of natural justice, established case law and the Acas Code of Practice. Change was instigated by the 2002 Employment Act (Dispute Resolution) Regulations that came into effect from October 1 2004. The Regulations introduced statutory grievance and disciplinary procedures that amount to a minimum standard that must be followed by all employers and employees. They prescribe a three-step procedure:

- a written statement from the employer (of the grounds for disciplinary action) or from the employee (the nature of the grievance)
- a meeting between the parties to discuss the matter, at which the employee has the right to be accompanied and after which the employee must be informed of the employer's decision
- an opportunity for the employee to appeal if dissatisfied with the employer's decision.

The government's aim in introducing the 2004 Regulations was to help avoid litigation over employment issues and to relieve pressures on the Employment Tribunal (ET) system, by encouraging early disputes resolution at the level of the workplace. And there is evidence that the number of cases taken to Tribunals has fallen since the 2002 Act came into effect (cited in Wedderburn 2007: 412). However, there has been criticism of the new statutory procedures.

The independent review, headed by Michael Gibbons, reported to the DTI (now the Department for Business, Enterprise and Regulatory Reform) in March 2007. The verdict was that the statutory procedures involved an unnecessarily high administrative burden, for employers and for employees, and had 'negative consequences which outweigh the benefits' (Gibbons: 8-9). They had encouraged greater formalism and greater 'legalism' rather than early resolution of individual disputes. They had focused attention on process (procedural compliance with the legislation, in anticipation of ET proceedings) rather than on improved disputes resolution in the workplace. Gibbons attributed the failings to the government's 'one size fits all' approach and the complexity of the legal requirements.

The Review recommended repeal of the statutory disputes resolution procedures, their replacement by a less prescriptive approach on the part of government – the provision of 'clear, simple, non-prescriptive guidelines on grievances, discipline and dismissal in the workplace' (p.10) – and increased support for promoting early alternative disputes resolution (ADR) in the workplace. It recommended there should be an adequately resourced helpline providing advice to potential claimants and respondents, including advice as to 'the realities of tribunal claims and the potential benefits of alternative dispute resolution' (p.38) and that the government should offer a free (publicly funded) early dispute resolution service including, where appropriate, mediation. The Gibbons Review thought that the simplest way to ensure an 'adequate and timely' supply of ADR services 'would be to place a new expanded emphasis on Acas' existing statutory duty to provide conciliation prior to a tribunal application where requested' (41). It recognised this would require additional public funding for Acas.

The government's response has as yet to be announced. In this period of review, however, it is pertinent to explore approaches to disputes handling and preferences in respect to external and ADR services among small and medium sized enterprises (SMEs, employing fewer than 250 people).

## **1.2 SMEs and disputes handling**

Government ministers made clear in 2002 that the new statutory disputes procedures had been designed specifically for the needs of small firms and their employees and were minimum standards on which larger firms might improve. The government estimated that up to 800,000 firms had either inadequate

procedures or no procedures for handling disciplinary and grievance matters. This meant that up to 7.2 million employees had 'no clear right to discuss employment problems in the workplace'. Almost all were in firms employing fewer than 20 workers (Gerry Sutcliffe, the then employment minister, cited in Parker and Arrowsmith 2004).

Analyses of the 2004 WERS provide further insight, although it needs to be emphasised that the survey was initiated before and continued after the new Regulations came into force. Kersley *et al* (2006: 215) found that 27 per cent of small *workplaces* (with fewer than 25 employees) did not have formal grievance procedures, although that there was variation by industry as well as sector. Forth *et al*'s analysis, which specifically explored SME employment practices, concluded that workplaces in even the smallest firms commonly (as opposed to invariably) had formal procedures for resolving disputes. They 'commonly followed at least some of the steps laid down in the new statutory framework, although few followed all of them, this being the norm in workplaces belonging to large firms' (2006: 94).

Other studies have shown that there has been longstanding over representation of small firms in the ET claims (e.g. Earnshaw *et al.* 1998). However, the 2003 Survey of ET Applicants (SETA) suggested that over-representation principally concerned businesses with between 50 and 249 employees; that is, medium sized enterprises under the European Union's definition. Such firms generated 21 per cent of tribunal applications but accounted for only four per cent of aggregate employment (Hayward *et al.* 2004, and cited in Gibbons, 2007). The evidence is interesting. It is obviously important to assess SME practice in terms of the existence (or otherwise) of formal procedures, as indication of the opportunities available to employees to make grievances known to managers and find redress locally. However, it is also important to understand the way in which formal procedures sit within broader aspects of the workplace and employee relations management.

There are various reasons why dispute handling may present particular problems for SMEs. These include a lack of internal specialist human resource management expertise and knowledge of the changing framework of employment law. Informality in the conduct of employee management is common in the SME sector but is not universal. Bacon and Hoque's (2005) analysis of 1998 WERS data suggested that among external influences on SME approaches, coercive pressure (from major customers, or from trade unions) was a more powerful predictor of the presence of 'positive' HRM practices, including formal grievance procedures, than involvement in 'advisory networks' (such as employers' associations).

Two points follow:

- First, widespread 'modernisation' of HRM in the SME sector may demand more than voluntarist means. The Gibbons Review acknowledged this, in so far as it identified a role for 'incentives' in bringing about a 'culture change'. It recommended an extension of ET discretion, to take into account the parties' efforts to settle the dispute when making awards and cost orders.
- Second, employment practice in the SME sector is varied and research needs to relate the particular approach taken – in this case to the handling of individualised conflict – to the firm's internal and external context.

Qualitative case study research has an important role to play in developing our understanding of how individual conflict is addressed in the smaller businesses, examining the perceptions of owner/managers on the nature of the support they need and how this should be provided. It is these gaps in existing knowledge that the current study was designed to fill.

### **1.3 Research methodology**

The concern was to understand small employers' experiences, rationales for their practices and perceptions of their needs in respect to dispute handling, in context. This favoured a qualitative case study approach (see also Holliday 1995). Semi-structured interviews were conducted with owners and managers in six firms over the period October-November 2007; three case studies were completed by each of the two collaborating research teams. In addition four focus groups were used to gain views of a wider sample of small business owners and managers, and a sample of relevant 'stakeholder' opinion. Two focus groups were conducted by each of the two research teams. Short profiles of the case study companies and summaries of the focus groups are provided in the appendices to this report.

The research aimed to select for case study investigation private sector firms with between 25 and 100 employees, operating in a range of industries to include manufacturing and services and without an internal qualified HR specialist. The choice of size reflected the concern to focus on small firms whose circumstances have been very much at the heart of the public policy debate on the 2002 legislative framework. This was similarly the rationale for excluding businesses with specialist HR staff and, given the size of firm selected for investigation, it was anticipated that their presence would be the exception. A range of networks was used in the effort to make contact with firms fitting the selection criteria, with a view to achieving research access. These included small firms' trade and employer associations. However, the time frame for the research was tight and some pragmatism was necessary; for example, some case studies were generated by pressing work colleagues or friends for their contacts in the small firms sector. Nonetheless the research was successful in achieving an industry spread including companies involved in waste management, food processing, printing, marketing communications, shop-fitting and environmental consultancy.

The research was designed to include semi-structured interviews at each firm with the owner or a senior manager; the manager with responsibility for HR matters; and a line manager. In practice, in the smaller firms, there was a good deal of doubling-up in manager job roles so that, for example, a company director was the line manager. Consequently, some cases are based on two interviews rather than three. A common interview schedule was used and the interviews, each lasting around an hour, were tape recorded. Details about each organisation, including the composition of the workforce, are discussed in section two of the report and summarised in Table 1 in Section 2 below. The case study companies have been anonymised as agreed with the participants.

The four focus groups fell into two categories, in terms of participants and the ways in which they were contacted. Two comprised SME owners and managers with a group taking place in each region. These were organised by Acas through a research recruitment agency with participants randomly sampled. In practice, in both regions a majority of the participants who actually attended were from the

voluntary sector which may in itself be an indicator of the particular issues for the sector in conflict resolution. The second set of focus groups included invited employers and other stakeholders working with small businesses. These included the Federation of Small Businesses, Engineering Employers Federation and Confederation of British Industry among others. Each of the four focus groups occupied around two hours. The discussion was based around a common list of issues (although some excited debate more than others) and was tape recorded and transcribed. Participants were asked if they were willing for their organisation to be identified but where anonymity was requested the wishes have obviously been respected.

There were organisations that were willing to participate but a representative was unable to attend on the date set for the focus group. Where it was possible to arrange, separate interviews were conducted with these people – in some instances by telephone, in others at the organisation's premises.

The research did not explore employees' views or those of trade unions. Readers of the report will need to bear this in mind. The study aimed to understand SME employers' rationales for their current approaches in disputes handling and aspirations in respect of additional support.

The analysis and discussion of the research findings is organised in four sections following this introduction. Section two provides details of the six case study firms (their ownership, business activity, organisational structure, employment size and composition). Section three reports their policies, procedures and practices in dealing with individual disputes in the workplace and considers their approaches to different conflict situations. Section four examines the internal support for disputes resolution (for example, provision for manager training) and types of external networks of support drawn on in disputes handling. Informed by the preferences of the case study firms and focus group participants, Section five considers the issue of additional support for workplace dispute resolution in the SME sector.

## **2. THE CASE STUDY COMPANIES AND THE FOCUS GROUPS**

As to be expected, there were both similarities and variations in the characteristics of our six case study companies. Table 1 summarises these on 'a case by case' basis. As well as organisational size, particular influences on the participating small businesses owners and managers' approaches to handling conflict in the employment relationship emerged as its ownership, age of the business, its structure, the sector/product market, the external labour market and workforce composition. In addition, there was a shared concern among the majority of our employers in the case studies and focus groups about potential employment litigation. This issue is discussed in Section 3.

### **2.1 Size**

All our case studies were small or medium size businesses in employment terms, with workforce sizes ranging from 25 to 100 permanent staff. Some organisations also made use of non permanent staff; temporary staff (normally employed through agencies), sub contractors or freelance consultants. In one firm, Shopfitters Ltd, sub contract labour could be as large as 150, doubling the size of the permanent workforce. Similarly the workforce at Food Processing could increase by as much as half again at those times of the year when it employed agency workers. The size of the business inevitably influenced the ability of these organisations to provide internal HR support and, reflecting the research design, none of the case studies had a dedicated internal HR expertise. In some sectors employers had access to or were members of an employers association for advice and support but all of them relied on sources of external advice. The point at which this was sought, from whom and whether or not this was paid varied and is considered in Section 4.

Size clearly influenced the preference expressed in all our case study companies for dealing with problems on an informal basis, whether these were grievances or disciplinary matters. This, undoubtedly, can be partly attributed to the distinct culture and management style found in these smaller workplaces where a close working relationship and a less formal style of management dominated.

### **2.2 The sector and product market**

Our case study organisations all reported operating in competitive and, in some cases, highly volatile product markets. Stationery Manufacturer for example, had been nominated as one of the fastest growing companies in the UK in the 1980s employing over 200 staff, only to suffer in the 1990s when the recession came and as a result the workforce reduced to 70. Business for the firm of environmental consultants is very much governed by the state of the economy and legislation. The introduction of the European Directive on Environmental Impact Assessment in 1988 led to unprecedented growth in the industry but in the mid 1990s a government review led to all motorway work being stopped overnight. The consequence for the firm that, at the time was involved in motorway widening programmes for the Department of Transport, was redundancies. These dismissals were their first experience of handling difficult

problems. Such external factors, often outside the control of the company, could increase the potential for conflict and were the catalyst for formalising procedures in the workplace and establishing sources of paid external support considered in Section 4.

For all of our small organisations, immediate business needs were ultimately their prime consideration, even if this led, as in one of the companies, to a rationale of not following proper procedures and risking possible litigation. For the majority, however, the fear that litigation could damage their business has led to a greater formalisation especially among those who reflected on the costs to the business of defending an employment tribunal claim.

The voluntary sector, well represented in the focus groups, although more immune to competitive pressures, identified the most acute problems in terms of dealing with workplace conflict when it arose. Employers representing the sector attributed this largely to cost constraints and a lack of internal resources, a particular sectoral issue explored in the report.

**Table 1: Profile of case study organisations**

Organisation	Industry	Characteristics of business	Ownership	Structure	Age (yrs)	Workforce size	(Main) types of employees	Labour market context
<b>Environmental Consultants</b>	Professional services	Niche market player Business fluctuates (influenced by economy & legislation) Clients mainly through recommendations or repeat business Turnover £3m pa	Limited company	Senior mgt team of 3 New line mgt structure	25	47	Majority professionals (graduates) e.g. landscape architects, ecologists Small support staff Permanent	Shortage of some professional skills Turnover low but increasing
<b>Shopfitters Ltd</b>	Manufacturing and retail	Growing steadily Competitive advantage is speed and reliability Seasonal work – business mainly through recommendations Turnover £22.5m pa	Owner/manager	3 mgt levels Lean in main support areas	26	70 perms & up to 150 temps	Mainly craftsmen (carpenters) High users of sub - contract labour Increasing use of migrant labour	Craftsmen hard to recruit  Retention good but recruitment & retention is a concern
<b>Marketing Services</b>	Professional services	Growing £1.5m turnover Public & private sector clients Mostly retained business	Limited Company	6 Board members	22	25	Professionals, mostly graduates & female Freelances for project work	Recent increase in labour turnover but comparable with the industry
<b>Waste Management</b>	Waste disposal and recycling	Formed by management buy out 3 yrs ago	Owner/manager	MD, Ops Mgr, Co. Director (wife)	3 (+8)	40 + agency (10)	Drivers & unskilled yard staff	Buoyant labour market especially for drivers
<b>Stationery Manufacturer</b>	Manufacturing	Highly competitive Emphasis on cost reduction – overcapacity in industry	Limited company Owner/manager	3 person senior mgt team	30	100	Majority shop floor mfg, plus support staff & designers Use placement students	Difficult to recruit graphic designers Retention good
<b>Food Processing</b>	Manufacturing	Growing Supplies seasonal business fresh food prep to food manufacturing	Limited company 2 Owner/managers	16 managers and admin	12 Relocated 2003	70	Low-skilled, manual workforce Increasing use of migrant labour Use agency workers	Turnover low for the industry (10-15%) and stable

### **2.3 External labour market**

A further influence is the external labour market. As stated above, our case study organisations faced tight labour markets for certain skills and reported varying degrees of difficulty in recruiting staff. For example, Shopfitters Ltd found it hard to recruit good carpenters to their permanent workforce; Waste Management reported problems in recruiting and retaining drivers and both professional service firms experienced problems obtaining certain professional skills. All these organisations recognised the need to be perceived as an attractive employer in order to recruit and retain staff and offered a range of HR practices, including formal discipline and grievance procedures. Few reported concerns about the level of employee turnover. Marketing Services had experienced recent 'churn' but its directors related this to the characteristics of the industry sector. They added that it was difficult for the small firm to satisfy all employees' aspirations for swift promotion to more senior graded consultant roles.

The buoyant labour market for many skills also meant that for some employees seeking alternative employment was a more attractive option than staying with an employer where an individual was experiencing problems, a trend that is returned to in Section 3.

### **2.4 Nature of the workforce**

A key contextual factor appeared to be the nature of the workforce. A range of employees were covered across the case study organisations including professionals (such as landscape architects, public relations consultants and graphic designers), craftsmen, and low skilled manual workers. As we have already discussed, some of these skills were hard to recruit because of labour market shortages and some organisations made use of non permanent labour because of fluctuations in demand (two businesses had very seasonal work) or, as in the case of the Shopfitters Ltd, it was part of the culture of the industry. Two of the case studies and some of the employer representatives in the focus groups reported a growing use of migrant labour, particularly as a source of temporary labour. There was no reported evidence that having a mix of core and non core staff presented any additional difficulties in terms of conflict management. Some managers, however, reported that they had heard of dissatisfaction being expressed informally over differences in terms and conditions of employment between different groups of employees.

Different types of employees, however, have different needs and may be treated differently in terms of people management; there were illustrations of this as well as in the nature of HR concerns identified by our employers. For example, in the professional services firms there was a strong emphasis on training and, as suggested, providing career opportunities was an identified key issue. For those case studies involved in manufacturing or processing, absence was a common source of operational problems whereas in the professional service organisations there could be tensions between the firm's required working time pattern and the flexible working arrangements it was possible to offer staff.

There were other factors which influenced conflict management although these were by no means common across the case study organisations, such as the owner/managers' own background and experiences. It is also worth noting that all but one of the case study organisations were non-unionised although some had non-union employee representatives. None of the organisations were party to a collective bargaining agreement at enterprise or industry level.

### **3. DISPUTES HANDLING IN PRACTICE**

This section considers the reported approaches and experiences of owners and managers in the case study companies and the focus groups in managing individual disputes in the workplace. The section is presented in two parts. The first part considers the reported practices of owners and managers from the case study companies and the focus groups in dealing with individual disputes in the workplace. It focuses on a number of different conflict situations, namely employee grievances, performance and behavioural problems, diversity issues and managing change.

The second part considers four dimensions of their approaches to managing workplace conflict that emerged from the research. These are the balance between formality and informality, the development and application of procedures, the communication of procedures and internal responsibilities for handling disputes. This is followed by a brief summary of the key influences on conflict resolution practices identified by the research. A dominant factor for our case study companies and focus group participants in shaping their practices, however, was their actual experience of litigation or perceptions about potential litigation within the current legal framework (as it was understood). Indeed this was often the starting point selected by our participants when asked about their conflict resolution practices. As a result this is considered at the outset, before examining the identified conflict situations, to contextualise what follows.

#### **3.1 The legal context**

There were reported differences in the extent of workplace conflict and how these issues were resolved by our case study companies and focus group owner/managers which could be partly explained by some of the differences in the characteristics identified in Section 2. There was one factor they shared, namely the prevailing legal context which was described by a number of focus group participants and case study interviewees as being currently 'pro employee'. This owner/manager's comment typifies that view:

*I have no problem with individuals having rights at work but at present the balance is in favour of the employee, not someone trying to run a business - you are always on the back foot.*

(Finance Manager, Plant Hire - focus group)

Although only two of our case study owner/managers (both employing mainly manual workers) had experienced employment tribunal claims in the past two years, another two had faced employment tribunal claims in their company histories, under previous managements. This had served as a catalyst for amending their HR procedures. Indeed, four of the six reported changing their HR practices and developing their formal procedures as a result of past tribunal claims.

There was widespread criticism of the complexity of employment legislation, which was frequently described as being a 'minefield' for the small business. Those employers who had faced ET claims had clearly found the experience of

defending their decision-making at a Tribunal hearing an uncomfortable experience:

*There's an employer but they sit above you and they look at you. They look down at you. ... it's not sitting around a table agreeing or something. I mean I could take anyone in there and they would agree it's a court experience.*

(Owner/manager, Shopfitters Ltd)

Nonetheless, at Environmental Consultants, a company director concluded that while employment legislation was burdensome on business in the sense that it obliged firms to devote resources to HR expertise and attend to procedural formality, it was also 'doing us a lot of good'. That is to say he thought statutory regulation could be a stimulus to good management practice. In the mid 1990s, in the context of effecting redundancies, the firm had faced an ET claim and had settled at last minute 'out of court'. This was described as the catalyst for an overhaul of HR policies and the introduction of formal disputes procedures. The directors interviewed at Marketing Services were broadly of a similar view, that employment law obligations were onerous but also a stimulus for effective HR policies and practices. This company had been in business for 22 years apparently without experiencing a single ET claim. Its senior managers were extremely anxious to keep the record clean. One explained that it would be 'an absolute nightmare' for an organisation in this line of business – which involved public relations work on behalf of client companies – to be in 'an employment tribunal situation'. Of the six case study organisations, Marketing Services had HR practices that conformed most closely with the 'model' of 'sophisticated HRM'.

The extent of employment tribunal experiences within the focus groups varied considerably because of their composition. For example, participants in one 'owner/manager' focus group included HR managers from large national charities as well as owners and managers representing private and voluntary sector SMEs. The majority of employers participating in two other focus groups reported experiencing tribunal claims. Yet all but one owner/manager in the focus groups and the company case studies articulated as an over-riding aim the avoidance of litigation and saw the early resolution of disputes at the workplace as the means of achieving the goal. In the one case study exception, the owner/manager who had lost two Tribunal cases on the grounds of procedural defect claimed that he would not do anything differently next time partly on the basis that the operational needs of the business would suffer. These took precedence even if it increased the firm's possible exposure to litigation.

Whilst not necessarily informed by their direct experiences, some SME owners and managers had the view that once an issue reached the employment tribunal stage, a small business would lose. The following quote is illustrative:

*The dice is loaded against the small employer, if an individual goes to a lawyer they will always be able to find some flaw in your process even if the action taken is perfectly justified. We are the wrong size to have HR advice on tap as they do in larger companies and, at the end of the day, my priority is the business so we are more than likely to have made some slip up in the process. It's a minefield - the best way is to nip problems in the bud as early as possible, not allow things to fester and to make sure you record everything even though that takes up a lot of time.*

(Owner/manager, Waste Management)

However, all six case study organisations wanted to avoid litigation and described this as a foremost influence in their firm's approach to handling conflict situations which, in all cases, involved provision for resolving conflict within the workplace, and at an early stage. Over and beyond the fear of litigation, there was a widely articulated acknowledgement that the impact of unresolved conflict could be particularly damaging in a small business environment and the majority of our owner/managers were anxious to be seen as fair employers. This was identified as important, not only to assist recruitment and retention, but also for employee motivation and developing workforce commitment to the business's priorities. At Marketing Services, company directors thought 'good' employment practice was necessary to recruit and motivate staff and in addition wanted to project a 'good employer' image publicly, for business considerations. A director explained that substantial effort was made to achieve harmonious workplace relations:

*This is a nice organisation to work for - we work at that ... we will sit down and deal with whatever the issue may be and resolve things as quickly as possible because we are a small business and we cannot allow things to linger on.*  
(Finance Director, Marketing Services)

Yet those HR managers with management experience acquired in large and small enterprises who participated in one of the focus groups, were doubtful that many small businesses had the capacity to put in place the procedures and practices that could achieve early disputes resolution and in this way 'insure' themselves against litigation. For example, an HR manager currently employed at a small hotel (although one that was part of a larger organisation) commented that:

*That is probably my biggest frustration where I am now in a small company where they think rules don't exist. 'Hang on a minute, you can do that but I won't sit next to you in a tribunal!' That generally stops them, when I say that.*

### **3.2 Different conflict situations**

#### **a) Employee grievances**

Asked about their experiences of handling employee grievances, our case study owners and line managers reported these as fairly rare occurrences and had some difficulties in providing specific situations to illustrate their practice. This was in spite of several of our employers being aware of potential causes of complaint at their businesses, for example differential hourly rates for permanent and temporary staff (Shopfitters Ltd); non-standard working hours and the stress of exacting workloads with tight deadlines (Marketing Services) and unpleasant working conditions (Food Processing). As already identified, several employers attributed this to a buoyant labour market for many skills in recent years. This meant that employees simply sought out alternative employment rather than staying and voicing a grievance or only mentioned any issues they felt aggrieved about at the point of leaving the organisation. Where specific skills were in short supply, the experience of this owner/manager was a common one:

*If they don't like the way they are managed, or the job our drivers just disappear and get another. There is no hanging around. They vote with their feet...there is plenty of work for them out there.*  
(Transport Manager, Waste Management)

Another explanation for the small number of reported grievances was that our interviewees acknowledged that their knowledge could be limited in terms of the potential conflicts informally resolved by first line supervisors and managers. The first line managers we interviewed saw this as a routine part of their job and did not necessarily categorise these as grievances until formally raised. Furthermore the study only explored grievance handling from the perspective of employers and is thus shaped by their perception of what constitutes a grievance.

Several examples of employee grievances provided by employers were incidents of inter employee conflict with management intervening as a third party to resolve these. For example:

*These two employees just couldn't get on and I was regularly having to bang their heads together to make them see sense. It only really changed when I had the opportunity to move one of them to another section....there is less scope to hide conflict in our size of business, you have to sort it.*

(Owner/ Manager, Coach Tour Operator - focus group)

Inter-employee conflict was referred to in a focus group comprising mainly of employers' association representatives, although the argument was that diversity management had become a particular issue for attention for employers recruiting migrant labour.

*But what you're finding, times have changed, the law regulates the employment relationship, but now you have new hostility in the workplace and this is what we train line managers to spot now. That is to new migrant workers, East Europeans, asylum seekers, people of Islamic faith ... and that is the new hostility that you find in the workplace because your workers don't check their prejudices at the door.*

(Employee Relations Adviser, Employers' Association- focus group)

At Environmental Consultants, a grievance related to redundancy pay which had led to an ET claim had persuaded company directors to adopt formal disputes procedures. A second more recent case cited by the director who was interviewed was an administrative worker's complaint about treatment by her line manager. However, the case appeared to illustrate the at times complex interaction of the employee raising a grievance and the manager initiating disciplinary action: the woman's time-keeping was reported as having been lax. The director who was interviewed described how it had taken senior management a long while to act to bring the case to a close – through the formal disciplinary procedure – which is interesting, given the emphasis on early disputes resolution reported by many of our case study employers. The complexity of the case and recognition of the potential for litigation, if mis-managed, apparently had inhibited senior management intervention over some period of time.

A focus group with participants predominantly from the voluntary sector provided a rather different picture, with grievances being reportedly more frequently in this sector than others represented in the research. They attributed this to the nature of the sector and a work force that was more likely to express any grievances to managers who were often at a loss about the best way to handle these and lacked specialist resources to support them.

Frequently the practices the focus group participants described were highly mechanistic and were based on procedures taken from the public sector organisations. It was felt that, because these were designed for larger, more complex organisations, they did not fit well in the context of a small enterprise. These procedures were also identified as reinforcing a lack of flexibility in seeking alternative means of resolving issues among managers already short of expertise in dealing with conflict.

An additional factor was that these organisations operated with a second tier of management, for example a board of trustees, which was not directly employed by the organisation but possessed decision making powers. What emerged were particular organisational difficulties in handling conflict in circumstances of highly constrained resources and structures which reduced managerial autonomy. This led focus group members reporting that when managing conflict went wrong in voluntary sector organisations it tended to go very wrong indeed, as illustrated by this senior manager's experience:

*No one knew what to do. The board didn't have the knowledge or the right experience to deal with the employee's grievance and, what was worse, they didn't come and ask me at any stage. It was totally one sided. I ended up being blamed for bullying, suspended and facing a disciplinary investigation so had to go and get legal advice.... It cost a great deal of time and money spent on legal fees, not to mention damaged relationships.*

(Voluntary sector Senior Manager, Children's Charity - focus group)

#### **b) Performance and behavioural issues**

Employers found it much easier to provide examples where conflict arose due to issues surrounding an employee's performance or behaviour, unsurprisingly as they were the initiators in such instances. Managing the conflict that could arise out of higher performance expectations was a key concern for employers seeking to develop their businesses. A common solution was to treat under-performance issues as redundancies even though, in reality, these were about employee capability. A focus group representative from a 'generalist' employers' representative body suggested that the 'procedural burden' of managing a disciplinary process weighed against small companies' ability to discharge staff who were felt to be 'under performing' and led many to present dismissals as cases of economic redundancy. Certainly the approach described by the following owner/manager was mentioned as a means of reducing conflict and the uncertainty of outcome resulting from managing a capability issue:

*We try to deflate a situation - for example I have a lady with 23 years service who has just lost the plot and cannot do the job so problems arrive on my desk ... but I don't have the heart to tackle it. A process of redundancy would be better. It is the most quantifiable excuse to get rid of people. We just make sure we follow the process to the letter.*

(Owner/manager, Stationery Manufacturer)

At the professional service firm, problem areas included failure to complete time sheets and what managers perceived to be employees' abuse of flexible working practices. At Marketing Services, a director reported that there had been no occasion to formally discipline a member of staff in recent years, but that some while ago a female consultant had been considered to be abusing the flexi-time

she had negotiated, in order to accommodate childcare. She had been warned and had left. At the environmental consultancy firm it was a senior manager who had been cautioned, informally, about the extent of time he spent working from home.

The issue most commonly identified as problematic by owners and managers where manual workers were the largest occupational group in their workforces, was handling employee absence and persistent absenteeism. Several employers reported receiving legal claims in the past from employees who had simply stopped coming to work and having failed to get in touch had been dismissed. The advice received from legal help lines and other external sources of support on employment matters was that employers should contact and arrange to meet with an employee who had not turned up for work before any dismissal could take place. Furthermore, where employers had insurance cover which included legal support in defending a claim and representation if there was a tribunal hearing, they had to adhere to that advice as not to do so rendered their cover invalid. Nonetheless this advice was frequently described as impractical and overly cautious, especially for a small business, as explained by this factory manager:

*We can end up chasing individuals who have just disappeared into the ether and have more than likely found themselves another job but can't be bothered to let us know. I think they have a responsibility to contact us... they are not children. The advice is that we can't replace them until we know the situation but one absent employee in a small business puts a burden on everyone else.*

(Factory Manager, Food Processing)

Claims for unfair dismissal resulting in ET cases tended to be for situations where there was perceived gross misconduct. One reported incident was a dismissal of a foreman for theft which the employer lost on the grounds of procedural defect. When asked to reflect on his experiences, the owner/manager replied that he wouldn't do anything differently, on the grounds that the business could suffer if there was a delay, it was complex and it suggested a lack of support for employees who had reported the incident:

*If someone was stealing and I believed what I was told, then I would accept my punishment because to go through proof is difficult .... We look after our people, our retention is high and I know them all.*

Some owner/managers were sensitive to the fine line between disciplinary action and employee grievances and gave examples where instigating disciplinary action had resulted in an employee grievance. Examples included:

- a reported clash between an individual and a line manager 'who had been trying to get more work out of them' (Stationery Manufacturer) by starting a formal process of dealing with under performance
- a claim of harassment against a line manager who had taken formal disciplinary action against an office employee for persistent absenteeism (Plant hire - focus group company)
- the secretary's grievance about treatment by her manager and the points and manager's attention to her attendance record (Environmental Consultancy).

### **c) Diversity issues**

Conflict resulting from diversity issues was not identified as a major concern by our case study employers. Where there was a more diverse workforce, however, such as in Food Processing, there were reported incidents related to ethnicity. There was one example of harassment linked to sexual orientation that had been dealt with quickly and informally at first line manager level. Other identified diversity conflicts were those between individuals from different ethnic minority backgrounds or time off requests to visit the country of origin for family reasons which required sensitive handling from line management. Our small business employers reported feeling particularly vulnerable in dealing with the type of conflict illustrated by the following examples and in trying to find solutions to such problems:

*Our accountant had taken all his holiday entitlement to go to Mecca. Six months later in same holiday year he asked for 2 weeks leave to go to Pakistan because his mother wasn't well. Asked if it was critical, he told me she was 'just not very well but I need to go home'. It was the time of our management buy out so he was really needed here so I said it wouldn't be possible.... He said he was going regardless of payment, money wasn't the issue. He then put in his written notice which I wanted to accept as I was furious with him. Advice from an ex Director of the company was to act very carefully because of the race issue and my wife persuaded me how upset the individual was, so he went and I paid him. Experiences at tribunal, a few years on my shoulder and listening to advice from those less directly involved made me take a better view on it.*

(Owner/manager, Waste Management)

In two of our case study companies there was a growing reliance on migrant workers from Eastern Europe to fill permanent vacant posts as well as to provide temporary cover to meet fluctuations in the business cycle. There were no performance problems reported by our employers arising from the use of these workers whose work ethic was very highly regarded. The general view was that such employees were less likely than the local workforce to raise individual grievances having specifically sought out work in the UK.

Food Processing was one of the two employers who reported employing an increasingly diverse work force. Whilst this had led to very few conflicts stemming from different cultures among the workforce, the Director responsible for employment issues felt that, when problems did occur, they could be particularly time consuming as they need to be handled very sensitively but also thoroughly. One such incident described below had significantly disrupted the business for a while, the situation had only calmed down after the employer's decision at the appeal stage. The owner's view was that although it had taken up an inordinate amount of his time, the approach adopted had demonstrated the company's commitment to act as a fair employer. If it had not been resolved, this owner felt this was exactly the sort of situation where, if support had been available from an independent third party external to the organisation to help mediate a solution, he would have used it, not least to minimise the impact on production.

## Window on practice

Workplace conflict arose in the food processing company when a Kurdish employee, who had worked for the company for several years and had a reasonable standard of English, used threatening language to his girlfriend's sister, both of whom also worked for the business. In an argument at work the employee had said to the girl friend's sister 'I will cut out your tongue.' The individual claimed he had said 'shut out your tongue' but others employees were clear that they had heard 'cut out your tongue'. After an investigation, the factory manager's decision was to dismiss the employee. One of the company's two owner/managers considered the employee's subsequent appeal against his dismissal.

After interviewing all the parties involved and two other employees who had witnessed the events, the owner/manager felt the evidence became 'rather blurred around the edges'. There was also some indication that there had been a degree of provocation. As a result the outcome was that a dismissal for gross misconduct was changed by one of the Directors to a final written warning under the disciplinary procedure.

### **d) Managing change**

Across our case studies and focus groups, substantial emphasis was given to potential conflicts arising from reductions in the work force in response to changes for example to product or services, market downturns or loss of principal client business. These had been experienced by the majority of our SME employers although there were only a few examples provided to illustrate the issues involved. Where these were identified the main concern was avoiding ET claims stemming from procedural lapses and avoiding claims of unfair selection for redundancy. As a result implementing redundancies were reported as an area where expert advice on process was required and had been sought at some stage.

The time consuming nature of the processes to be followed in dealing with redundancies was, however, viewed as impractical for small businesses operating in highly competitive markets. Most admitted that, having sought advice, they then had to make decisions which weighed the interests of the business against the potential risk of litigation when deciding how to proceed in implementing change. Despite these identified difficulties in complying with statutory requirements, as already mentioned, several case study employers saw redundancy as an easier means of addressing a capability problem and an approach that better suited the needs of both employer and employee. This owner/ manager of a manufacturing company described the advantage of such an approach:

*If it is a redundancy we can sit down and sort out an arrangement that is acceptable to both of us without anyone losing their respect, I think that is really important for people. You can acknowledge the years of service someone has given you and agreed an amicable parting of the ways.*

One means of coping with business fluctuations, for example at Food Processing, was to employ agency staff which meant the problem of dealing with underperformance was the responsibility of the employment agency. The company could simply request that employees who continued to under perform were removed from the rota.

### **3.3 Dimensions of dispute resolution practice**

#### ***a) A formal or informal approach***

One prevailing view was that employee performance and behaviour issues could be addressed informally, and employers suggested their approach was to nip such issues in the bud. It was felt to be advisable to begin formal processes in addressing issues relating to employee performance or behaviours at the earliest opportunity on the grounds that this was the best means of defence in case of subsequent litigation.

Yet our findings revealed a paradox. On the one hand quickly moving into formal procedure was seen as the 'safest thing to do' in a climate where the balance in employment rights was viewed – by some research participants – as pro-employee. On the other hand, the majority of our case study owner/ managers and focus group participants thought that an informal approach to resolving issues, traditionally associated with smaller businesses (Edwards *et al.*, 2003) worked better and was more appropriate. Their rationale was that:

- this reduced disruption in a close working environment
- was less time consuming
- stopped things escalating
- was more appropriate to a small business culture and management style where things rapidly became public knowledge.

In short, there emerged a preference for informality but a view that formal processes are safer because they provide evidence if challenged.

One outcome of this was a policy of moving to formal process without delay if an issue could not resolved informally. This approach was reported by half the case studies and a number of owner/managers in the focus groups. But an HR Manager from the British Glass Confederation, which provides HR services to both large and small employers in the industry, offered another explanation. Namely that for managers lacking the people skills needed to try to resolve things through informal processes, resorting to formal procedures was viewed as less risky. As she explained:

*Formalisation is simply a safer bet. There is more certainty and guidance for managers who lack the softer skills needed for informal resolution which would be a much better approach to solving most issues early on in smaller businesses. Managers are not trained in the procedures they have to implement which have just been dropped into place without understanding the rationale behind them. A situation that is aggravated by the fact when managers first come to use them they are facing an immediate problem.*

There were some acknowledgement that more employment law had placed pressure on SMES to go to formal processes more quickly which could exacerbate problems and even create a new set of problems. As the owner of the stationery manufacturing company commented:

*I'm not in favour of the rules as they are ... it's quite difficult to identify whether you are acting through a constructive process. At times there are very fine tolerances between whether you are implementing a disciplinary procedure to correct an action, or whether you activate the disciplinary procedure to create an inevitable conclusion ...*

An employer's association representative participating in one of the South West focus group made the observation that it was the decline in 'traditional', collectivised industrial relations that had precipitated the problems currently experienced by many firms, small and large. He suggested:

*So what we've seen ... is, in the private sector now ... is the virtual disappearance of one institution of the old industrial relations, the old employee relations. The law is trying to fill the gap, but the problem with that for small companies is in the informal way that they employ people. There isn't anything to support them in managing disputes. In the old days you went to the shop steward in the kinds of companies we represent. These days, you go to your friendly no win no fee (lawyer) ... and it has to be said ... lawyers sometimes do not help to resolve disputes.*

(Employee Relations Adviser, Employer's Association- focus group)

It was recognised in several focus groups that an emphasis on formal procedures was likely to be heavily influenced by the size of the business as this participant observed:

*I think its fair to say that up to about twenty to twenty five staff it's very unlikely that there would be any formal procedures unless they are externally required, because of the nature of the culture and the way it has grown up'*  
(Owner/ Manager, School Pictures - focus group)

This was illustrated by our case study companies which, with the exception of Marketing Services, had workforces of 40 plus employees.

### **b) Human resource procedures**

Formal grievance and disciplinary procedures were largely reported to be in place across the research participants; a number of these were well established. Where there were particular problems reported with absence, there was an interest in introducing specific absence procedures.

Some owner/managers had adapted procedures they had come across, or were familiar with from working in larger organisations, for a small business context. Where HR advice was contracted from an external source, a number of these advisers also supplied procedures and an updating service. The most frequently reported catalyst for changing a procedure was where existing procedures had been tested by a particular incident and found not to have worked effectively or had led to potential unfairness due to a lack of clarity, as in this factory manager's experience:

*We had an attendance problem with one of employees which ended up with me dismissing her. But she appealed against this to one of our Directors who decided to change it to a final written warning because our procedure for notifying absence wasn't really clear. Of course we then immediately changed the procedure to make it crystal clear. I didn't have a problem with my decision being changed, it was fair and the action that I had taken had the desired effect on the workforce... it got the message across.*

(Factory Manager, Food Processing)

It was clear that one difficulty faced by employers was that procedures were not 'road tested' until they were faced with an issue to resolve. This gave rise to concerns that learning through experiences in this way did not always add to the credibility of those managing the business.

When asked to explain how the requirements of the statutory disciplinary and grievance procedures were met, our interviewees referred to the different stages of formal action provided for in their disciplinary procedures (provided the issue was not one of gross misconduct). Put another way, with the exception of just one operational manager responsible for employment issues, the statutory procedures were understood to refer to the *Acas Code of Practice's* guidance on 'Dealing with disciplinary issues in the workplace' rather than the statutory procedure. The finding suggests that the provisions of the *Acas Code of Practice* are much better established in managers' knowledge and practice than those of the 2004 statutory procedures. Indeed, the managers responsible for HR at three case study companies were not at all familiar with the 2004 Regulations.

Despite this apparent confusion surrounding the term statutory procedures, the practices as reported by all but one of our employers conformed with the three stages of the 2004 statutory procedures in handling grievances and disciplinary issues. Whilst appeal processes were identified as potentially problematic for small companies in practice, owner/managers had developed their own mechanisms for dealing with any appeal stage.

The usual practice reported in the case study companies was to ensure that a senior person, who had not been involved in the previous processes, was available to hear appeals. This is an arrangement that becomes more problematic the smaller the business and was identified by one of the focus groups containing a couple of participants from smaller businesses. Clearly it helped where there was more than one owner/manager but appeal requirements were seen as another reason for encouraging the resolution of issues at the earliest stage possible within the organisation.

The statutory right to be accompanied was, similarly, not reported as a particular problem. Whilst procedures tended to limit these to a fellow employee or trade union official, most, but not all, of our employers were accommodating and even relaxed about allowing other individuals to act as representatives. This had sometimes resulted in difficulties in dealing with an issue because of a lack of knowledge about what the role of the representative was or a high level of emotion because a family member was involved as this focus group participant described:

*We had a problem with an employee's attendance and were dealing with this when the individual countered this with a grievance against her manager that was causing her to be ill with anxiety and depression. Because of what she wanted to say it would not have been appropriate for her to be accompanied by a fellow member of staff (our handbook says fellow employee or union representative). We thought it would help...you've got to be fair. She asked if her mother could come and we said 'yes' so she had the emotional support needed to air her grievances. With hindsight we should have said no, the atmosphere was absolutely appalling from the very beginning - it was just impossible to progress anything.. we had to end the meeting.*  
(Finance Manager, Plant Hire - focus group)

### **c) Communicating procedures**

The main means of communicating the discipline and grievance procedures to employees was through the induction process when they joined the company. In four of the six case study companies, employees were given a copy of the company handbook which contained the procedures. They were asked to sign that they had received it and read it. This was reported as the general practice in recent years. Previous practice had been for employees to be made aware of the procedures at induction, sign that they had read them and then to have access to a copy in their line manager's office if required. Access to the company handbook through a hard copy kept in the manager's office was the continuing practice in two of the case study companies.

Owners and managers felt that the present processes of communicating the presence of these procedures worked reasonably well, although it was not until they were put into practice that the level of awareness was actually tested. In at least two organisations the managers interviewed felt that awareness of the procedures was mixed. One concern was the difficulty of keeping the handbook up to date and ensuring that updates were made known to employees. There was a lack of clarity about how this was being achieved, although those senior managers who had been designated as having HR responsibilities for the organisation reported keeping their personal copies up to date, either through information they had picked up from different sources or from external support services where these were in place.

### **d) Responsibilities for dispute handling**

Owners and managers favoured devolving initial dispute handling as far down the organisation as they could to support early resolution of conflict and most felt that the initial stage of dealing with any issues lay with first line management. This meant that like larger organisations, the SME employers were highly reliant on the capabilities of their first line managers (Purcell and Hutchinson, 2003). However, it was usual for the senior manager responsible for HR or a Director to have the authority to deal with the final stages of the disciplinary or grievance procedure excluding any appeal. The approach described by this manager was typical:

*We expect the section managers to deal with anything that is referred to them and the first stages of the procedure. They usually come and have a chat about it with me and I will check out anything that looks as though it could present a problem. It would be my responsibility to deal with anything like a final warning or a dismissal and, of course, there is an appeal stage (that goes) to the Director. Basically the buck stops with me...*

(Finance Director, Stationery Manufacturer)

Alongside the devolution of initial disputes handling, however, was the practice described at two of the case study companies of the manager with HR responsibility making him or herself available to staff to discuss problems at work informally. The 'open door' approach was supported by a conscious attempt to fill the HR brief by a manager who would be considered approachable, for early resolution of employee grievances or concerns.

As well as providing scope for an internal appeal process, some owners saw clear advantages in only getting involved at the final stages. The reasons given were that this enabled them to focus on the business or even that they could be too emotionally involved with the business which was not beneficial to dispute resolution. These are illustrated by the following owner/manager observations:

*To be honest, if I was to say what we are doing better and avoiding the problems we used to have, I think it is leaving me out of it and letting Frank and June get on with it. To me it is personal if someone isn't pulling their weight and costing us money but they won't just jump in like I would, they would check with Acas. ...I suppose they are a bit more level headed about it.*

(Owner/manager, Waste Management)

and;

*I keep out of things until I am needed. It is better for my managers. They have more authority that way and also develop their people skills. My aim is to try to get things resolved at the earliest point possible.....*

(Owner/ Manager, Coach Tour Operator - focus group)

In one of the focus groups the point was made that in very small businesses employing less than 10 people there was no line management structure and employees had no choice but to deal directly with the owner/manager. Obviously a tiered approach to dealing with conflict, as often detailed in formal procedures, is impractical in this context.

### **3.4 Key influences**

To sum up, the reported practices revealed similarities but also a number of differences in our owners and managers approaches to employment conflict as earlier reported by Earnshaw *et al* (1998). These illustrate the difficulty of offering generalisations about SME responses to employment regulation. There was evidence, however, that the type of conflict situations reported by our case study organisations were influenced by the nature of their industry, product or services, its workforce, and the state of the external labour market. Size was clearly a factor in the extent of proceduralisation and, with this, formalisation although the smallest of our case study firms, Marketing Services, had introduced formal

disputes procedures some fifteen years ago, as part of the application for Investors in People accreditation.

The approaches taken to handling individual disputes were also shaped by the background and career experiences of owners and line managers, the product markets in which firms operated and the commercial 'strategy' they pursued. Our findings did, however, reveal a shared concern, regardless of sector or company history, which was the one discussed in some detail at the beginning of the section. This is the fear of potential litigation and a perception – among some research participants – that smaller businesses will lose if a claim proceeds to an employment tribunal. These emerged as the dominant factors in the reported emphasis on work place resolution and the implementation of procedures, despite our SME employers' articulated preference for informal approaches.

## **4. CURRENT SOURCES OF SUPPORT AND EXPERTISE**

It is generally accepted that firm size has a bearing on the character and conduct of employment relations. However, different assumptions are made about the nature of that influence. For example, it is sometimes suggested that small firms are better placed than large companies to achieve harmonious work relations because they lack the bureaucratic management structures that 'distance' workers and proprietors. Yet there is also wide recognition that small firms may encounter particular difficulties in handling conflict at work because they lack requisite HR expertise or the time and resources to remain cognisant of their employment law obligations (see Section 1). In this section we examine the ways in which HR responsibilities were allocated among managerial staff at our six case study SMEs and the opportunities those with HR roles had – or otherwise – to participate in formal HR training. We go on to consider the forms of external support the case study firms and other SMEs in our focus groups drew on, or paid for, to supplement their internal HR resources or to assist disputes handling.

### **4.1 Internal HR resources**

None of the case studies had a dedicated internal HR professional. Instead responsibility for HR was undertaken by one or sometimes two members of staff who had other roles to perform. In five of the six case companies, responsibility for HR matters was allocated to a senior manager - the finance director, operations manager or company secretary – or was shared between two directors/senior managers (Table 2). At Environmental Consultants, for example, the operations manager was responsible for developing the HR processes and policies (with the support of an external provider) in addition to her role as the office manager, which included responsibility for IT. This HR role was one she had taken over from the finance controller when she joined the company four years previously, although finance still provided legal advice on issues such as pensions, salaries and sick leave.

The principal contrast was Shopfitters Ltd where a relatively junior member of managerial staff (the office administrator) held the HR brief. The firm operated in a fiercely competitive and volatile product market and its proprietor's concern was to keep overheads to a minimum. The organisational structure was lean.

In all the case study organisations key HR decisions lay with the owner/managers. Typically key HR decisions were interpreted to include staffing levels; the decision to layoff employees or to make new appointments. At Marketing Services, however, where the finance director had the HR brief, all six directors periodically became involved in HR policy formulation. At the time of our research they were debating whether they should employ external consultants to review current recruitment and selection practices.

**Table 2: Case study organisation resources**

Organisation	Employee representation	Employment conditions (perceived)	Internal HR	Main external HR support	Formal procedures	Preference for informality	ET experience	Acas awareness	Users of Acas	Key issues in handling conflict
<b>Environmental Consultants</b>	No	Good e.g. training. Career opportunities limited	Operations manager	Legal services paid a retainer	✓ in handbook	✓	No	✓ but limited	No	Keeping abreast of the law Need for more proactive advice Improve line management skills
<b>Shopfitters Ltd</b>	No	Overall package good for industry, particularly training & development.	Office administrator	Acas & solicitor	✓ in handbook	✓	✓	✓	✓	Advice needs to take account of small business needs Advice needs to be more commercially realistic
<b>Marketing Services</b>	No	Good HR practices – IiP Career progression issues	Finance Director	PR consultants Assoc	✓ in handbook	✓	No	✓	No	Damaging to reputation if go to ET Need to deal with issues speedily More support for small businesses in terms of new legislation
<b>Waste Management</b>	Employee reps	Good standard (for the industry)	Operations Manager Company Secretary	Solicitor & Acas	✓ in handbook	✓	✓	✓	✓	Resolve issues quickly & at earliest stage Aim to avoid litigation External advice needs to take account of small business context, be accessible & early
<b>Stationery Manufacturer</b>	AMICUS Works Council	Good employer IiP Shift work	Finance Director	CBI & insurance company & Chamber of commerce	✓ in handbook	✓	No	✓ but limited	No	Too much regulation Keeping up to date with law Better advice on resolving issues for small businesses – advice that is fit for purpose
<b>Food Processing</b>	No	Good (for the industry) Shift work	MD & Factory Manager	HR consultancy	✓ in handbook	✓	No	✓ but limited	No	Need to deal with issues speedily & early. Advice needs to fit business context and size

None of those responsible for HR in our case study companies claimed to have received any formal training in HR, other than occasional short course attendance. Learning had been on the job. Thus the finance director at Marketing Services who had been responsible for HR for twelve years explained his qualification was '*being qualified by experience more than it is by a personnel or HR qualification*'.

Critical incidents for some firms had proved to be learning experiences. For example, Waste Management had experienced several costly tribunal cases under its former ownership that had led the current manager responsible for HR to develop formal disciplinary and grievance procedures and introduce a more professional approach to HR management. The procedures introduced were based on the company secretary's previous experience of working for a county council and participation in its HR training programmes. The owner/manager at Food Processing shared responsibility for HR with his business partner and reported that his HR expertise had been acquired in his former employment as a senior (general) manager in a 'blue chip' organisation in the industry sector.

Formal training, where experienced, was limited. It was only the finance director at Marketing Services who kept updated (on his own initiative) by attending seminars and breakfast meetings on employment legislation run by law firms. The only other training referred to in our interviews was at Waste Management where the operations manager felt that the NVQ Level 4 in waste control he was studying was helping him in his responsibilities for HR and in amending the staff handbook.

In all the case study companies' day to day responsibility for HR, including conflict resolution, in practice devolved to line managers (who in some companies were also senior managers or directors). However, only two firms suggested they provided line managers with access to HR training. In one case, supervisors had received training in discipline and grievance handling at a local college. In another, a line manager recalled attending a one day employment law session some years ago although its content was too technically focused to be regarded of value. As a result he felt that 'a lot had passed him by'. It is perhaps surprising that senior managers in only one of the six case study organisations expressed concern that line managers lacked confidence in dealing with these issues.

As indicated in Section 3 of our report, the company handbook was the main means by which disciplinary and grievance procedures were communicated to employees, and this was usually dealt with in the induction process. However in some organisations managers interviewed felt that awareness amongst employees of these procedures was mixed, even amongst the senior managers as one director himself admitted:

*I wouldn't necessarily say that everybody reads it thoroughly. We possibly could all do with some sort of refreshment on what all those procedures are. I've been here 14 years. It's so easy to forget along the way what they actually say.*  
(Director, Marketing Services)

All those interviewed showed awareness of their procedural obligations with regard to discipline and grievance, although they were not necessarily clear about the detail of the extant legal framework. As reported earlier (Section 3 above), only three organisations showed awareness of the existence of the current

statutory dispute resolution regulations, and only one of these appeared to be clear about the detail.

The common view of those interviewed in the case study companies was that they were making best use of the internal HR expertise and resources they had available for this aspect of company management. Broadly they were satisfied with the in-house services provided. This was not the case, however, for small organisations in the voluntary sector who were represented in some of our focus groups. The comments indicated there was a lack of internal (and external) HR support, and limited awareness about legislative obligations. This was demonstrated by a manager from a small charity who was unclear about who would offer support if there was a problem in the workplace but supposed it would, in the first instance, be the governing committee of trustees.

*I don't know really who I would go to, it would probably be the committee. It's something I've never come across ...*

(Manager, Children's Charity – focus group)

One of our case study interviewees reported a discussion he had held with a small sub-contractor, who claimed to be largely unaware of the employment legislation and only to have become aware of it when taken to a tribunal. The interviewee commented:

*They haven't got a clue about say, age discrimination, and get done for things they genuinely don't know about.*

The importance of this finding is that it suggests that the experience of going through the Employment Tribunal process played a role in informing small businesses about legislation and acting as a catalyst for implementing formal procedures.

## **4.2 External support**

In view of the absence of internal specialist HR expertise (formally qualified HR personnel) it is not surprising that all the owner/managers in the case study companies and focus groups had at some time sought external advice on HR issues, employment law or disputes handling more specifically. The types and extensiveness of external HR support sought varied, as is detailed in Table 3 for the six case study SMEs. Four of these paid on an on-going basis for services that could be contracted-in when needed. Three of these paid a retainer to a specialist HR consultancy, or to an insurance provider specialising in HR services, and the fourth was a member of the industry trade association. All six case study organisations accessed a range of other sources on an ad hoc basis, the most common being Acas, Business Link, Chamber of Commerce, and solicitors. Some of these were free, others involved a cost. Two of the case study firms (Shopfitters Ltd and Waste Management) relied on ad hoc recourse to external support, as and when it was felt advice was required or problems arose.

**Table 3: External sources of HR support**

<b>Organisation</b>	<b>Membership of an employers' or trade association</b>	<b>Contract with an external HR consultancy or insurance provider</b>	<b>Other external sources of support</b>
<b>Environmental Consultants</b>	None	Insurance based legal service	Business Link, Business West, CIPD website
<b>Shopfitters Ltd</b>	None	None	Acas, solicitors trade/industry magazine, accountants, Inland Revenue.
<b>Marketing Services</b>	PR Consultancy Associates (PRCA)	None	Business West, Institute of Directors, solicitors, breakfast seminars
<b>Waste Management</b>	None	None	Acas; industry contacts, various websites
<b>Stationery Manufacturer</b>	CBI, Chamber of Commerce	Insurance based legal service	Chamber of Commerce training events, various websites
<b>Food Processing</b>	None	Insurance based legal service	Business Link, Chamber of Commerce, various websites

#### **4.3 Contracted services: trade or employers' association membership**

Although Stationery Manufacturer belonged to the CBI and used it as a source of expert knowledge on employment legislation, only one of our six case study organisations belonged to an industry-specific trade association. This was Marketing Services that subscribed for membership of the PR Consultants Association. The Association's services included an advice helpline covering employment issues and other business matters (e.g. taxation). In addition, the firm's finance director belonged to the Institute of Directors and used it as a further main source of employment law advice.

In our focus group discussions, however, there were employers who were members of a trade association, employers' association or federation and individuals who were employed by such bodies. The group discussions and separate interviews conducted with employers' association representatives who showed interest in our research but were unable to attend the focus group allowed us to explore the member services provided and members' satisfaction with this type of external provision.

In the past employers' associations negotiated industry pay rates and working hours with trade unions at sector level but few industry collective agreements survive in the private sector of the UK economy. Employers' associations have been obliged to develop or emphasise other member services and in the focus groups these were discussed as including management training as well as employment and employment law advice. The National Trainers' Federation is still party to an industry collective agreement and the representative participating in

our research highlighted that for members there was the safety-net of industry procedures for dealing with disputes (collective and individual).

All the trade and employers' associations represented in our research provided employment and legal advice through a range of channels; by telephone, in face to face meetings with member firms, a web-site, and through regular newsletters and fact sheets. Representatives explained that a concern was to make employment legislation easy for members (busy business managers) to 'digest'; that is by summarising key provisions in plain English. They agreed, however, that SME employers could be particularly hard-pressed to find the time to read communications on a regular basis. Many of the associations provided members with access to a 24-hour legal advice help-line (see Table 4). This was an important benefit because, as employers' representatives explained, their experience was that it was often in the hours after the normal working day that SME proprietors had the time to deal with employment issues:

*When a member wakes at 4 a.m. with a problem, they can deal with it straight away, rather than lying awake worrying.*

(Hairdressers' Federation representative – interview).

At Marketing Services, the finance director explained that he valued the PRCA's advice hot-line because it was mainly staffed by retired professionals who had a detailed knowledge of the industry and could advise accordingly:

*... you have got an expert on the phone on any of one of the issues ... And nine times out of ten it is somebody that may be retired or used to work in that profession as a professional ...*

**Table 4: Support provided by employers' and trade associations**

<b>Association</b>	<b>Type of support provided</b>	<b>How support is delivered</b>
EEF West	Employment law advice; law helpline; training	In-house legal experts
National Trainers Federation	Employment law advice; staff handbook; national collective agreement; training	In-house legal expert; affiliation to EEF
Federation of Small Businesses (South West and East Midlands)	Employment law advice, legal helpline	Helpline outsourced to insurance-based provider
CBI (South West and East Midlands)	Advice on employment matters	No provider
National Hairdressers' Federation	24 hour legal helpline; newsletter	Helpline outsourced to insurance based provider
Confederation of British Glass	Legal helpline; newsletter; training events	In-house HR expertise and legal advice
Licensed Victuallers Association	Employment advice and telephone helpline; newsletters and fact sheets	In-house servicing of advice hot-line
Road Haulage Association	24 hour legal helpline; newsletter; training	Helpline outsourced to insurance provider

Focus group participants with trade/employers' association membership also felt the advantage was access to advice that was attuned to the needs of employers operating in the particular industry. The apparent contradiction is that some employers' representative bodies outsourced the delivery of the 24-hour advice hot-line to another, external provider, in order to operate the service cost-efficiently for members. That said, all associations represented in our research maintained a range of channels for providing members with employment and legal advice. The Engineering Employers' Federation has a nationwide network of employment law advisers, employed in-house.

Many of the associations also provided training. The National Trainers' Federation provides management training, including training in HR, as a condition of a trainer being granted a licence by the British Horseracing Authority. The EEF and CBI run courses for managers, addressing employment law and HR issues. Many of the representatives in our research, however, suggested it was often difficult to get SME affiliates to participate in training programmes because of time and resource pressures. For example, the majority of firms in the road haulage industry are micro-businesses (with fewer than ten employees) that may be constrained from releasing managers for development purposes. In addition there was the issue of costs, which tended to push small firms to train on an ad hoc basis.

#### **4.4 Contracted services: HR consultancies and insurance providers**

Three of the case study SMEs contracted for the services of a specialist HR consultancy or an insurance firm that specialised in the HR field. The number of such providers has grown substantially in the past decade, presenting competition for established trade and employers' associations.

Environmental Consultants had opted to pay a retainer to an HR consultancy for the past nine or ten years. The arrangement had been instituted following the redundancies in the mid-1990s and experience of having to pay for solicitors' advice to achieve an 'out of court' settlement of an employee's grievance about the compensation she had been offered. The HR consultancy drafted the staff handbook that was then introduced and instituted formal grievance and disciplinary procedures for the first time. For the fee paid Environmental Consultancy acquired access to legal advice (over the phone) and the assurance that if it did face an Employment Tribunal claim most costs – including legal representation if the case proceeded to a hearing – would be borne by the insurer. And the Director interviewed observed that 'it's a sort of insurance policy in a sense'. He added:

*I am comforted to know that I can pick up the phone and get some advice from a real person who will talk me through things, provide me with a draft letter if that's what it requires, provide me with a draft policy if I seek to have some employee policy.*

Although broadly satisfied with the service, the interviewees at this organisation thought it was limited in some respects; they would have liked more regular updating about employment law changes and advice about how to develop 'positive' people management practices. Other case study interviewees and focus group participants elaborated on some of the points.

Stationery Manufacturer used the CBI and the Chamber of Commerce as sources of advice but saw its main provider as an insurance company whose advice had to be followed to the letter, otherwise the insurance cover was invalidated. Although this provider was preferred to lawyers on the grounds of costs, one manager interviewed expressed some misgivings. He thought the advice focused on procedure – ‘they are just telling you how it has to be done’ – rather than the objective of early disputes resolution at workplace level:

*They expect us to stick to our guns if we follow the legal process correctly... sometimes that can be very black and white. Legal advice sets the parameters as to what you can or cannot do... more often than not we will take a much slower process than they would recommend..we slow it down... try to resolve it in house.*

(Finance Director, Stationery Manufacturer)

The issue was raised in discussion in three of the four focus groups. A number of participants thought there could be a potential conflict between the insurer’s interest in ensuring the company adhered to prescribed steps (i.e. to demonstrate compliance with statutory regulation) and the company’s concern to achieve early workplace resolution. An employers’ association representative understood it could be the case that a company that deviated from its insurer’s advice – for example, by applying to another expert body (including Acas) for help in handling the dispute – could find its insurance cover had become invalid.

Food Processing was the third case study company that used an external private company provider. Its HR consultancy provided an advice help line plus a guidance manual which was updated twice a year. Whilst broadly satisfied with the level of service, managers reported that the advice could be impractical for the size of the company and was over cautious. They cited the example of the ‘disappearing employee’, that is to say someone who simply did not turn up for work for several days and did not appear likely to return. The advice was to wait for the employee to get in touch with them and not to act on the assumption that this individual had chosen to leave. Company managers complained that it was difficult for a small firm to wait when they needed to resolve the situation promptly and possibly find a replacement member of staff.

In short, research participants raised two types of issue in relation to the use of private sector HR insurance companies. First, some felt the employer’s flexibility of response could be reduced because the insurer’s principal concern was to ensure the employer demonstrated procedural compliance in the handling of workplace disputes. Second was the view that the service could be quite limited, i.e. focused on procedures rather than contributing to the development of ‘positive’ people management practices.

An interesting finding in this context, therefore, is that the three case study SMEs that (of the six) appeared to be most aware of current legal obligations – that is, the 2004 statutory disputes resolution regulations – were those that contracted for HR insurance provision. Their freedom to be under-informed presumably had been circumscribed by the contractual obligations they had entered.

#### 4.5 Other services, including Acas

Where no contracted service was in place, companies said they took advice as and when particular problems arose. Two of the six case study organisations fell into this category, and perhaps significantly were the only ones to have witnessed claims going to an Employment Tribunal hearing. Shopfitters Ltd used a range of external sources of advice, but predominantly consulted Acas and their solicitor on a range of employment related matters, including disputes. Both sources had been consulted over previous dismissal cases, and in addition the solicitors regularly reviewed the firm's contracts of employment. Waste Management used Acas quite regularly, plus solicitors and, occasionally, an ex Director who had HR expertise. There were some mixed views from these two companies about the advice received. For example, Shopfitters Ltd felt that as a legal advice line Acas was satisfactory but failed to take sufficient account of the small business context and therefore was not practical or realistic to business needs:

*I think Acas is great to be there to ring up and find out about the rules and regulations, but it would be better to get a realistic commercial discussion in a sense..It's a little bit more than being told the law.*

(Owner/manager, Shopfitters Ltd)

and;

*They say it's an advice line but I don't actually believe that. It's just telling you the law.*

(Owner/manager, Shopfitters Ltd)

This owner/manager also felt that Acas was insufficiently prescriptive, for example in detailing how the company should get out of a dismissal predicament.

Waste Management proprietors and managers were generally very satisfied with their advice from Acas which they described as '*clear, precise, not always palatable but at least you know where you are*'. They felt that the information provided did not always fit their industry or small business needs. On the other hand, they felt the advice from Acas could be trusted and that its value was its availability to employers and employees. This view on who Acas represented was not necessarily shared by all the case study firms. For example, an interviewee at Marketing Services suggested, 'I don't know why but I always see that they are there for the employee'. Environmental Consultants did not use Acas services principally, it seemed, because managers did not know very much about them.

Thus there was a mixed response regarding awareness of what types of assistance and guidance Acas could offer, and generally a lack of clarity among respondents on the Acas services available. The majority of the case study organisations and the focus group participants had very limited awareness of Acas' services. Food Processing managers said they had not thought of going to Acas, given the insurance based arrangements they already had in place. A Stationery Manufacturer manager said the firm was familiar with the Service 'to a degree' but that their only involvement had been conciliation in an ET claim, commenting:

*It's only at the end that you would involve them.*

(Manager, Stationery Manufacturer)

The first experience of Acas could prove to be an important one. The focus group participant quoted below had not tried to use Acas again after experiencing difficulties many years ago in trying to find someone to speak with on the telephone who could help her with the problem for which she needed advice. This had proved to be a lastingly negative experience. She described that:

*It was hopeless. I went from pillar to post so gave up in the end. I haven't tried again.*

(Owner/ Manager, School Pictures - focus group)

In terms of when external advice was sought, most interviewees were quite clear that they would consult other bodies when they were contemplating action to check that they were following the correct procedures and to avoid Employment Tribunal proceedings. It was not always the case, however, that the advice was heeded. In a reported case of a drugs offence, advice was sought but disregarded:

*We did seek advice from Acas but took our own course of action.*

(Owner/manager, Shopfitters Ltd)

In the same organisation advice was also sought after action had been taken by the company in a reported incident of theft where the employee threatened to take his case to Tribunal:

*At that point I rang Acas ... and they were no use whatsoever. They just said you did not go by the rules, well great... so that was it... So then I had to seek legal advice which went 'you're up the shit basically', which is very frustrating when you know that he was actually stealing.*

(Owner/manager, Shopfitters Ltd)

Other sources of support for the case study organisations were mainly information providing services and included the internet, for example the CIPD or other employment law websites, the Institute of Directors, Business West, Business Link, accountants, Inland Revenue (who publish a magazine which contains regular employment law updates), and the Chamber of Commerce. However, a Federation of Small Business representative in a focus group discussion emphasised that small businesses rarely had time to complete comprehensive research:

*... but hold on. It's not the money that's limited. The small employer hasn't got the time. With all the best will in the world, you can have all the documents, all the templates, all the websites, all the information, but the time they have is limited.*

Yet some employers clearly struggled to obtain regular updates on employment related issues, and lacked clear and targeted information, particularly in terms of keeping abreast of the legislation. A clear message from many of the case studies was that employers would value a service which could provide up to day and easily digestible information about their legal obligations.

## 5. WHAT IS NEEDED TO HELP EMPLOYERS

### 5.1 Type of support

As already identified, the majority of our respondents had developed their own sources of support, were satisfied with their provision but identified its limitations. The most frequently mentioned was that the current advice focused on procedural compliance to provide a defence in case of a subsequent legal claim rather than advice and support aimed at solving the workplace issue that was concerning the employer. As a result the advice received was seen as useful for ensuring that proper procedures were followed and that supporting documentation was in place but it could also, at times, be impractical and detached from small business operational realities. What the majority of our case study employers and focus group participants were seeking was more dedicated practical support for small businesses to assist early workplace resolution when difficulties did occur. And it occurred to one focus group participant, the manager of a print firm, that self-help could be the best approach for SME employers.

*I suppose the answer to that would be for employers to be affiliated to an organisation, to a group or if the government were to set up something ... people would be affiliated to that and then they would get regular advice ...*

Those forms of support that were identified as being of the most value to SMEs in resolving workplace disputes are illustrated in Table 5. These tended to overlap but revealed three key themes: developing managers' people skills to assist workplace dispute resolution; access to early external advice that was not just about avoiding tribunal claims but was practical, proactive and took account of the SME context; and a desire for personal advice from someone familiar with the business.

**Table 5: Participants' views on the type of support needed to assist SME employers in workplace dispute resolution**

***Developing managers' people management and problem solving skills to help them resolve workplace disputes***

*What I would like to see is a move away from a focus on avoiding tribunal claims to problem solving and developing managers' skills. (Food Processing)*

*Support that helps develop the skills managers need to resolve issues is what is missing so they can handle things in a way that gets the best from people. (Trade Federation - focus group)*

*What I think is lacking is training for managers on how to deal with grievances. We have the processes in place...what is needed is behavioural, knowing how to communicate and ask the right questions. (Marketing Services)*

*We tend to seek advice when we are well into procedure.... Access to early active support could stop things from getting to that stage, for example, supervisory training to deal with the early signs of things going wrong. (Stationery Manufacturer)*

**External advice that is not just focused on process and avoiding tribunal claims**

*The advice we get is all about making sure you don't get near a tribunal, it is not about improving relationships, that needs more personalised support but who would pay for it is the question. (Waste Management)*

*I accept that we need to know the legal situation and have proper procedures but it is more about support with handling the people issues, relationships are all important in a small business. (School Pictures - focus group)*

*Not just advice about process, we know that's a minefield, and more about solving problems so we don't get into the minefield in the first place. (Coach Tour Operator - focus group)*

*More proactive advice on employment law changes but also what can be done, for example, I would like advice on setting up a staff consultative committee but we also need support to continue to develop management skills in areas such as communication and decision making. (Environmental Consultants)*

**A personalised approach which takes account of the business context**

*What we want above all else is good 'hands on' practical advice, the ability to pick up the phone and talk through how to actually approach a problem as well as the legal considerations. My ideal would be to have someone that knew our situation that I could have access to when needed. (Children's Charity - focus group)*

*My preference would be for support from an adviser who was familiar with our business, if possible someone we had met and had a much more personalised approach that took account of our circumstances. (Plant Hire - focus group)*

An essential message revealed by the comments summarised in Table 5, is the recognition by many of our SME employers that managers need support to develop and apply their skills of dispute resolution. This was seen as essential to avoiding prematurely going down a procedural route which was widely acknowledged could be detrimental to employment relationships. Their ideal was to have more 'hands on practical advice' on how to deal with a particular situation. They saw it as important that this advice was preferably from an individual specialising in advising smaller businesses and, ideally, someone who was familiar with their particular business and industry and if possible known to them. The value placed on familiarity with the business is reflected in Food Processing's factory manager's suggested arrangement:

*What would be really helpful is to have a dedicated adviser who provided a support service to a number of businesses in our industry and met with us, say twice a year. That way they would know a bit about us and the sort of issues we face.*

But it was the voluntary sector participants that identified the most need for more dedicated support. They explained that this was not only for the reasons already identified earlier in the report, but also due to the instability caused by uncertain funding in 'not for profit' organisations. This focus group representative from a Regional Council for Voluntary Services described the sector's needs as follows:

*We need to have a small business specialist to contact at Acas. If I was getting my dream it would be for someone who knew what our needs were. The complications of our funding have implications for employment relationships and viability generally - we really want more hand holding.*

There was a view from a couple of owner/managers with positive experiences of using HR Consultants as a source of external expertise, that an HR consultant familiar with the business would be the best equipped to offer the proactive, customised support that was needed. Such an arrangement had worked very successfully for one owner/manager of a coach tour company (a focus group interviewee) for over ten years.

As identified in the evaluation of the DTI's HR pilots in small firms (Emmott and Harris, 2004), it was suggested that HR consultants were more likely to have knowledge of HR practices, use accessible language rather than legal terminology, and adopt a practical solution based approach which took account of business needs. The Marketing Services company believed that an HR consultancy arrangement could be useful, particularly to allow the company to develop HR practices in line with corporate objectives. However, its directors had selected a particular consultancy, run by someone they knew. There was a concern from owner/managers with recent memories of legal claims that using an HR consultant would be an insufficient guarantee that the advice received was correct. A tension was revealed for SME owners and managers between seeking out advice that was practical and took account of operational realities and having 'watertight' advice to meet any legal eventualities. It is illustrated by this manager's observation:

*We would like HR advice in an accessible manner, designed for the smaller business, to be provided by the industry, e.g. the environment agency. We pay a licence fee and they tell us what to do on health and safety issues. It would be good to ring someone on the HR side about a particular problem and know that the advice came with a guarantee that if we did it there would be no come back.*

(Operations Manager, Waste Management)

The reality was that both legal advice and support with solving problems were identified as necessary but those owner/managers who felt more confident with their procedures and sources of expertise they had in place were more likely to suggest that the focus needed to shift to the issue of practical support for solving problems within the workplace. The key message, however, regarding the provision of external support (whether supplied through a commercial arrangement or through Acas) was that it needed to be knowledgeable, sensitive to the needs of small firms and not a 'one size fits all' approach. What our focus group participants and case study owners and managers identified it should not do was to assume a highly structured organisation with dedicated resources devoted to human resourcing issues, including dispute resolution.

## 5.2 A place for third party intervention

Asked about third party support for resolving conflict in the workplace, our employers and managers, in general, had very little knowledge about alternative forms of dispute resolution. There were focus group members who were familiar with mediation because they practiced it: one participant was a trained mediator and two others were from time to time involved in mediation in their roles at their employing employers' association. Yet other of our employers had no experience of having used third party intervention and had little knowledge, if any, of who would provide such a service. This included the role Acas could play in alternative dispute resolution other than its conciliation role in employment tribunal claims which had been the time when most employers recalled having their initial contact with Acas.

Half our case study employers were conscious of the move toward mediation as a means of dispute resolution in areas other than employment. For example, the stationery manufacturing company had been involved in mediation processes to resolve commercial disputes.

Although there was a general lack of awareness of what might be involved, there was considerable interest in the possibility of third party assistance in resolving issues where internal agreement could not be reached. The type of issues these might be were explored in both the case studies and focus groups but without any experience of third party intervention, responses lacked specificity. There were 'experts' in one focus group, however, and they suggested the scope for mediation was possibly most substantial where it was compensation of termination of employment that was at issue:

*We have used mediators in the past, successfully, I have to say, to resolve disputes in the workplace. I say successfully, that's not always where the employment relationship is maintained, but the person has benefited, if you like, from the intervention of an independent mediator and has recognised they no longer wish to work for the organisation and off they've gone without recourse to litigation.*

(Employee Relations Adviser, Employer's Association – focus group)

It was thought by some focus group participants that mediation could be particularly useful in dealing with sensitive issues such as claims of discrimination, bullying, long term absence or where there were difficult working relationships which could be resolved. A couple of participants from employer associations who had been involved in mediation thought it was less complex claims and those involving modest sums of money that were most amenable to resolution via mediation. In principle, nonetheless, it was felt that mediation could be of value to small businesses in difficult conflict situations such as the one mentioned earlier (Section 3) with the Kurdish employee at Food Processing. This view was illustrated by the following observations:

*There are situations, for example dealing with issues arising from different cultures, where third party support could be useful - just to have a neutral input. So far we have not had any incidents that required it as so far we have been able to deal with things internally*

(Owner/manager, Food Processing)

and;

*On some occasions there might be other solutions... a whole level where we could call in mediation. It has become the norm elsewhere... if I have a contract dispute with suppliers then we work with our solicitors and it is far less adversarial.*

(Owner/manager, Stationery Manufacturer)

Despite the general lack of knowledge about mediation as a process, there was considerable interest among owners and managers for third party intervention to support work place conflict resolution if it could reduce the potential for costly litigation. A focus group dominated by representatives from the voluntary sector proved to be particularly in favour of the use of mediation even though again they were far from certain what might be involved. Their rationale was that a quicker, less adversarial means of resolving issues reduced the risk of long drawn out and damaging conflict and potential litigation. Mediation was strongly advocated by this regional representative for the Council for the Voluntary Sector who described mediation as a 'win-win' scenario for the small business who was an Acas trained mediator. She had, however, experienced problems when it came to applying her skills within her own workplace for the reasons explained below:

*I found a problem in acting as a mediator in an issue in my own organisation. In a small business context an internal person will be too close to those involved which makes it difficult post mediation - an external person takes the baggage away with them.*

(HR Adviser, Voluntary Sector Council - focus gGroup)

This was a view shared by other participants in some of the focus groups who saw an external mediator being of more value in the SME context in view of their distance from the issues and greater neutrality where an issue was proving difficult to resolve. At Marketing Services, the two directors interviewed had different views about the potential value of mediation. One thought anything that helped to promote staff relationships should be considered. The other was less convinced. He thought that to bring an independent person in to resolve disputes would be to admit failure in the company's HR practices and ability to resolve disputes internally and informally. He argued:

*I should like to think you could be able to sort that informally internally ... Before getting to that stage, because that is almost going down the formal route. If we had to pull in a third party for us that would be tantamount to going down the formal route of written warnings and so on.*

Employers' association representatives with knowledge or experience of mediation were present in one focus group. The predominant view among them was that there would need to be some form of compulsion to establish mediation as an alternative to litigation. This was not least, they argued, because the parties were in dispute and each might weigh the advantage they stood to gain (or otherwise) from alternative disputes resolution differently. For example, one participant suggested that if a claimant proposed alternative dispute resolution he would be inclined to advise his member to say no, because the claimant had signaled 'they're scared of the tribunal route'. He continued that, while he was familiar with the Tribunal system:

*... if the other party says 'well, I want to go to alternative dispute resolution and you have to agree it', then I am going to go in front of someone who is recruited as a mediator in effect. I don't know what legal test they're going to apply to things in front of them and effectively they may be pushed into making the judgement of Solomon, which is to say the thing in half and, well 'give them some money'.*

To make the point clear, the 'experts' in this focus group were not opposed to alternative disputes resolution but simply mindful of the realities of workplace relations and conflict at work. Hence in their view, compulsion would be necessary to establish a mediation 'alternative' to litigation.

### **Incentives for mediation**

*... going back to what we discussed ten minutes ago about the compulsion for a stage prior to a tribunal, I think that certainly has some potential. What form it takes and whatever is key, but I think expecting people whose relationship has already fallen down to agree on going to that level is not going to happen, I think that's naïve beyond belief.*

(First Employer's Association representative – focus group)

*There's also the other thing, I can imagine people not wanting to go down that route, because if they still had to go to court, in mediation they actually would probably already have rehearsed their legal arguments etc. which means they would pretty much have known what each other was going to say in court anyway.*

(Second Employer's Association representative- focus group)

*Well certainly it gives you an opportunity to arbitrate, to discuss the issue as they said, rather than go immediately from a breakdown in the relationship to a tribunal scenario. There's that bit in between. As I said, the intention of the current legislation is to do that but because there's no compulsion involved, by one side asking to go down that route, it's seen as a sign of weakness in the case at the moment. That's why, potentially, no one uses it and nobody recommends using it. So I think there should be almost that stage in the process prior to the tribunal.*

(First Employer's Association representative – focus group)

In another focus group that comprised employers and HR specialists rather than mainly employers' representatives, similar questions were raised. An operations manager from a small print firm asked:

*But who would call the arbiter in? .... That's such a good point, you know, you say OK we'll get an independent in. What if the other party didn't want an independent arbiter?*

And an HR manager from the voluntary sector wondered: 'Could it ever be neutral, though? Wouldn't it depend on who was called in?'

### 5.3 The role of Acas

Our owners, managers and focus group participants were then asked about what advisory and support services they would like from Acas to assist work place dispute resolution. They did not make any distinction between advisory and other support services but their responses again reflected the need for practical and customised support for smaller businesses. Whilst there was some debate about the stage at which third party intervention would be appropriate and effective, participants could see the value of providing third party intervention such as mediation or conciliation as a means of resolving conflict before the positions of the parties became too entrenched.

A prevailing view among owners and managers in three of the case study companies and among employers in the focus groups was that this type of support would be best undertaken by Acas, publicly funded and thus independent. The question of paying for support with conflict resolution will be returned to as there were a range of views on this matter. Acas' independence was seen by many focus group representatives as leading to its credibility as a source of impartial advice:

*I don't know who would provide it unless Acas could do it, but you've got to look at the cost and the time involved.*

(Third Employer's Association representative – focus group)

Although Acas was widely viewed as suitable for this role because of its neutrality, a couple of respondents did see it as pro-employee. For the majority having a neutral party to call upon was seen as the best way of promoting trust and a sense of fairness in the process for both sides of the employment relationship as illustrated by the following observations:

*We want somebody to help us offer options and get relationships back on track - that is missing currently from external advice services and, within our industry, Acas would be acceptable to both us and our employees.*

(Finance Director, Stationery Manufacturer)

The owner of the same company thought that Acas could offer a range of membership services on employment matters brokered through Business Link and the Chamber of Commerce but acknowledged that this could be difficult in view of its responsibility to provide advice to both employers and employees.

Another case study owner/manager also had a preference for Acas to be the key source of support but for a rather different reason - 'as an insurance in case things go wrong' describing Acas as more reliable than other sources of support such as an HR consultant. As he explained:

*No one can guarantee independent advice is right but if it was Acas it would be of more value if they said what had to be done and we did it and had done nothing wrong. My preference is for Acas to provide support services as an insurance but whoever it was would have to be responsible for the advice they gave.*

(Owner/ Manager, Waste Management)

In two focus groups, the view was that Acas was the obvious provider of alternative disputes resolution, in particular mediation:

*I don't know who would provide it unless Acas could do it, but you've got to look at the cost and the time involved.*

(Third employer's association representative – focus group)

The focus group participants and, again half of our case study companies, felt Acas should be the key provider of training to develop managers' skills in handling conflict issues as well as the main source for communicating changes in employment law, especially to SMEs. But this raised an issue about Acas' visibility. Our interviewees and focus group participants saw Acas as not being sufficiently known as an organisation or in terms of the services it provided. The majority suggested that Acas needed to be more 'embedded' in websites such as those of Business Link or Chambers of Commerce to signal their relevance to the SME sector. It was felt that this would help small firms understand the support and advice that Acas could give and might encourage a more effective use by small firms of Acas' services.

In addition there was the role, already identified, for Acas to play in keeping companies up to date with changes needed to their employment policies and practice to comply with employment legislation. Various means of doing this were put forward by participants, including using television and other media as well as postal shots to small businesses about changes in the law and the support services Acas could offer. One interesting comment from an SME manager with HR responsibility was that it was important to send a copy of such information materials to the person responsible for employment issues, not just the owner, so its relevance was more readily identified.

#### **5.4 Paying for support**

A range of issues were raised in the focus group discussions concerning alternative disputes resolution: how much would it cost, who would pay for it and if it was a paid for service could arbitration or mediation be neutral? The balance of opinion among participants in both discussions was that in view of the last consideration, the service would have to be free. Alongside this was the view that 'given the number of small businesses there are now, it should be a publicly funded thing' (HR manager, Voluntary Sector - focus group).

What any further support services might cost was a key consideration voiced by our case study employers and in the focus groups. As this focus group participant put it:

*The only downside to all this advice is that, what it comes down to is, at the end of the day, for the owner of a small business, is actually how much is it going to cost .*

Those owner/managers who had in place existing insurance arrangements, (figures mentioned ranged from £700 to £2000 a year), reported being satisfied with the value for money of what was provided whilst recognising that the nature of the advice they received was essentially focused on penalty avoidance. Their general position was that, any policy shift towards increased workplace dispute

resolution, should be accompanied by financial support for smaller businesses. This employer summed up the view of many participants:

*Let me put it this way ... the government has passed all this legislation and we are left to sort it out in practice ... there is a responsibility to try and help us with that and to give us the financial support we need...*

(Finance Director, Stationery Manufacturer)

The basic reasoning was that if changes in employment law were to be effectively implemented there was a responsibility on government to support small businesses lacking the necessary internal expertise. SMEs with growing or larger work forces felt they faced particular challenges. As these two owner/managers of the case study companies explained:

*Of course we can do with more support. We are too small to be able to afford internal expertise but big enough to need it. We have to rely on what is out there. What we can take advantage of is always going to depend on what it costs. In my view there should be a free service for businesses of our size.*

(Owner/manager, Waste Management)

and;

*At the end of the day it is about money and what we can afford. We could do with more customised advice but we would have to see that it would bring us real benefits if we had to pay for it. The problem with people problems is that you never know when something can crop up - you might be paying out and not getting anything from it. In my view, the best investment would be to help us train our managers but the cost is not just about money it is also about their time away from running the business.*

(Director, Food Processing)

Financial support for training to develop internal expertise was raised in the focus groups. The feeling was that if training to develop managers' skills was not entirely free to small businesses, then it should be heavily subsidised. Furthermore, if it was provided by Acas, their prices should compare very favourably with those of other competitors. The cost of training also being time spent out of the business was a recurrent theme raised by both busy SME owner and their managers.

It proved difficult for our participants to distinguish between paying for advice that was currently in place and what they had identified as support services they would like to be provided in the future. It was rather clearer for those companies with existing paid advice services who had already decided that this was worthwhile. For example, as the owner of the stationery manufacturing company observed:

*When I think what it can mean in legal fees if things go wrong, the modest fee I pay annually to our help line is well worth it and I suppose the same is true of other types of support.*

One difficulty in exploring the fee issue with our case study companies was their lack of knowledge of what support for workplace resolution might involve. They could not easily envisage the type of support that might be on offer or that they might need. Asked to reflect on particular examples, our Food Processing company director said that the situation illustrated (on page 20 above) was one where he would have been willing to pay for an external third party if it had remained unresolved. Asked how much he would be prepared to pay, he suggested something around £250 for half a day if it would bring a return to normality but pointed out that this was an 'off the top figure' although a lot less than getting lawyers involved.

Where employers were familiar with the use of mediation in other areas there was a more positive view on paying for this type of intervention in employment matters. In fact the owner/manager of Stationery Manufacturer saw it as the employer's responsibility to do so:

*I think it is the employer's responsibility to pay if there are problems at work as it will help their business to sort them out. I am not talking silly money but I do think we should have the choice of paying for membership services for example with Acas which would mean we could bring in a third party to mediate and avoid placing blame. ... sometimes we only place a value on what we have chosen to pay for.*

The issue of a greater value being placed on a service that was paid was mentioned by several owner/managers, half of the case study owners said that they would be prepared to pay for tailored workplace support in resolving issues. It should be pointed out that their managers who we interviewed were rather less sure that this would be the case.

There was a further argument put forward by one employer in favour of paying for support services. This was that being a paying customer meant it was reasonable to expect your interests to be represented, as with a lawyer. The challenge that this would present to neutral Acas did not go unnoticed by the owner/manager concerned, who openly valued Acas for the very neutrality which he observed might be compromised:

*We would be prepared to pay. It would cost less than lawyers but then we would expect support for our position ... that could be difficult for Acas and its independent role.*

(Owner/manager, Waste Management)

The most consistent position on payment was reflected in the two focus groups dominated by voluntary sector organisations. Their lack of resources, employment challenges and the instability caused by funding in the sector led to a unanimous view that what was needed by 'not for profit organisations' was independent publicly funded advice and support.

To sum up, the overall picture our participants provided on paying for services was not a clear one. Whilst the majority sought free advice and support to train their managers in people skills, in certain industries we found a willingness to pay a reasonable sum for support in resolving problem situations where it was thought an external third party would be effective and less time consuming than legal processes.

A direct comparison between potential legal fees and the more moderate sums alternative dispute resolution might involve was not a calculation really entered into by our case study owners and managers. Because of the 'needs led' approach to resolving work place issues, such calculations were only made after a particular experience, such as at Waste Management. Leaving aside the range of individual views we received, it was the voluntary sector that was the most forthcoming and consistent in seeking a free, independent service to support the resolution of work place conflict situations.

## **6. CONCLUSIONS**

The research revealed considerable variety in the approaches to dispute resolution adopted by our small business owners and their managers. These can be largely explained by the nature of the industry, its workforce, the maturity of the business, the background of the owner(s) and past experiences of ET claims. Handling individual conflict at work was identified as a difficult area for small business employers without access to internal HR expertise and one where it was very easy to get things wrong due to a lack of knowledge or experience. Participants from the voluntary sector most frequently reported problems in resolving conflict situations at work for reasons identified in the report and, as a result, saw the greatest need for free external support and advice services.

There was a widespread view that the present balance in employment rights favoured employees and impacted disproportionately upon the smaller business. Our SME employers' perception was that once an issue had progressed to an ET hearing it would be very costly and time consuming and most believed a small business employer would lose. This led nearly all our case study employers and focus group participants to identify early resolution of individual disputes as crucial, both to reduce the risk of potentially costly litigation and to support positive employee relations in a small business context.

There were more reported experiences of dealing with disciplinary issues than employee grievances. The latter were identified as less frequent occurrences that managers had to attend to. A common explanation was that a buoyant labour market for many skills meant dissatisfied employees simply moved to a job with another employer rather than stay and voice a grievance. Where conflict did arise from increased workforce diversity, employers described such situations as particularly challenging to deal with in terms of demonstrating consistency of treatment whilst addressing individual needs. As a result, these were identified as instances where third party external support could be of particular value.

There was frequently articulated preference for informality, seen by participants as better suited to the close working relationships of smaller businesses, or the most effective means of forestalling formal proceedings. In practice, however, a fear of litigation led many employers to move quickly to a formal process. Their rationale was that doing so better equipped them to defend their decision making and demonstrate a fair process but another perspective was offered by a couple of associations working with smaller businesses. This was that managers resorted to formal process because many lacked the skills needed to support informal dispute resolution.

The importance attributed to early resolution, and the need to retain another level of management to deal with a later stage or to provide an internal appeal, led to first line managers' capability in dealing with people management issues being identified as vital but often as insufficient. Whilst there was very little evidence of training taking place to develop line managers' people skills, developing managerial capability was identified as a priority area where support was needed.

Although the 2004 discipline and grievance statutory requirements were evident in most employers' procedures, their actual knowledge of these was found to be very limited indeed. Their knowledge was of the various stages set out in the Acas Code of Practice on handling disciplinary issues and grievances. To compensate for the absence of internal expertise, over half of our case study employers had in place paid sources of external advice on employment law to help them avoid ET claims. A widely held view was this advice was focused on providing a legal defence which could even act as a constraint in terms of considering alternative approaches to conflict resolution. What employers said they wanted was more practical problem solving advice, expressed in non legalistic language, which addressed a particular issue and took account of the small business context.

The need for advice tailored to the needs of smaller organisations and, ideally, provided from a personal adviser familiar with the business was a recurrent theme. It was widely felt that any advice and support services should be publicly funded support for small businesses. The rationale was that as the government introduced the employment legislation, it had a responsibility to help SMEs lacking internal expertise and HR resources to make sure they had the support needed to keep within the law.

There was a lack of knowledge about alternative approaches to dispute resolution. Very few owners and managers knew about mediation and what it involved but were interested in what they heard from focus group participants who were more informed. Most employers thought that such support would be best provided by an external third party although this was not a unanimous view. Employers who were in favour saw it as a service probably best provided by Acas.

Perceptions of Acas and its services were heavily influenced by the first experience of any direct contact whether this was to a help line or with a conciliator dealing with an ET claim. Although a couple of employers thought it was too pro employee, Acas was generally well regarded. It was widely viewed as an independent third party which would be trusted by employees and employers and thus one that would be acceptable as an external third party to assist in workplace dispute resolution. Our case study employers and focus group participants, however, thought that Acas as an organisation was not sufficiently visible and that its services needed to be more widely publicised and linked to the web sites of other organisations providing services to small businesses.

Whilst the 'in depth' nature of this research provides many insights into SME employers' dispute resolution practices, it does not explore these from the perspective of employees and their experiences. This is suggested as an important area for future research as the employee's view of whether or not there has been fair treatment will have a major impact on any decision to pursue an ET claim. Furthermore, the particular difficulties for the voluntary sector in dealing with conflict resolution and people management issues at work revealed by our study requires a closer examination than was possible within the scope of this report.

## REFERENCES

- Bacon, N. and Hoque, K. (2005) 'HRM in the SME sector: valuable employees and coercive networks', *International Journal of Human Resource Management* 16(11) 1976-99
- Earnshaw, J., Goodman, J., Harrison, R. and Marchington, M. (1998) *Industrial Tribunals, workplace disciplinary procedures and employment practice*. DTI, London, URN 98/564
- Edwards, P., Ram, M. and Black, J. (2003) *The impact of employment legislation on small firms: a case study analysis*, DTI Employment Relations Research Series, No. 20
- Emmott, M. and Harris, L. (2004) '*Shared HR Schemes for Small Firms*' a report for the DTI on the shared HR pilot schemes for small firms. London: CIPD
- Forth, J., Bewley, H. and Bryson, A. (2006) *Small and Medium-sized Enterprises: Findings from the 2004 Workplace Employment Relations Survey*. London: DTI, Acas, ESRC and PSI
- Gibbons, M. (2007) *Better dispute resolution: a review of employment dispute resolution in Great Britain*. DTI, London
- Hayward, B., Peters, M., Rousseau, N. and Seeds, K. (2004) *Findings from the Survey of Employment Tribunal Applications 2003*, Employment Relations Research Series, No. 33, London, DTI
- Holliday, R. (1995) *Investigating Small Firms*. London: Routledge
- Kersley, B., Carmen, A., Forth, J., Bryson, A., Bewley, A., Dix, G., and Oxenbridge, S. (2006) *Inside the Workplace - Findings from the 2004 Workplace Employment Relations Survey*, London: Routledge
- Parker, J. and Arrowsmith, J. (2004) New statutory workplace dispute resolution procedures *EIROnline*, August
- Purcell, J., and Hutchinson, S. (2003) *Bringing policies to life: the vital role of the front line managers in people management*, London: CIPD
- Wedderburn, Lord (2007) 'Labour Law 2008: 40 Years On', *Industrial Law Journal*, 36(4), 397424

## **APPENDICES**

### **Case Study 1      Waste Management**

This East Midlands based waste management company currently has a workforce of 40 employees, 36 men and four women, who all work full time although the number of employees can increase to 50 at busy times. These additional workers are provided through an agency as and when required. The current owner/manager bought the business as part of a management buy out over two years ago, having worked for the previous company as the director responsible for the waste management side of the business. There are two core elements of the present business; waste collection and disposal and recycling. There is no recognised trade union on site but there are two employee representatives who have volunteered to represent the work force, one for the drivers and the other for the ten employees working in waste recycling.

The previous company experienced several costly employment tribunal cases which has led the current owner/manager to pay considerable attention to ensuring there are formal procedures in place which are communicated and adhered to when addressing any conflicts that may arise in the workplace. There is no internal professional HR expertise and employment matters are dealt with by the Company Secretary who is the owner/manager's wife and the Operations Manager. A company handbook is provided at induction to employees, this includes both the grievance and disciplinary procedures. These have been adapted from those used in a large public sector organisation scaled down to fit a small business context and have been further added to in the light of particular experiences. In the first instance any employee grievances, issues of performance or other potential problems are dealt with by the immediate supervisor. If an issue remains unresolved, it is referred to the Operations Manager although the practice is for supervisors to seek advice at the earliest opportunity before addressing issues that may be difficult to deal with.

The guiding principle within the company in handling any conflict is to try to resolve things quickly, at the earliest stage possible and, at all costs, to try and avoid creating any grounds for litigation. Based on their previous experiences, the prevailing perception is that should any matter reach an employment tribunal hearing then a small business will almost certainly lose the case. Employee grievances are reported as rare occurrences, explained partly by a buoyant labour market (especially for drivers) which means that individuals will tend to leave for another job rather than pursue a grievance.

An informal approach to resolving workplace differences is seen as preferable and more supportive of the close working relationships required in the small business context but a fear of litigation has led to early formalisation. This is regarded as necessary but very time consuming for managers and a distraction from developing the business. Employee absence is identified as a particular problem with the advice received from employment lawyers and the Acas help line on handling absenteeism being perceived as 'just unrealistic' for small businesses with limited resources.

The company has no membership with an employer's association and no standing arrangement for the provision of HR expertise from an external consultant, insurance company or other professional body although they do use a consultant for Health and Safety matters. There is, however, a regular use of the Acas help line which is reported to be an important source of information and general advice although taking insufficient account of the realities of the small business context.

## **Case Study 2      Stationery Manufacturer**

The owner/manager who established this East Midlands-based paper company 30 years ago describes his business as a manufacturing stationers. The company produces a variety of finished stationery products for both the UK and global markets. At the time of the study it employed over 100 employees, mostly drawn from the local area. The workforce is made up of 60 employees in the manufacturing process, a further 25 employees in general administration with the balance working in design, sales and marketing. The company is non-unionised although some employees are card-carrying union members and there is a company Works Council but its role is limited to one of information and consultation. The company operates without a Board of Directors and has a senior management team consisting of three directors (including the owner) who share strategic and operational duties including HR, purchasing, sales and marketing. Below the three company directors lies an established supervisory function comprising of salaried team leaders with responsibility for the initial stages of any disciplinary and grievance matters.

The company's personnel procedures are set out in a company handbook; a loose-leaf document which is updated by one of the directors to reflect changes in employment law and company policies and issued to all employees at induction. Disciplinary and grievance issues are reported as rare which is attributed to the stability of a work force, predominantly recruited from the local labour market, with many employees having long service with the company. Informal routes to conflict resolution are favoured by the company directors, with the supervisory levels assuming initial responsibility for informal grievance and performance issues. Formal warnings are issued by senior managers; on occasion the company has employed independent third parties to manage disciplinary and grievance issues. Appeals are heard in-house by a director not involved in any earlier process. However, such formal issues are rare and are generally regarded by the owner/manager as the company's failure to manage employees effectively. The prevailing view amongst directors is that cases reaching an employment tribunal hearing would result in the company losing (as had been the case in the past); therefore resources and effort are applied to resolving matters informally and in-house wherever possible. The company wants to act fairly to employees and be seen to do so.

The owner and directors saw positive employment relationships as important for the business and ensuring fairness to all employees was a critical element of these. Nonetheless the processes this involved were identified as complex and time-consuming. The Directors use a confidential paid for legal telephone helpline provided as part of company insurance and also seek assistance from professional associations such as the Chamber of Commerce (COC) which provides solicitors if requested as part of the members' annual fees. The company had sought Acas' assistance in the past, but had not done so recently. Acas was valued for its independence and neutrality towards both parties. The Directors thought Acas' conciliation and mediation services should be expanded and favoured a new integrated member services programme where the COC and other agencies would automatically refer its members to Acas regarding work place dispute resolution issues.

### **Case Study 3      Food Processing**

The company was established in the mid 1990's to process vegetables. It moved to its current premises in 2003 when the present owners took over and expanded the business into processing carbohydrates, potatoes and pastas. The business's core activity is fresh food preparation for other manufacturers involved in making ready meals and ready to eat salads. The company is owned by two partners, one who deals with marketing and sales whilst the other focuses on production including employment issues. There are 65 employees on site in the winter months but it is a seasonal business and agency staff are employed at peak times. The gender split is 55% male and 45% female and there are 3 part time staff. There are 16 employees in management and administrative roles which includes 2 directors, 4 senior managers and 5 supervisors. The remaining work force works in production. As the company has developed new products and customers, the work force has grown. It is a seven day week operation with a three shift system in the summer and a two shift system in the winter.

Agency staff are largely migrant labour, predominantly from Eastern Europe. The workforce is increasingly diverse which presents a number of challenges. There is no recognised trade union on site and no qualified HR person, Operational HR issues are the responsibility of the Factory Manager. The partner responsible for production worked for 20 years in a global food manufacturing company so was used to having HR expertise on hand. A consultancy company provides an advisory helpline and a guidance manual which is updated twice a year. This consultancy was selected on the basis that it most met the company's needs, offered value for money and dealt with the National Farmers' Union so was familiar with the food industry.

There are particular problems in finding and retaining team leaders and supervisors of the right skills level and managers of the right calibre, particularly competing with the employment packages offered by larger companies. It is felt that support is needed to develop developing managers' skills. The nature of the business means it is largely low skill, manual work which can involve working in low temperatures. The company finds it is increasingly employing migrant labour which is described as 'hard working and reliable'. Employee turnover is between 10 to 15% a year which is below average for the industry and temporary agency staff who become permanent are a key source of recruitment.

The focus in dealing with workplace conflict is try to deal with issues quickly 'to nip them in the bud' so there is a heavy reliance on front line managers. However, they do not had training in people skills. The grievance and disciplinary procedures are set out in the company handbook and include dealing with harassment, bullying, and discrimination. If a matter is unresolved it will go to director level and one of the two partners considers any appeals. Apart from issues arising from the diversity of the work force, the main area of concern relates to attendance. In the partners' view, without expert support, a small business employer will make mistakes and lose a case if it reaches an employment tribunal hearing. As a result the Company's whole approach is to devolve responsibility down the organisation, make sure that procedures were well known and communicated and that issues when they occur are dealt with promptly and go through the formal procedures.

What was identified as the most value in terms of additional support was an experienced independent third party who could come into the organisation in really difficult situations. There was a lack of knowledge about Acas and its services and a perception that it was not well embedded into the websites that small businesses were likely to use. The fact that Acas provides a service to both employers and employees was viewed as a strength as it assisted a common understanding and reduced misunderstandings.

## Case Study 4      Shopfitters Ltd

This is a privately owned company providing a shop fitting service to blue chip companies, including high street shops, hotels, pubs and offices across the UK. Since it was founded in 1981 the company has grown steadily, and is expected to have an annual turnover in the region of £26 million in 2007. Around 70 permanent staff are employed plus up to 100-150 subcontractors during peak periods, mostly from agencies. Migrant labour currently makes up about half the agency carpenters. The use of sub contractors is due to the seasonal nature of the work, difficulties in recruiting good 'chippies' (carpenters), and the culture of the industry. The company has a policy of trying to retain a high proportion of permanent staff. As the owner/manager explained:

*It's still an industry which has a floating mass of sub contractors, although our policy is whenever we find somebody who is good then we try and keep them on.*

This relatively high use of permanent staff enables the company to provide a reliable and quick service with committed staff and it is this which gives them a key competitive advantage. The company is proud of its staff retention, although constantly concerned that it may lose staff to the sub contract labour pool. As a result it offers attractive terms and conditions of employment, particularly in the area of training and development and has a history of promotion from within. Each year they aim to offer 3 apprenticeships. The majority of staff are engaged in manufacture (they have their own workshop) or on-site project work. The company is very lean on the support side and internal HR support is provided by an office administrator. There is no finance director, no buyers and no marketing function since nearly all of the work is obtained through recommendations/word of mouth.

With regard to handling conflict, the company feels that their current practices work well and, in the main issues, are resolved amicably. Although there are written procedures for discipline and grievance handling (which are referred to in the contracts of employment) the preference is to deal with issues informally and quickly. This approach fits with the approachable and less formal management style and close working relationships which typify the firm. The company has had two cases of employees pursuing claims to an Employment Tribunal, and in the example given described the case of a foreman dismissed for theft. Although they lost the case on the grounds of procedural neglect and felt the experience to be intimidating, if confronted with a similar issue again they would not do anything differently on the grounds that the business could suffer, it was complex, and suggested a lack of commitment to staff who had reported the issue.

Acas is used in an advisory capacity (although their awareness of the services Acas offer is limited) and the company feel that support provided on the 'rules and regulations' is adequate. However there is a strong feeling that advice needs to be more 'commercially realistic' and take account of the needs of the small business, and that Acas is employee biased. Other sources of advice include their solicitor (who for example reviews their contracts of employment), Inland Revenue newsletters and trade journals. The Company feel that there is a place for some kind of third party to mediate or adjudicate in conflict.

## **Case Study 5      Environmental Consultants**

This company is a limited company providing environmental consultancy to a range of clients including private sector house builders, government agencies, and major landowners. A typical project would be environmental impact assessment of a proposed development, with projects typically lasting 3-5 years. As they provide a combination of environmental services, which is unusual for a relatively small company, they occupied a niche position in the market for environmental consultancies which they said had been a growth industry as a direct result of EU-derived legislation in 1988. They could identify two other competitors of a similar size but pointed out that environmental services in the main were provided by large organisations employing from 500-5000 staff. They saw themselves as being at the quality end of the business.

Since the company was established in 1982, employing 5 staff, it has grown steadily and now employs 47 staff. There have been some fluctuations in size over this period which necessitated redundancies but the company reported that it is now fairly stable in size. Their annual turnover is in the region of £3 million. The majority of the staff (around 42) are educated to degree level and are technically trained in disciplines ranging from environmental science to landscape architecture and all belong to their relevant professional association. They have a banded salary structure, annual appraisals, 5 days a year training for continuing professional development and support staff wishing to progress to Masters level. Staff are made aware of terms and conditions via a company handbook but do not have an individual copy to keep. No trade union is recognised. The overall employment relationship was described as very good and fairly relaxed and open.

The staff are split 50/50 on gender lines and the average length of service is 8-9 years, although there are some very long serving members. It is unusual for the consultancy to employ staff on short term contracts. The company operates a fairly flexible system of work in order to accommodate staff needs and recently introduced a more formal flexible working arrangement. Labour turnover has increased in recent times but was regarded as relatively low. The company has been facing a shortage of professionally qualified and experienced staff with the requisite environmental skills. There has recently been a restructuring exercise intended to give more responsibility to managers; to improve career opportunities; and to break down functional boundaries.

HR policy decisions are the responsibility of the three Directors. Development of HR policy and procedure are the responsibility of the operations manager, also responsible for office management and IT. She has developed policies and procedures on benefits, leave, recruitment, training and appraisal and in this she is supported by an external HR and legal services consultant who provides employment and health and safety advice. She has gained her HR knowledge by learning on the job and the company is prepared to support her when she needs further training. Prior to her appointment, HR was the responsibility of the finance controller who continues to hold knowledge of legal position on pensions, salaries and sick leave. HR management is also part of the day to day responsibilities of line managers who typically deal with matters such as individual staff appraisals (on which they have been trained), attendance and overtime.

The HR consultancy is retained for a monthly fee, separately for HR and health and safety. It is mainly used for employment issues, and developed the employee handbook. It is found to be more cost effective than solicitors and has been used for the last nine or ten years. The consultancy provider bears the cost of a case going to ET should that happen and so acts as an insurance policy and would represent the company if a case went to ET. The company is happy with their services, feeling well supported and pleased to be able to 'pick up the phone and get some advice from a real person who will talk through things, provide a draft letter and provide a draft policy if that's what it requires.'

More than that, because the HR consultancy would cover their costs, they had no incentive to go elsewhere. However, they did observe that they would like the external consultancy to do more to ensure that they kept up to date with employment law changes. As stated at the beginning of the summary, the company had found itself making staff redundant in the mid 1990s and had threat of ET proceedings against them in the case of one employee. They had settled the matter out of court but this was the critical incident which had persuaded them to go down the route of insuring against future employment cases through the external HR consultancy firm.

With regard to conflict resolution, there have been procedures for grievance and discipline laid out in the staff handbook for the last four years and the company was aware of the statutory procedures. It was unusual for people to raise grievances and when they did, these tended to be dealt with informally. They could recall only two formal grievances, one where a member of staff had complained about her line manager and this had been taken through the procedure, although no outcome was offered. With regard to disciplinary issues, the company said they rarely had disputes although they could recall one incident of alleged gross misconduct which would have resulted in dismissal if proven. Ultimately it had not come to a formal hearing since, after suspension and a disciplinary investigation, the employee had decided to resign. The HR consultant had supported the company throughout. They experienced minor disciplinary problems over attendance and completing time sheets but these were capable of quick and successful resolution at an informal level.

The company was aware of Acas but unclear what they could offer, for example giving advice, access to website. They felt they had not had a need to use Acas and did not consider them as a provider of informal advice for small firms, although they could see a role for them as providers of information and education. They did not see Acas as an alternative to the HR consultant, their current source of outside advice and support, but could see a role for them in bringing a resolution to dispute by way of conciliation or through arbitration.

## **Case Study 6      Marketing Services**

This is a business-to-business strategic communications and marketing services consultancy with an annual turnover of £1.5 million. It has been in business for 22 years. The founder remains the largest shareholder and is Managing Director. There is a single office, in the city centre. The company has 19 employees, including three administrative staff, and six board members. Most of the consultants and senior consultants are graduates. Jobs are advertised nationally and in recent years applicants have mainly been people seeking to relocate from London. The average age of staff is 30 years. The majority of employees are women. In recruitment, emphasis is placed on 'soft skills' including those of presentation and the ability to empathise with clients.

There is no dedicated HR specialist. The Finance Director has responsibility for HR and other office administration functions. The directors have involvement in HR as senior managers, in charge of recruitment, and as line managers to senior consultants and their client account teams. The company has been Investors in People (IiP) accredited for over ten years. The standard was sought in the first instance to assist business development but spurred formalisation of HR policies, including appraisal and staff development. The staff handbook dates from the initial IiP application and includes the detail of the formal grievance and discipline procedures. A copy is given to new recruits at their induction week.

Actual use of the formal disputes procedures was described as rare by the directors who were interviewed. Neither could recall an employee grievance being registered formally in recent years. The one example given of the formal discipline procedure being activated related to time-keeping. A female employee was thought to have abused the flexibility she had been given to accommodate childcare.

The directors thought employee grievances were rare because it was a good company to work for, in terms of salaries and benefits, its open style of management and positive attention to staff welfare. Regular staff social events were among the strategies used for building a cohesive team. Staff turnover had risen in the past year. It was related to the characteristics of the industry and the work – involvement in media related activity precluded standard office hours – and to the small scale of the enterprise. It was not always possible to provide promotion as the means of retaining staff. A director thought employees most likely to articulate grievances when they quit, but that these were usually minor 'niggles' and not the main reason for the resignation.

There was a concern to deal with any staff issues – grievances and matters relating to performance – at an early stage and through informal discussion. Priority was given to avoiding any involvement in an ET hearing, because this would be adverse publicity for the company and would, in the directors' view, signal a failure of their HR management. The director with HR responsibility used a range of external support services to keep up to date with employment law, including the trade association's advice line. The company did not use an HR consultancy but this was under consideration, for the purposes of developing recruitment and selection techniques. There was a preference to use business HR support services, as opposed to Acas. There was a division of views in respect to third party intervention. One director thought recourse to such services would be tantamount to externalising problems that should be dealt with internally.

## Focus Group 1

The focus group aimed at owner/managers of SMEs, was held on 1 November 2007 at Acas Nottingham Office and participants were arranged by an external recruitment agency appointed by Acas. Ten participants were expected from the East Midlands region but only five attended. Because of the low attendance, the research team contacted those who did not take part but unfortunately none were able to participate in an alternative focus group or to be separately interviewed for the research. Of the five participants, two came from the same small voluntary sector organisation; a children's charity. Two further participants also came from the voluntary sector; one from an organisation giving respite care and the other from a community and voluntary sector local federation. Only one participant, a specialist provider of school photographs, came from the private sector. All attendees had some responsibility for HR matters in their organisations, two reported CIPD membership with one having undergone Acas training in mediation. The latter did have an influence the direction of the discussion. Issues discussed and key points that emerged:

### Dealing with disputes

- Most organisations reported they had well developed formal procedures to provide protection from litigation.
- Trying to resolve issues early is the best solution – the present system tends to formalise disputes early which was not always the best way of dealing with problems especially in smaller businesses.
- Another level of management in the voluntary sector who are not directly employed can create adversarial situations and confusion

### Present support

- There are a lot of sources to go to but where it is free it is advantageous.
- Advice was rather general and not specific enough to your issues and was not tailored to small businesses.
- Advice was frequently over cautious and difficult to put into practice – especially if given by an insurance provider.

### Future support

- There is a need for more dedicated external support for resolving workplace issues arrangements in small businesses and organisations but there are particular challenges for the voluntary sector
- Support should be free, and ideally provided by Acas as a publicly funded body. If there was a charge it should be minimal.
- The Acas brand was important as it was trusted by both parties and was seen as independent but their services needed to be more visible and better known.
- Support provided by Acas training and development to SMEs could be improved.
- Regular updates to knowledge should be provided to SME employers by a government agency by post or the media – seen as a role for Acas.

### Mediation and third party intervention

- There was felt to be insufficient information about what this could involve or who could provide it but in principle it was felt it would be of particular value to small businesses in difficult to resolve situations.

- Although training and development internally in mediation was considered to be useful when sensitive issues were involved an intervention from an external third party was necessary in a small business because of future relationships.

## Focus Group 2

The focus group held on the 19 November 2007 at the Management Centre of Nottingham Trent University. The target participants were stakeholders working with small businesses as well as owner/managers of SMEs. Twenty SMEs were invited to attend from names suggested by a number of trade and business federations, small business organisations. In addition, those not attending the focus group held on the 1<sup>st</sup> November were also contacted to see if they would be able to attend on this later occasion. A further list of a seven stakeholders, principally business federations, were also invited.

Despite a good attendance being expected only three from those invited attended partly due to a high drop out rate due to other commitments on the day of the meeting. To compensate for this low attendance, further interviews were conducted with 2 owner/managers, representing a coach tour operator and a provider of educational equipment, with the British Glass Confederation and the employment adviser for the Citizens' Advice Bureau. These interviews covered the schedule for the focus groups.

The three participants in the focus group came from the Federation of Small Business (FSB), the East Midlands Development Agency and a plant hire company within the construction industry. Given its composition, the focus group was rather dominated by the actual experience of workplace conflict resolution within the plant hire firm, represented by their Accountant who also dealt with HR issues. Issues discussed and key points that emerged:

### Dealing with disputes

- How time consuming disciplinary and grievance issues through the formal processes could be and at a considerable cost for small businesses.
- The larger the workforce the heavier the reliance was on formal procedures but legislation had made small business go to formal procedure earlier to defend their decision making. This was a double-edged sword as often formal systems prevented the possibility of resolving issues at an early stage.
- At present small businesses tend to be defending their corner not problem solving and resolving the issues.
- There is too much regulation so small businesses have to focus on compliance.

### Present support

- The Federation of Small Businesses was seen as the preferred option for gaining information although the neutrality of Acas was regarded as important for gaining trust from owner/managers and employees.
- Owner/managers, however, see problems with the impartial advice from Acas. They have a need for more directed hand holding on what to do.
- Advice offered by parties such as business federations, banks, accountants or solicitors usually lead to issues becoming formalised too quickly
- There can be a conflict in seeking out solutions to problems with advice that is to be linked to an insurance provider when any deviation from that advice renders the insurance cover invalid.
- The very limited access to immediate expertise on how to deal with an issue for small businesses - although difficult to generalise since small businesses are at different levels or stages of development.

#### Future support

- The need for tailored, practical advice which understood the small business context.
- Moving away from a focus on procedures to solving an issue could make employers feel vulnerable. There needed to be protection for the employer and employment law was seen as a minefield.
- There was a lack of knowledge about what Acas could provide other than the help line which some felt was not directive enough in saying what needed to be done - small business employers wanted practical support.

#### Third party intervention

- There was little knowledge of what this could involve or who might provide it.
- Acas would probably be the best provider if third party intervention was needed as both employer and employees would see them as acceptable but some employers would want someone supporting them and would certainly do so if they were paying for it.

### Focus Group 3

This focus group was held on November 21 2007 at the Acas South West offices. It comprised a sample of individual small employers in the South West area, including the voluntary sector. Participants were arranged by an external consultancy appointed by Acas and included representatives from a community centre, a printing company, four registered charities (local children's, national children's, Asian community, nationwide housing association), a local hotel, a media company, as well as a retired head teacher. Their employing organisations ranged in size from 12 employees (a local children's charity) to 140 (the local hotel).

With regard to current arrangements for advice and support on employment law matters, a range of provision was available. The local hotel, housing association and the second, national, children's charity, were all part of much larger organisations and had human resource management support in house. Others, such as the printing company, had access to management consultants which specialised in employment law matters, while others, such as the small children's charity relied on their managers to find out human resource and employment law information for themselves. The Asian charity organisation used a firm of solicitors which undertook pro-bono work. Where management consultants were used, this was because they represented a reliable but cheaper option than legal advice from solicitors. Issues discussed and points that emerged:

#### Disciplinary issues

- The need for clear and fair procedures which were followed consistently.
- Where HR/employment law support was available in house managers were well supported and the incidence of unfair dismissal cases was reduced.
- A regular arrangement, both with solicitors or management consultants, was also valued and seen as likely to reduce the chance of 'getting things wrong'.
- The smallest organisation, the local children's charity, clearly felt vulnerable, not being sure for example whether it had a staff handbook and not having access to sources such as the internet.

#### Grievance issues

- Where raised within organisations, had been about potential sex discrimination in the small media company (resolved by the individuals moving to other jobs) and school reorganisation (which had resulted in a great deal of individual disruption).
- But grievances were not cited by all respondents as a cause for concern where they felt the need for support.

#### Training

- For the larger respondent organisations, there was clearly more ability to train managers in grievance and discipline whereas the smaller organisations learnt as they went along, sometimes in response to critical incidents such as a dismissal for gross misconduct dealt with by the Asian charity.

#### Communication of employment law changes

- More Government support for small businesses would be welcomed, although all respondents were aware of Acas and its web-based information services.
- It was felt that organisations such as Business Link could be more proactive in their support of small firms.
- It was also felt that small organisations should show more willingness to affiliate with employers' associations.
- Various representatives pointed out that there was open internet access to a great many sources of advice, such as the CIPD, Health and Safety Executive although, as the printing company manager pointed out, small firms didn't always 'know what it was they didn't know'.

#### Third party intervention

- Possibly via Acas, was seen as a potentially useful route to resolving problems but it was felt that this would have to be with the agreement of both parties.
- Such a service would have to be provided on a completely independent basis, so that no prior view of the parties could be formed.
- The two national charity representatives cited their experiences of intervention from within the organisation which had worked where the arbitrator/conciliator came from another region, for example.

## Focus Group 4

The focus group was held on November 14 2007 at the University of the West of England. It was organised by the UWE research team and included representatives from a range of employers' and trade associations and from a small alarm intruder business in the South West. Issues discussed and points that emerged:

Current arrangements for advice and support on employment law matters

- A large number of small firms, particularly those not affiliated to an employers' association had recourse to third party provision, such as management consultants which specialised in employment law matters.
- This source often acted as an insurance policy but small firms often found that the service offered was too rigid.
- Employers associations might contract out legal services, but provided a service much more tailored to their small firm members' needs.

Legal regulation of the employment relationship

- There was too much law and this interfered with the ability of small firms to resolve matters quickly at the workplace level. There was too much rigidity in the system.
- Small firms found it very hard to keep up with legal changes. They had been pushed increasingly into reliance on the legal profession, which entrenched the problem.

Management training

- Even where small firms had grievance and discipline procedures communicated through a staff handbook, there might be a tendency to think this was all that needed to be done, when in fact managers needed to be trained and alive to workplace issues.
- A programme of continuous development for business owners could usefully be developed to support their leadership and managerial skills and application to employee relations.

Communication of employment law changes

- All said that they circulated regular newsletters which included specific legal sections but a worry was articulated that small firms still relied on newspaper reports, rather than more 'official' sources of information.

Government support for small businesses

- Was inconsistent and too much onus was placed on small firms to find information, rather than receive regular bulletins.

Mediation or arbitration

- Possibly via Acas, was felt to be a useful route to resolving problems.
- But the present ADR procedures were not favoured as they had not been tried and clarified to the point that parties felt confident to use them.
- It was also felt that mediation would need some form of compulsion to make it workable otherwise suspicion would remain if one side were calling for it rather than it being a stage that both parties had to go through before other routes were sought.
- Other alternatives suggested were the removal of small value claims from the tribunal.



