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Title : Formal procedures and conflict resolution in the smaller business – a question of balance.

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Abstract

This paper examines conflict resolution in smaller businesses who can experience particular challenges due to a lack of internal HR expertise and a high dependency on external advice; identified as contributory factors in the long standing over-representation of smaller businesses in UK Employment Tribunals. To specifically address these issues in SMEs, statutory procedures were implemented in 2004 to provide minimum standards for handling grievance and disciplinary issues. In practice, the procedures have been heavily criticised for encouraging greater formalism rather than early dispute resolution. Findings from a study conducted for Acas into how SME employers handle individualized conflict at work reveal that their concerns about litigation had led to early formalisation although an informal approach to managing employment relationships was seen as more appropriate for effective

working relationships in a small business environment. The tensions between formality and informality in conflict resolution in smaller businesses are the focus of the discussion in the paper.

Key words

Conflict, formalisation, employment relationships, litigation, early resolution

Introduction

The approaches adopted by smaller business to individual workplace disputes is a particularly topical issue in the UK following the repeal of the 2004 statutory procedures for handling disciplinary issues and grievances in April 2009 and the present government's policy emphasis on workplace based conflict resolution. This paper draws upon findings from a qualitative study of dispute resolution in SMEs undertaken by the Universities of Nottingham Trent and the University of the West of England for the UK's Advisory, Conciliation and Arbitration Service (Harris et al., 2008). Whilst the aim of the ACAS study was to explore approaches to individual disputes in small firms as a means of identifying what was needed in terms of support for early workplace resolution, the discussion here will focus on those factors which impact on the approaches to handling conflicts in smaller businesses particularly the degree of formalisation. It is intended to particularly examine how these can support or impede early workplace dispute resolution in smaller organisations.

The absence of formal procedures has long been identified as one of the principal causes of the disproportionate number of employment tribunal applications involving small businesses (Tremlett and Banerji, 1994; Earnshaw et al., 2000). In 2003, for example, UK employment tribunal applications revealed that businesses with less than

250 employees formed 62% of all tribunal applications whilst constituting only 37% of the workforce (SETA, 2003). It is further identified that claims particularly occur in organisations employing between 50 and 249 employees (Hayward et al. 2004; Gibbons, 2007:16) where, it is argued, well communicated processes for conflict resolution are required but there is commonly a lack of sufficient internal specialist HR expertise (Harris, 2002a).

Prior to the government introducing new statutory disputes procedures in October 2004 as part of its 2002 Employment Act, the then Department of Trade and Industry (DTI) estimated that procedures for handling workplace issues relating to discipline or grievances were inadequate or lacking in some 800,000 small businesses. It was concluded that this was an important factor in the greater propensity for smaller businesses to both experience and lose employment tribunal claims. To address this Gerry Sutcliffe, the employment minister at the time, saw the new procedures as being particularly designed to address the needs of small firms and their employees although it was also intended that these statutory procedures would provide minimum standards for larger firms to improve upon (Parker and Arrowsmith, 2004).

The 2004 regulations introduced a statutory three-stage procedure which required a written statement setting out the alleged issue, a meeting between the parties to discuss the matter at which the employee had the right to be accompanied and the opportunity for an appeal. A principle aim of the new procedures was to encourage employers and employees to engage earlier workplace dispute resolution but, from the outset, they attracted criticism. It was predicted that the regulations would, in practice,

lead to the increased complexity, greater formality, legalism and costs arising from the involvement of lawyers at an early stage (Hepple and Morris, 2004).

Following the introduction of the statutory procedures, concerns grew that dispute resolution processes had indeed become overly complex and were costing all the parties too much in terms of both money and time with a disproportionate impact on smaller businesses. This led the government to have an independent review undertaken by Michael Gibbons of the UK's dispute resolution arrangements which was completed in 2007. The Gibbons review concluded that whilst the statutory dispute procedures had brought more clarity about the steps to follow, their application had resulted in 'unintended negative consequences which outweighed their benefits' (Gibbons, 2007: 8). A frequent complaint from employers concerned the cost of the dispute resolution processes to businesses with the average tribunal case estimated as costing an employer £9,000 to defend and taking up some 9.85 days of the business's time (Gibbons, 2007:4). As an employer's key means of defence against legal claims was procedural compliance, Gibbons observed that the regulations had led to greater formalisation in dealing with individual disputes at work that could have been resolved informally.

Furthermore, for small business employers putting things in writing was often 'counter-cultural' and could 'actually exacerbate a problem rather than to help to solve it' with the regulations leading to a focus on the application of the procedures rather than the merits of a case. The emphasis on formal process created an adversarial climate and encouraged a litigious approach to conflict resolution which had become an impediment to the early resolution of individual employment disputes and the

consideration of outcomes not provided by the tribunal system, such 'as an apology or changes in behaviour' (2007:9).

Gibbons recommended the replacement of the statutory procedures with 'clear, simple, non-prescriptive guidelines on grievances, discipline and dismissal in the workplace' (10) and increased support for promoting early alternative disputes resolution (ADR) in the workplace. His report recommended that the government should offer a free (publicly funded) early dispute resolution service including, where appropriate, mediation. It was suggested that extending Acas's activities might be the simplest means of supporting early work place resolution; a recommendation that led to ACAS funding the study whose findings reported in this paper.

Dispute resolution in SMES

Employment relations in small businesses have long been associated with informality with 'little in the way of control systems' (Wilkinson;1999:209). The same analysis of a lack of formal procedures for handling workplace disciplinary issues and grievances informed the introduction of the statutory regulations. But the findings from the 2004 Workplace Employment Relations Survey (WERS) presented a different picture of formal procedures being widespread (Kersley et al. 2006; 215) across all sizes of businesses. Forth et al.'s (2006; 94) more detailed analysis of the WERS data relating to small and medium sized enterprises revealed that whilst workplaces of small firms continued to be less likely to have formal grievance and disciplinary procedures than large firms, they 'commonly had procedures for resolving individual disputes'. A reported 63 per cent of small firms had formal grievance procedures, rising to 87 per cent of medium sized firms with up to 250 employees and to 99 per cent of large

firms. The incidence of formal disciplinary procedures followed a similar pattern with figures of 69 per cent in the smallest firms, 92 per cent in medium sized firms and 99 percent of large firms – the overall figure for the adoption of grievance and disciplinary procedures across all SMEs being 73%.

Even in the smallest firms the formal procedures for resolving individual disputes followed at least some of the steps laid down in the statutory procedures although few followed all of them. Whilst this may be construed as evidence of the impact of the 2004 regulations in encouraging the adoption of formal procedures in smaller businesses for handling individual disputes, it should be noted that the data for WERS 2004 was collected prior to the introduction of the statutory procedures. A more likely explanation is the one offered by Hepple and Morris (2002) that the increase in formal procedures has been a response to the growth in litigation due to the increase in statutory rights particularly in smaller firms where they were lacking.

In terms of the conduct of employment relations, the Bolton Committee in 1971 characterised small firms as attaining relatively harmonious relations because they were small and non bureaucratic leading to employee relations being managed informally and flexibly. By the late 1980s Rainnie (1989) provided a very different interpretation of employee relations in small firms characterised by poor working conditions and dictatorial management. The argument was that the lack of formal processes to provide standards and consistency in managing the employment relationship contributed to this 'bleak house scenario'. Forth et al. (2006:2) concluded that an informal approach to employment relations still characterises much of the SME sector but the impact of this preference for informality continues to be

interpreted in different ways. Whilst the Bolton Committee equated it with workplace harmony, other research studies (Earnshaw et al. 2000; Atkinson and Curtis 2004) suggest it can be a source of tension and disruption in employment relations. As Cassell et al. (2002; 674) observe these different interpretations demonstrate the difficulty of generalising about employment practices across the rich diversity of small firms and reinforce the importance of taking into account the impact of the relationships smaller enterprises have with larger organisations. This point was illustrated in our study by the reported difficulties in handling disputes in small voluntary sector organisations by employers who applied complex formal procedures frequently based on those adopted in the large public sector organisations they worked with.

Ram et al. (2001:846) define informality in employment relations as ‘a process of workforce engagement, collective and/or individual, based on mainly unwritten customs and tacit understandings that arise out of the interaction of the parties’. This interpretation views the degree of informality as both dynamic and context specific. It is argued that when the advantages of formalisation are perceived to be greater than those of informality the balance will swing in favour of increased proceduralisation (Edwards et al. 2004; Harris, 2002a) as a defence against costly litigation. But as Earnshaw et al. (1998; 2000) found in their DTI commissioned research, while small firms adopted formal procedures as an insurance against employment tribunal claims, this strategy failed when SME employers didn’t follow their own procedures laying themselves open to claims of unfair treatment through an inconsistency of approach. A situation that was exacerbated by a lack of internal HR expertise and training for line managers in handling disciplinary issues. In most firms it was observed managers

preferred to have a 'quiet word' with the employee in the first instance but, without due expertise, this could confuse the issue of when a first warning had been given. Once the shift from the informal to formal procedure had taken place, it was seen as an indication that a decision had been made to dismiss. Similarly our study revealed a view among employers that once a formal process had begun in a disciplinary issue, it was commonly the first step in exiting that employee from the organisation. This is consistent with the Marlow and Patton's (2002) finding that individuals who don't fit into the close working relationships which characterise the small firm working environment are likely to be removed in the interest of maintaining the social cohesion of the work group.

Employment relationships are increasingly shaped by the potential for litigation threatening the mutual benefits associated with more informal approaches to employee relations (Harris, 2002b). This has a particular relevance for SME managers who work in close proximity with the workers they supervise and will routinely face the challenge of maintaining control at the same time as encouraging productive co-operation. As Marlowe and Patten (2002 : 537) point out their findings 'support the notion of informality regarding the employment relationship but suggest a rather more complex juggling act by owners to retain ownership authority "whilst manufacturing consent" by adopting the role of co-worker.' Certainly the majority of the small firm employers participating in our study were aware of the importance of clear control systems but also of maintaining harmonious employment relationships in the interests of the business. What the most recent WERS findings reveal is that, in general, SME employers are no worse at individual dispute handling than their counterparts in larger companies. Indeed small firms were found to have lower rates of absenteeism and

retention and their employees, on average, report being more satisfied with some aspects of the way they were treated by managers than those in larger firms (Forth et al., 2006).

Approach and methods

To develop a greater understanding of how small business employers handle individual disputes relating to discipline or grievances at work favoured the adoption of a qualitative case study approach (Holliday 1995). The research had a specific brief to explore;

- 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 to be their needs in handling dispute resolution and the forms of additional support services they would prefer and would be most likely to use to assist workplace dispute resolution.

Given the focus of the research and its limited time scale, there was no opportunity to explore employees' views or those of trade unions. The case studies were selected from small private sector firms with 25 to 100 employees, operating in a range of industries. The choice of the size of the companies was shaped by trying to explore approaches to conflict resolution in the type of smaller businesses at the heart of the public policy debate which led to the 2004 statutory procedures. The six case studies companies represented both manufacturing and the service sector and were involved

in waste management, food processing, printing, marketing communications, shop-fitting and environmental consultancy. All the businesses were well established and had been trading for at least 10 years and in three instances for 25 years or more. Whilst the largest permanent work force was just over 100 employees, some of the case study firms also made use of temporary staff (normally employed through agencies), sub contractors or freelance consultants. In one firm, Shopfitters Ltd., the sub contract labour force could be as large as 150, doubling the size of the permanent workforce. Similarly the workforce at Food Processing Co 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 an internal HR specialist. In some sectors employers had access to or were members of an employers association for advice and support but all of them relied on external sources for advice. The point at which this was sought, from whom and whether or not this was paid varied. Details about each organisation, including the composition of the workforce, are summarised in Table 1. The case study companies have been anonymised as agreed with the participants.

Semi-structured interviews were conducted with owners and managers in the six firms during the last three months of 2007. In addition, four focus groups were conducted to gain views from a wider sample of small business employers and other stakeholders working with SMEs. The semi-structured interviews at each firm took place with the owner or a senior manager; the manager with responsibility for HR matters; and a line manager. In practice, in a couple of the smaller firms, there doubling-up in manager job roles so that, for example, a company director was the line manager. In these case

studies there were two interviews rather than three. A common interview schedule was used and the interviews, each lasting around an hour, were tape recorded.

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 again asked if they were willing for their organisation to be identified but where anonymity was requested the wishes have obviously been respected. When organisations were willing to participate but a representative was unable to attend on the date set for the focus group, where possible, interviews were conducted with these individuals by telephone or at the organisation's premises.

Table 1: Profile of case study organisations

Organisation & Industry	Characteristics	Ownership & Structure	Workforce size	(Main) types of employees	Labour market
Environmental Consultants Professional services	Niche market player Business fluctuates Clients mainly through recommendations or repeat business. Turnover £3m pa	Ltd.Co. Senior mgt team of 3 New line mgt structure	47	Majority professionals (graduates) e.g. landscape architects, ecologists. Small support staff Permanent	Shortage of some professional skills Turnover low but increasing
Shopfitters Ltd Manufacturing and retail	Growing steadily. Competitive advantage is speed and reliability Seasonal work-business mainly through recommendations Turnover £22.5m pa	Ltd. Co. Owner Manager 3 Mgt levels. Lean in main support areas	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.
Marketing Services Co professional services	Growing. £1.5 m turnover. Public & private sector clients Mostly retained business	Ltd. Co. 6 Board members	25	Professionals, mostly graduates & female Freelances for project work	Recent increase in labour turnover but comparable with the industry
Waste Management Co Waste disposal and recycling	Formed by management buy out 3 yrs ago Growing steadily	Ltd. Co. Owner Manager MD, Ops Mgr, Co. Director (wife)	40 + agency (10)	Drivers & unskilled yard staff	Buoyant labour market especially for drivers
Stationery Manufacturer Co Manufacturing	Highly competitive sector. Emphasis on cost reduction – overcapacity in industry Focus on specialist products	Ltd. Co. Managing Director 3 person senior mgt team.	100	Majority shop floor mfg, plus support staff & designers. Use placement students	Difficult to recruit graphic designers & management skills Retention good
Food Processing Co Manufacturing	Growing Supplies Seasonal business fresh food prep to food mfg.	Ltd. Co. 2 Managing Partners 16 managers with 3 mgt levels	70	Low skilled, manual workforce-. Used migrant agency workers	Turnover low for the industry (10 -15%).

Findings

All the case study organisations worked in competitive and, in several instances, highly volatile markets. A tight labour market across a range of skilled and unskilled jobs at the time of the study was reported as impacting on the level of formal grievances. In areas where skills were in short supply, for example skilled trades or drivers, our employers reported employees ‘voting with their feet’ by obtaining alternative employment rather than pursuing a work problem through a formal grievance. It also meant employers had to think twice before dispensing with the services of an employee it could prove difficult to replace. Nonetheless, as expected, there were differences in the extent of workplace conflict and how these issues were resolved by our case study companies and focus group owner/managers. Whilst these were influenced by the sector, organisational history, owner manager profile and the nature of the workforce, there was one factor the study’s participants shared; the prevailing legal context.

With the exception of one employer who routinely risked possible litigation by short circuiting procedures on the grounds of business expediency, the other case study employers reported that the potential costs to the business arising from employment tribunal claims had led to greater formalisation in their handling of individual grievances and disciplinary issues. The approach taken to resolving individual conflicts were found to be predominantly influenced by a concern to minimise the risk of litigation but these also reflected the extent of the owner/manager’s interest and expertise in people management, management and supervisory capability, demonstrating fairness through consistency of treatment as well as the nature and source of any specialist advice. These factors have been used to organise the

discussion of the research findings although it is recognised that these themes are interrelated and overlapping.

Concerns about litigation

The actual experiences of employment tribunal claims varied across the case studies and SME employers in the focus groups. Although only two of the case study owner/managers had experienced employment tribunal claims in the past two years, others recalled claims under previous managements. For example, in the Waste Management Co. a series of costly claims against the business had stemmed from inadequate procedures. Such experiences served as a catalyst for amending HR procedures. Indeed, four reported changing their HR practices and developing their formal procedures as a result of past tribunal claims.

This was considered to be the most effective means of responding to a legal environment where focus group participants and the case study interviewees felt the balance in employment law had become too 'pro employee' although as previous studies have revealed there was rarely any principled objection to individual employment rights (Blackburn and Hart, 2002 ; Harris and Foster, 2005). 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)

There was widespread criticism of the complexity of employment legislation, which was described as a ‘minefield’ for smaller businesses. Those employers who had faced ET claims had clearly found the experience of defending their decision-making at a Tribunal hearing an uncomfortable one

...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).

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 was more vulnerable and more likely to lose than a larger organisation.

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 stage in the process even though that takes up a lot of time.

(Owner/Manager, Waste Management)

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. A director at Marketing Services 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)

Similarly 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. Despite an acknowledgment that employment regulation could have a positive impact on employee relations, the general consensus was the adverse effects of regulation outweighed the benefits. Increased employment rights and litigation had placed pressure on SMES to resort to formal processes more

quickly which could exacerbate conflict situations and erode the prospect of resolving an issue. As the owner of the stationery manufacturing company explained:

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 ...

Although moving into formal procedure was seen as the wisest approach in a climate viewed as dominated by individual employment rights, the majority of our case study owner/ managers and focus group participants felt that the 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.

What emerged was a preference for informality but practices that reflected a rationale that formal processes should be adhered to as the 'safest thing to do' on the grounds that these provided 'legal protection for employers' (Antcliff and Saundry, 2009: 115). This was also the justification moving to formal process without delay if it was felt that an issue could not be resolved informally.

Management capability

Another explanation for the practice of resorting to formal procedures at an early stage in individual disputes was provided by an HR Manager from the British Glass Confederation which provides HR services to both large and small employers in the industry. 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 demanding as well as less risky. As she pointed out:

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.

Owners and managers favoured devolving initial dispute handling as far down the organisation as possible 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, our small business employers were highly reliant on the capabilities of their first line managers (Hutchinson and Purcell, 2003) particularly as it was usual for a senior manager or a director to keep their distance from an issue so that they could deal with the final stages of the disciplinary or grievance procedure or an appeal. The approach described by this director 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 (delegation) of initial disputes handling, however, was the practice described at two of the case study companies of a manager with designated 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 support the early resolution of employee grievances or concerns.

As well as providing scope for an internal appeal process, some owners saw clear advantages in getting involved only 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 effective dispute resolution as explained by this owner.

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)

There was a general feeling that managers and most particularly first line supervisors would benefit from developing the skills of conflict resolution but none reported having received any such training. A number of managers had attended half day courses on employment law but the emphasis had been on the importance of complying with procedures rather than on conflict resolution. It was identified that what was needed were skills to support the application of any procedures, for example;

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 Co– focus group)

and

Its not just advice about process, we know that's a minefield, what's needed is more about solving real problems so we don't get in the minefield in the first place.

Coach Tour Co – focus group)

A consistency of approach

An emphasis on process rather than the rights or wrongs of a particular case had led to managers placing the emphasis on 'sameness of treatment' as a simpler, more foolproof approach. The rationale being that this helped to promote neutrality as a principle of fair treatment (Fredman, 2001) in dealing with disciplinary and grievance issues and reduced the need to apply discretionary judgement which was more open to challenge. The approach taken by this production manager in a food manufacturing process illustrated the perceived best way of handling conflict by managers in front line roles:

I keep strictly to the rules, make sure no one is treated any differently which can be a bit harsh at times but means no one can claim I have favourites.

Production Manager, Food Processing Co.

The confidence to tailor the approach to handling conflict to the needs of the situation appeared to directly reflect the extent to which a manager were in their comfort zone in dealing with HR issues. Some felt these did not fall within their area of expertise and that the adherence to formal procedures at all times was their best protection against making a mistake. The prospect of their individual judgement being closely scrutinised can be a daunting prospect for many managers, especially the less experienced (Sheppard *et al.*, 1994) who are also less likely to exercise discretion in decision making to accommodate individual circumstances. In contrast, where owners or their managers had wider experience or a particular interest in the people side of the business there was a greater propensity to exercise discretionary judgement

(Boxall and Purcell, 2008) in the application of the procedures. An example of this was provided by one managing partner who had significant large company HR experience and upheld an employee's appeal against dismissal for intimidating behaviours in a dispute between employees of different ethnicity. He explained:

The investigation showed things were not clear cut in terms of who was responsible so I decided to give the individual the benefit of the doubt. I had to square it with the line manager who had followed the rules to the letter but our approach has paid off with the workforce. They know we will do everything we can to act fairly to everyone the appeal is not just a stage in the dismissal process.

Workforce characteristics such as a high level of workers from ethnic minorities have been identified as more likely to see higher levels of conflicts relation to disciplinary issues (Knight and Latrelle, 2000) but as only two of our employers in our study reported a reliance on migrant workers at peak times so it was not possible to explore this dimension further.

Some employers recognised that using the procedures as a means of ensuring consistency did not always deliver greater fairness and saw that the process itself could become the focus of the dispute rather than resolving the problem itself in the interests of the business. This was commonly reported in handling cases of employee attendance or sickness which presented particular problems for smaller employers with less resources to cover extended or persistent absences from work but who received professional to wait for an employee to get in touch with them and not to act on the assumption that they had left. Approaches to handling issues could themselves

become the source of a grievance to the concern of employers as illustrated by this senior manager's experience who saw the growth in formal procedures as leading to greater adversarialism between employers and employees in the workplace.

We had a problem with an employee's attendance and our office manager was dealing with this through our formal procedure when the individual countered this with a formal grievance against this manager that he was causing her to be ill with anxiety and depression. ... the management time this has taken up.

Coach Tour Co-focus group

The nature of specialist advice

In the absence of internal specialist HR expertise, all the owner/managers in the case study companies and the focus groups had found it necessary at some time to seek external advice on handling employment issues or specific disputes which could take the form of a fee for an advisory service from a consultancy company or a retainer to an HR consultant whose services could be drawn upon as and when required. The pursuit of advice was 'needs led' when a problem had presented itself which meant that the key consideration at the time was the avoidance of any potential legal claims stemming from how the issue was handled (Emmott and Harris, 2004). This led employers to seek to retain a source of advice they could turn to when required. For example, three of our case study companies paid an annual fee to an insurance provider through the industry trade association or an insurance provider offering specialist HR service. Most of the trade and employers association provided employment and legal advice through a range of channels and included the cost of legal representation in the event of a case proceeding to a hearing. Although broadly

satisfied with the services received, owners and managers identified that the nature of the advice encouraged the use of formal procedures and arguably worked against considering alternative approaches to workplace dispute resolution. Because of the insurance element of the cover, the support provided focused on procedures and ‘telling us how things have to be done’:

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 Co.

Our case study and focus group participants identified that could be potential conflict between the insurer’s interest in ensuring the company adhered to prescribed steps and the objective of early workplace resolution. It was understood that any deviation from the insurer’s advice could lead to the insurance cover becoming invalid and this could extend even to applying to another expert body (including Acas) for help in resolving a dispute. In short, our research participants raised two key issues in relation to the use of private sector HR insurance companies. Firstly, the employer’s flexibility of response could be reduced because the insurer’s principle aim was to ensure that the employer demonstrated procedural compliance in the handling of workplace disputes. Secondly, the advice focused on compliance with formal process rather than contributing to the wider development of ‘positive’ people management practices. It was acknowledged that this encouraged progressing disputes through

formal procedures and limited the examination of other possible outcomes such as those suggested by Gibbons , for example workplace mediation.

In this respect the advice provided by Acas was seen as likely to offer a wider perspective as it was not directly related to the provision of insurance cover but again the services employers were aware of ACAS offering (largely the help line) were seen as satisfactory as but that the advice provided took insufficient account of the small business context. The very impartiality of Acas was viewed as valuable in dispute resolution but this was also an issue for some employers, for example. one owner manager in the focus groups who had made a call made to the Acas help line observed:

Its was all very impartial and told me the law but to be honest I wanted to be told exactly what to do to make sure we kept out of trouble

This wasn't the only view. The owner/manager of Waste Management Co saw the advice from Acas as the most reliable source and, as such, a form of insurance if things went wrong provided it had been followed to the letter. Yet whilst the advice was '*clear, precise, if not always palatable*' it was seen as '*often unrealistic in terms of our industry needs*'.

What emerged was that owner/managers wanted support that was more tailored to the small business context and, in the absence of anything specifically focused on their needs, tended to pay for specialist advice when problems reached a stage that they felt out of their depth or wanted to be told how to avoid making a mistake. The emphasis

then become one of procedural compliance rather than looking at alternatives to resolve an issue which was reinforced by a widespread lack of knowledge about alternative dispute resolution (ADR) or the wider services that Acas could offer although paying for such support again proved to be a tension for employers. Whilst employers saw real benefits in the impartiality of Acas, they felt that if they had to pay for such services it changed what they then expected in terms of support as employers who were 'footing the bill'. There was widely held view that as government was responsible for the legal framework then it had a responsibility to support SMEs who lacked the necessary internal resources and expertise. As this case study owner/manager put it:

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.

Conclusion and policy implications

The findings from this study showed that, whilst the approach taken to dispute resolution differed among our owner/managers, their dominant concern was to protect their businesses against potential, costly litigation through the application of formal procedures in as consistent a manner as possible at an early stage if a difference could not be resolved. To conclude that the increasing use of formal processes was driven by the 2004 statutory regulations would, however, be misleading. Only three of our case study employers were really conversant with the requirements of the now repealed regulations. Interestingly these were also the employers who had insurance based HR advice and were particularly aware of the pressures for compliance. Most

employers (including those in the focus groups) when asked about the statutory regulations referred to the different stages approach provided by the ACAS Code of Practice before the statutory procedures were implemented.

Other key influences on the adoption of formal process and their stage of application were past experiences of ET claims, the background and career experiences of owners and line managers, the product markets in which firms operated and the commercial 'strategy' they pursued as well as the level of interest in people issues at the head of the organisation. But regardless of sector or company history the main pressure to formalise early on appeared to be the widespread perception among the research participants that smaller businesses were more likely to lose if a claim proceeded to an employment tribunal and that this would damage the business both financially and in terms of its reputation. It was acknowledged that front line supervisory management played a critical role in the application of procedures (Purcell and Hutchinson, 2007) but recognised that any training they had received focused on legal compliance rather than the skills of dispute resolution. As a result the main means of overcoming and gaps in managerial capability in resolving conflicts was a policy of adhering to procedures as the safest way to avoid mistakes at an early stage. Just as in larger companies, a greater emphasis on devolving of HR responsibilities to front line managers was accompanied by an emphasis on adhering to company procedures which they are expected to apply in a highly uniform manner (McGovern *et al.*, 1997). The disadvantage of such an approach being that it can descend into managing by 'systems control' (Watson, 2002: 382) but this approach was not only upheld but reinforced by third party advice, particularly where there was an element of insurance attached to the provision of that advice.

Just as Gibbons (2007) observed, the combination of these different factors contributed to an approach to handling disputes increasingly preoccupied with ensuring procedural compliance rather than the merits of a case. Despite their reported propensity to formalise dispute resolution, our owner/managers' articulated a continuing preference for informal approaches as better suited to the workplace realities of small businesses. Whilst their response to increased employment rights and the potential for litigation had been to increasingly formalise their approaches to individual disputes, this frequently did not sit comfortably with what our owner/managers saw as the benefits of more informal, customised approaches to such issues. These continued to be viewed as more appropriate to the close working relationships, including their own proximity to the workforce that characterise labour management in small firms (Marlow and Patton, 2002). Whilst it is accepted that the findings from a small sample of small business employers of a similar size are limited in their wider application, the outcomes from this study provide further evidence that the approach to resolving workplace disputes has become overly dominated by concerns about penalty avoidance.

Despite the government's promotion of earlier workplace dispute resolution in its latest employment act which repealed the 2004 regulations, it is argued that the trend will be for continuing formalisation. Whilst in theory the repeal of the statutory disputes procedures provides greater opportunities for the development of more innovative solutions to the resolution of individual grievances and disciplinary problems which may be particularly relevant to smaller businesses, the findings from this study suggest that the balance in handling disputes will remain one of

compliance and penalty avoidance through formal processes until there are greater incentives to look at alternative more flexible approaches. For example, the business case for mediation is made largely on the grounds of the costs (Emmott, 2009) compared to costly litigation but this is less of an attractive option if it may still leave a small business employer lacking internal HR expertise open to the possibility of a tribunal claim.

A preoccupation with procedural compliance rather than exploring the mutual benefits for employers and employees as a result of increased statutory rights leads Edwards (2007) to argue for a new public policy initiative for workplace justice. Any such policy framework needs to place an equal value on approaches to dispute resolution which provide sensitive, flexible solutions which take account of the circumstances in a particular case as the legal requirement to demonstrate procedural justice. An approach to dispute resolution that it is argued would be better suited to the complexity of workplace relations in smaller businesses (Ram and Edwards, 2003) and would assist managers who face the contradictory pressures identified by Nadin and Cassell, 2009 maintaining control but also maintaining positive working relationships with employees they work closely with.

To support such a shift in emphasis requires a recognition that management behaviours in the application and interpretation of organisational rules are the most significant factor on individual perceptions of fair treatment (Hutchinson and Purcell, 2003). These would require the provision of resources to support training for line managers in smaller businesses to develop and hone their skills and knowledge of conflict resolution which could lead to a greater sensitivity to individual feelings of

fairness within the workplace. This would help to address the concern of employer identified in this study that increasing formalisation led to greater adversarialism in employee relations. For the majority of employees, evidence of an empathetic management responsive to their individual needs is more likely to result in a greater tolerance when mistakes do occur and reinforce a climate of workplace dispute resolution.

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