

# Research Paper

Public sector employers' attitudes to use of Acas collective conciliation

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## **Disclaimer**

This report contains the views of the authors and does not represent the views of the Acas Council. Any errors or inaccuracies are the responsibility of the authors alone.

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# 1 INTRODUCTION

In December 2010, Acas commissioned IES to undertake a small piece of research into the attitudes of public sector employers regarding Acas collective conciliation – Acas’ long-standing service for resolving collective employment disputes through negotiations between employee representatives (usually trade unions) and employers, facilitated by Acas conciliators. The research was based on in-depth qualitative interviews with Heads of Employment Relations or Human Resources across a range of public sector bodies.

The purpose of the study was to understand public sector managers’ experiences of, attitudes towards and approaches to collective dispute resolution, in the context of previous studies which have found that *negotiators* in the public sector are less likely to have used Acas collective conciliation than those in the private sector and those negotiating in both sectors: A comprehensive survey of trade union officers undertaken in 2010 for Acas by the Labour Research Department (LRD) found that officials negotiating in the private and mixed sectors were more likely to have brought in Acas than those negotiating in the public sector. They were also significantly more likely to have used them more than once in the past 10 years (Ruhemann, 2010: 25). Secondary analysis of the survey data by Heery and Nash similarly pointed to ‘fairly striking’ differences between the sectors; with non-use of Acas found to be appreciably more common among public sector negotiators (2011: pp.51-52). This study aims to find out whether this is also the case for public sector *managers* and, if so, to unpack the reasons why this might be so. All of this needs to be considered in the current industrial relations context of the public sector – where post-recessionary spending cuts were ongoing at the time of this research – and our existing knowledge of factors which predict different types of approach to dispute resolution, including the role of Acas.

This research builds on previous work into the subject of dispute resolution and collective conciliation. Although the numbers of collective employment disputes in Britain have declined significantly over the past 25 years (Dix et al, 2008), the aforementioned survey of trade union officers undertaken by the LRD has shown that most union negotiators still encounter collective disputes, particularly where they are dealing with a mixture of organisations in both the public and private sectors (Ruhemann 2010). This gives rise to questions about the nature of any differences in public and private sector disputes and how they are handled.

In the section below, we look at some of the findings of this and other research regarding the attitudes of *trade union officials* who do not use Acas, as this may help to inform our own employer-based research into the reasons why the use of Acas collective conciliation may be less widespread in the public than the private sector.

## 1.1 Reasons for (not) using Acas collective conciliation by trade union negotiators

There is a small body of literature examining why trade union officers may not use collective conciliation, which can provide a useful backdrop for our research, which focuses on public sector employers rather than union officials.

Following the LRD survey of trade union officers, two further complementary studies of non-use of collective conciliation were undertaken on behalf of Acas; a secondary review of the survey data (Heery and Nash, 2011) and a series of qualitative interviews with officials themselves (Bond, 2011). Neither produced evidence to suggest that there has been a decline in the likelihood of *officials* using Acas in negotiations and disputes – but based on these and other studies, the factors which predict low or non-use of Acas *by trade union negotiators* can be seen to cluster into the following key areas:

- Perceived need/severity of the dispute, sometimes linked to a desire for 'control' over the situation by the parties

Where the situation is not perceived to be particularly severe or where there is no impasse as yet, the parties may also not believe Acas can offer any novel solutions they have not considered themselves. Negotiators in the public sector have been found to be particularly likely to cite not reaching an impasse as a reason for not going to Acas (Ruhemann, 2010: 31). Other, qualitative, research has shown that stalled negotiations are not even necessarily seen to constitute an 'impasse'; as long as channels of communication with the employer remain open, the action of calling for or conducting a ballot can focus minds on both sides, providing sufficient extra pressure to allow the negotiations to resume or conclude. This outlook was most strongly in evidence among public sector interviewees (Bond, 2011).

An additional large scale survey of collective conciliation customers undertaken by Acas found that internal resolution was the most common reason for not involving Acas (Neathey and Dawe, 2008). There was some concern that Acas involvement might diminish the parties' control of the dispute and employers from both public and private sectors were sometimes reluctant to involve Acas, while union officials regarded industrial action ballots as a more effective means of resolving disputes than help from Acas. Furthermore, some officials have shown a lack of knowledge about Acas' neutrality as well as fears that the introduction of Acas would negatively affect the industrial relations 'dynamic' (Bond, 2011).

- Familiarity with and knowledge of conciliation and Acas services

The involvement of younger officials and relatively recent entrants to the occupation has also been linked to reduced likelihood of involving Acas in collective disputes. Secondary analysis of the LRD survey dataset similarly showed that graduates of the TUC's organising academy were less likely to use collective conciliation (Heery and Nash, 2011). Bond (2011) indicates that although some officials seem unclear as to what Acas collective conciliation entails, confusion appears mostly to be semantic. Podro and Suff (2009) also found that lack of experience in using the service would mean that individuals are less likely to be inclined to use it.

- The personal and organisational characteristics, negotiating strategies and positions adopted by the parties

Analysis by Heery and Nash (2011) found that larger unions are more likely to use Acas collective conciliation, as are those with tougher negotiating stances. This is consistent with the authors' other finding that officers from unions with a militant reputation are more likely to be Acas users, while officers from non-TUC affiliates – what might be regarded as more moderate unions – are less likely to do so (Heery and Nash, 2011).

Women responding to the LRD survey of officials were found to be more likely to use Acas in 'impasse' situations but less likely to have experienced these than men (Ruhemann 2010). Secondary analysis of the same data also showed that women officers were generally less likely to use collective conciliation (Heery and Nash, 2011). Officers responsible for multiple bargaining units and those with members in local government, retail and distribution and passenger transport were *more* likely to make use of Acas.

Elsewhere, qualitative research by Bond (2011) reveals trade union officials' strong belief that disputes tend to be 'straightforward' and hence that their personal competence ought to be sufficient to solve the dispute without external help. This is sometimes bound up in professional self-image, where officials perceive their own function as one of 'conciliation' and hence view the need for external help as a mark of failure. These perceptions appear unrelated to personal characteristics of the individual trade union officials.

One further factor to consider is the strong preference officials have been found to have for their own established method for resolving disputes – a so-called 'pressure-building' approach for 'ratcheting-up' the pressure on an employer via a combination of multi-stage negotiations and balloting. Third parties are rarely said to be included within this 'pressure-building' process, there being no obvious juncture at which to 'interrupt' the process to allow for conciliation. Moreover, the approach has been most strongly described by those officials who negotiate predominantly in the public sector (Bond, 2011).

It is likely that some of these factors are interlinked. For example, officers with a professional orientation that emphasised their own capacity to resolve disputes were found to be less likely to have resorted to collective conciliation (Heery and Nash, 2011) and this may be linked to perceptions of the severity of disputes.

Interestingly, factors which played no part in officials' decision-making process about Acas involvement were found to include financial cost, the absence of mechanisms to refer disputes to Acas, and geographical location of the trade union.

## **1.2 The rationale for this research**

The research briefly summarised above details some of the reasons *why trade union officials* – particularly those in the public sector – might be less likely to use collective conciliation. In order to reveal the whole picture regarding the use of collective conciliation in the public sector, however, it is vital to detail the views of public sector *employers*. Our research therefore focuses on the views of Heads of Employment Relations or Human Resources in the public sector.

For public sector managers, one might speculate that, while higher levels of experience and confidence in dispute resolution, and greater experience of and investment in internal mediation processes may in some cases reduce the need for external support, compared with their counterparts in the private sector, there are other factors which might nevertheless be assumed a priori to *increase* the potential role for Acas collective conciliation in public sector organisations.

Certainly, given the higher incidence of industrial disputes in the public sector, it is possible that the reliance of public sector organisations on internal dispute

resolution processes is misplaced<sup>1</sup>. Indeed, the organisational culture and industrial relations architecture of state sector organisations, employee and employer understanding of respective rights and responsibilities within that, and the financial climate of public sector organisations might all be thought to make industrial disputes *more likely, more complicated* and *more intractable* to resolve. These factors would therefore not explain why organisations choose not to use Acas, given the latter's track record of resolving high profile, volatile and acrimonious disputes. It is therefore valuable to explore these potential factors, as well as any other variations in philosophy about dispute resolution among a subsample of appropriate organisations.

Within the public sector, individual managers may not have the same level of power as do their equivalents within the private sector – particularly in a period where very significant reductions in central government funding are being imposed, and management discretion is restricted to deciding where and how the axe will fall. Bach (2011) notes that there have been significant reforms to public sector services over the past two decades, and that, in the current climate of austerity, this is likely to continue over the coming period due to budget cuts. In particular, he notes that “the promotion of a smaller more restricted role for the state, the expansion of a variety of providers, market-orientated funding and more user-centred services is posing an increasing threat to institutionalised employment relations in the sector”.

Furthermore, research by Corby (2003) has found that public sector disputes are more likely to receive media attention than private sector disputes – in part because the public sector is accountable to parliament and ultimately to the electorate in a way that the private sector is not. The implication of this is that managers in the public sector may be more likely to want to resolve disputes internally, being unwilling to involve an external party and potentially external notice and publicity. In addition, public sector disputes are proportionately more likely to have a national dimension, and, possibly most importantly, the government plays a role in public sector pay setting that it does not in the private sector (Corby, 2003). These factors may put the onus on public sector organisations to resolve disputes without attracting any media attention and to do so in a way which minimises any disruption to services where the outcome may be subject to scrutiny by a wider range of interested parties. Given the current economic context, where public sector organisations are likely to be making very difficult management decisions that are likely to create some tensions and challenges for collective employment relationships, it is worth considering how public sector organisations handle disputes and the potential implications for Acas services.

In the future, it is possible that use of methods which avoid industrial action may become more important. Acas (2011) notes that in relation to workplace disputes, the ability of organisations to build in transformative approaches to dispute resolution through greater use and awareness of mediation and other forms of conflict management may well begin to tip the balance in the way in which

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<sup>1</sup> See Dix et al. (2008) *Conflict at Work: The pattern of disputes in Britain since 1980*.

organisations address conflict. It may be that in ten years' time, alternative dispute resolution may become the default position for many workplaces.

### **1.3 Structure of the report**

Chapter 2 sets out the methodology we used in our research.

Chapter 3 examines the industrial relations context in the five areas of the public sector in which we carried out employer interviews: universities; further education colleges; health; central government; and local government. The aim of this is to provide context that may help to explain the differences in public and private sector attitudes to collective conciliation.

Chapter 4 looks at use of Acas collective conciliation by the Head of Employment Relations and Human Resources interviewed for this research and their reasons for non-use of the service.

Chapter 5 compares and contrasts public and private sector approaches to dispute resolution.

Chapter 6 offers some conclusions and policy recommendations.

## 2 METHODOLOGY

In order to obtain some background information about the sectors we wished to research, and to obtain contact names of appropriate staff for interview, we carried out a series of scoping interviews by telephone. Individuals from the following organisations were interviewed in January and February 2011:

- NHS Employers
- Local Government Employers
- Cabinet Office
- Universities and Colleges Employers Association (UCEA)
- National governors association
- Association of Colleges.

These interviewees were asked about:

- the type and nature of organisations that operated in their sector
- the main employment/industrial relations problems or issues that affected their sector, and whether employment/industrial relations issues were a prominent issue for the sector
- views on how collective disputes are resolved in their sector, for example, whether most were settled internally, whether there was an external sector-specific dispute resolution body or procedure, or whether there was a propensity to involve external parties; and
- views on whether there were any sector-specific ways of approaching collective dispute resolution and why this might be the case.

These interviewees also gave us the names of HR directors to approach for a telephone interview of between 30 minutes and one hour. Fifteen interviews were conducted between February and April 2011, of which 14 were by telephone and one was face-to-face. The sample consisted of:

- local government: 4 interviews
- central government: 3 interviews
- NHS: 3 interviews
- universities: 2 interviews
- colleges: 3 interviews

The telephone interviews covered the following topics:

- Information about the interviewee and their organisation, including their role, whether they were involved in negotiating with trade unions, and details of which trade unions are recognised for bargaining purposes.
- Information about industrial relations in the organisation. This was the most detailed section, and included information about the kinds of disputes that the organisation had faced over the previous five years, how prominent industrial relations issues were in the organisation in general, whether the economic downturn had made a difference, information about the mechanisms in place

for dealing with industrial relations disputes, whether there were any sector-specific or organisation-specific factors relating to dispute resolution approaches, how much autonomy the individual had in dealing with disputes, and how they saw the future.

- Information about their experiences and views of Acas, including whether they had used Acas to help resolve a dispute, either in their current organisation, or in a previous organisation, or, if they had not used Acas, the reasons why they had not, and whether they would consider working with Acas to help resolve a dispute in the future.
- Whether they had worked in the private sector prior to their current position. If so, whether they had noticed any differences between the public and private sectors in terms of the use of collective conciliation.

The discussion guide for these telephone interviews is contained in Appendix 1. The interviews were recorded and transcribed for ease of analysis.

## 3 INDUSTRIAL RELATIONS CONTEXT

### 3.1 Introduction

The aim of this chapter is to highlight the key differences between the public and private sector in terms of industrial relations culture and practice. This in turn may shed some light on the different attitudes towards dispute resolution that some public and private sector managers hold.

One of the key characteristics of the industrial relations context for the organisations included in the research was a high level of trade union density and the presence of strong trade unions. In the health sector in particular, there was usually a mix of different trade unions, which could complicate the handling of relationships, although the unions generally had long-established relationships with management.

All interviewees spoke of a generally difficult industrial relations context, with many themes running across all parts of the public sector, but with some variations. Most also spoke of forthcoming budget cuts as a potential source of conflict in the future. Other similarities included concerns about pay and job losses. The differences centred on sector-specific issues, such as the implementation of national-level pay reforms in the health sector, or civil service-specific issues in central government.

### 3.2 Collective disputes

Interviewees were asked about disputes over the past five years: the majority of them could describe in some detail a collective dispute that they had dealt with in recent months. Nevertheless, some characterised the level of industrial action in their organisation as being generally relatively low. Others pointed to the fact that levels of industrial action fluctuated, depending on factors such as the level of organisational change, the economic climate, or sometimes the personalities involved.

*In the previous downturn, there was a lot of industrial relations action and there was a particular stance adopted by the staff side in the organisation which was possibly verging on the militant side of things. That went away and so we've had some relatively quiet years.*

HR Director, NHS Trust

Some felt that a sectoral history of engagement with trade unions which were in a strong position - due to high membership levels - had led to a relatively low level of disputes.

*We have a low level of disputes. We have a low level of collective grievances, and we have a commensurate high level of engagement with the trade unions. Those two things I'm firmly convinced are related.*

HR Director, central government

In other cases, interviewees attributed the low level of collective disputes to the fact that they had made their procedures very robust and transparent. For example, one NHS Trust took the approach that, under their procedure, a written report of disputes always had to be submitted, and looked for early resolution of disputes overall.

### *3.2.1 Main topics of collective disputes*

Although pay tends to be agreed at a national level across many parts of the public sector, there is usually considerable scope concerning implementation of pay at the local level, in terms of the distribution of overall increases, and disputes can therefore arise over local implementation (or lack) of nationally-agreed increases. Other subjects for disputes which tended to be common across the areas of the public sector where our interviewees worked included:

- organisational change, including changes to terms and conditions
- equal pay, particularly cases resulting from rebanding following job evaluation
- working time and working practices
- pensions
- the relationship between managers and unions.

#### **Organisational change**

Organisational change was an issue that featured prominently in many disputes that had taken place in the organisations included in this research. In the central government sector, for example, recent disputes have centred on national issues such as the redundancy compensation scheme for civil servants and pensions, reorganisation/job losses, and general difficulties in the relationship between management and trade union representatives. These national-level issues are peculiar to central government, while intense engagement between management and union representatives is also more likely to take place in the public sector, where union membership levels are higher than in the private sector.

Although the private sector has also been enduring significant levels of enterprise restructuring in the past few years, public sector employees have historically enjoyed a greater sense of job security than their private sector counterparts, and so threats of job losses are perhaps likely to be more of a shock to public sector employees. In one central government organisation represented in the research there were plans to close more than thirty offices around the UK, which was, not surprisingly, said to be causing difficulties in the relationship between management and trade unions.

The university sector has to varying degrees also reduced its workforce over the past five years. This has been a source of unrest, with one HR Director pointing this out as an obvious source of tension among both departing and remaining staff. The sector has also been affected by the downturn by way of reduced pay increases, although interviewees tended to suggest that concerns about job security outweigh those about bald income levels.

Organisational change can be seen to have had a similarly detrimental impact on the industrial relations climates of many FE colleges in the past five years, often leading to redundancies and changes to terms and conditions, which in turn gives rise to unrest and potential for industrial action.

### **Pay and equal pay**

Many recent disputes in the organisations examined for this research have centred on pay increases, restructuring of pay systems and the equal pay issues that have emerged from this.

On the subject of pay increases, it was reported by local government interviewees that there is a general sense of disgruntlement among council workers that pay has not increased very much over the past couple of years. In one council, discussions between management and unions took place in 2008 over the fact that workers were not given a pay rise that year. However, no formal industrial action was taken as the union decided in the end to accept that there was no money *available* for a pay increase. In these types of cases, where an organisation's hands are tied in terms of budget spend, managers may well feel that there is no reason to involve an external party as the case is clear and there is nothing that can be negotiated on.

In the case of pay reorganisation, in the universities sector, for example, pay and job evaluation issues appear to be the cause of the majority of recent disputes, according to interviewees. One university HR Director explained how – as with one of the central government organisations represented in the sample – the organisation had been successful in bringing other, secondary, issues to the negotiating table in order to help resolve the dispute. In so doing the organisation successfully resolved a pay dispute that remained ongoing in other universities:

*What we have been able to do locally, is try to go for a sort of something-for-something negotiation rather than just agreeing open increases ... we managed to bring our negotiation to a close so long as the union did three things. One was to agree the timing, because we wanted the threat of action from support staff as well as academics to be off the table before Christmas. Also, our facilities arrangements were updated and signed as part of the deal. And we've been negotiating disciplinary and grievance procedures for four years, and so the final bit of that was part of that deal as well.*

HR Director, university

This is an example of how an HR professional, with good knowledge of their own room for manoeuvre in negotiations, and secure in the depth of their relationship with the trade union, would perhaps feel confident in being the best person to resolve a specific issue unaided.

Many of the disputes cited by interviewees in the local government sector also involved pay and grading and were in many cases extremely complex. In one organisation, for example, the implementation of a single status agreement has been the source of much of the industrial relations unrest in the organisation over the past decade. In order to implement the new agreement, job evaluations had to be carried out, following which individual employees were rebanded, reducing

the previous 45 grades to seven broader bands. Alongside this, a new appraisal process was put into place, in tandem with a new staff engagement plan. The organisation also overhauled the allowance and bonus systems, thereby provoking negative trade union reactions:

*We took the view that if we were going to do something as radical as introduce a new job evaluation scheme, we might as well go for broke and modernise all of our employee practices ... now, to the trade union that is regarded as us just having carte blanche to say, well, I'm sorry, you're not going to work here today, you're going to work down the other end of the city and like it. So, there is considerable opposition to that.*

HR Director, local government

Similarly, in the health sector, many of the disputes that interviewees described were around the implementation of the new national pay system - Agenda for Change - and particularly around the implementation of the new job evaluation system, which could be controversial, sometimes resulting in strike action. Implementation of national terms and conditions was another source of potential difficulty.

### **Working time and working practices**

Changes to working time and working practices had caused disputes in some organisations represented in the research, and this was often linked to organisational change. For example, some local government organisations had specific industrial relations issues connected to certain groups of workers, such as working practices for refuse collectors, which was an issue that at the time of the interview was not resolved.

In the health sector, one interviewee reported that their Trust has had issues around progression and seniority of certain groups of staff - the career progression scheme for nurses had not been aligned with national terms and conditions and the Trust was therefore trying to rectify the situation. The dispute had been 'parked' but was at the time of the research being discussed in joint staff consultative committees, including discussions about knock-on effects on the pay of other staff groups.

### **Pensions**

Disputes around pensions have recently been common in the universities and colleges sectors. One interviewee in the universities sector confirmed that there were a number of ongoing disputes relating to pensions, pay and redundancies for academic staff. These are issues that are common to other organisations in different parts of the public sector and are usually complex, have their own history, and are tied to national provisions and budgets. Employers may therefore feel that they, rather than an external party, would be better equipped to handle it:

*At the moment we've got two disputes going on. One about the proposed changes to the pension system, and the second about pay for last year, although we're now into negotiating pay for next year ... about five years*

*ago we were just coming to the end of re-negotiating all the local pay spines, that is all done locally although we're tied into a national agreement. And then we've had pay disputes in the meantime but also, increasingly over the last three or four years, we also, at any given moment, are usually in dispute about potential redundancies.*

HR Director, university

There have also been national disputes and strikes over pay and pensions in the college sector. Although these issues are not peculiar to the public sector, their complexity might be expected to be greater in the public sector, where managers will often be facing trade unions that are in a relatively strong position (less likely in the private sector). Thus, managers may well have developed their own strategies for dealing with these types of disputes.

### **Relationship between management and unions**

Issues connected to the relationship between management and unions were also a source of disputes in the organisations examined for this research. As unions are more likely to be present and have high membership levels in public sector organisations, it is to be expected that issues around the relationship between the two sides may arise at least occasionally.

In one central government organisation, the interviewee described a dispute which they believed derived from the underlying state of the relationship between management and trade unions rather than a single specific issue. Management were said to have thought that the union reps were not contributing enough to management/union meetings. With hindsight, it seemed that many of the union reps were in fact relatively new to their roles and therefore felt uncomfortable in raising issues with the organisation's management team:

*In the end, relations got that bad they just failed to communicate, so effectively any local office issue was just being escalated up to me nationally to deal with the national PCS guys. I wouldn't say it was one particular thing we dealt with, I just think it was an ongoing relationship issue that just got worse.*

HR Director, central government

This was resolved by working with Acas, who brought the two sides together by organising a day in which management and union representatives had a chance to set out their different perspectives. The Acas conciliators also held pre-meetings with representatives from both sides in order to gain an overview of the situation before bringing them together.

Similarly, another central government interviewee cited a series of local-level disputes that were said to be linked to difficulties in the relationship between the workforce, management and union representatives at their department:

*I just think they're issues around relationships. With [one regional] dispute it's more a couple of collective grievances that have gone in around local management decisions. In [another location] it was a complete relationship breakdown so that the local PCS branch and local management weren't*

*even meeting or talking to each other, so myself and the national union had to get involved. And in [another location] there is a dispute over facility time and the control that management have over PCS facility time.*

HR Director, central government

### **Specific characteristics of public sector disputes**

The examples above demonstrate some of the specific characteristics of public sector disputes that mark them out from disputes in the private sector and, on the face of it, might be expected to make them to be less easily resolvable through collective conciliation<sup>2</sup>. These characteristics include:

- complex links to national agreements and policies (for example in the health sector) that may not easily lend themselves to external input
- complex pay and grading systems that may have specific sensitivities in an organisation, and
- budget cuts and workforce reductions that are linked to civil service or public sector strategy and also may not be easily resolved by external parties.

Such a mixture of disputes characterised by organisational sensitivities and complexities may partly explain why public sector managers would rather broaden the matter out internally to try to achieve resolution (particularly given that dispute resolution procedures tend to be relatively well-developed in public sector organisations – see section 3.2.2 below).

#### *3.2.2 Dispute resolution procedures*

The presence of well-developed dispute procedures appears to have an influence on whether there is recourse by an organisation to an external party when disputes arise – that is. an organisation may be less likely to feel that it *needs* to use an external party if it can resolve disputes internally by referring them on within the organisation. In this section, we review the dispute resolution procedures of the public sector organisations represented in this study. It would appear that the majority of organisations do have procedures in place, with some making reference to the involvement of external parties – in some cases specifying Acas – at a certain stage in the procedure. In addition to the existence of formal procedures, many interviews also noted that informal actions around the dispute procedure – such as ad hoc meetings, and the general relationship between the parties – were just as important as having the formal procedures in place.

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<sup>2</sup>– In fact, customer research has shown that Acas conciliators' ability to comprehend the complexities of disputes is actually a feature of the service (Neathey and Dawe, 2008) and indeed where interviewees for this study had actually used Acas, they praised the conciliators' ability to grasp complex situations (see 4.1.2).

Most organisations represented in this study were said to have well-developed dispute resolution procedures, usually involving informal resolution steps, followed by formal steps, all within the organisation. This would typically comprise stages such as an attempt by both parties to resolve their differences by discussion and agreement, followed by escalation to a higher level within the organisation if no agreement can be reached.

The existence of relatively well-developed internal dispute resolution procedures generally seemed to be a factor in limiting use of external input to help resolving disputes. It also appeared to be a way of letting both parties to the dispute know where they stood.

*I think that's very helpful actually because you know formally when you're in a failure to agree, and it's almost as if you know what dance you're dancing really.*

HR Director, university

In some central government organisations, the parties were said to have occasionally been content to simply *register* a disagreement when an impasse on a specific issue has been reached, rather than try to *resolve* it.

*Ultimately, when a deadlock is reached, either the PCS can rest with it and just say, look, we'll just register our disagreement and dispute and leave it at that, they can either ask to challenge us legally if they feel there is a legal challenge, or they can take the industrial action route.*

*Because of the times we live in, and some of the things that there are in contemplation, are things that no union could agree to. So therefore they're going to not agree and you'll know as well as I do, there are certain degrees of not agreeing, which are sulking through to vehement opposition.*

HR Directors, central government

There were, however, issues around keeping procedures up-to-date. One university interviewee spoke of their dispute resolution procedure for academic staff being so outdated that it was difficult to follow (the organisation is currently in the process of updating it).

In addition to the procedures, however, it is clear that the relationship between the two parties is essential to the smooth handling of a dispute. One central government interviewee talked about the *informal* interactions between management and union reps, stressing that it was important to have informal contact – such as letting the other side have sight of an offer before it was made formally – so as not to push the other party into a difficult position.

*What you need to try and avoid in the negotiation process is having either side being pushed into a position where they are saying things publicly that might set it in concrete. The more that is said unofficially, not minuted in private rooms albeit in front of an audience of people, the more that is said in that context and not said publicly, the better, because public statements are very hard to withdraw.*

HR Director, central government

In addition to noting its importance, this interviewee also stressed that the informal part of the dispute resolution procedure could take a long time, involving a series of many meetings before anything was actually formally written down.

*We've found that frequent meetings are helpful ... It can take half a dozen meetings or more to get to a point where we can start writing down what the outline of an agreement might be.*

HR Director, central government

Another interviewee – from local government – stressed that it was often not helpful to adhere too closely to procedures, even though they may exist. Rather, it was said to be better to be guided more by 'feel' and 'instinct' as to how to deal with a specific situation:

*The nature of employee relations and industrial disputes are that things happen and they escalate very rapidly and frankly, being hog-tied by a procedure and trying to insist on its adherence is not, in my view, a particularly helpful way of doing things. I think you just have to get in there with them and get your hands dirty and sit down and talk about things and that's what we do. We pay perhaps a little bit of lip service to the procedures.*

HR Director, local government

Nevertheless, some dispute resolution procedures made reference to an (unspecified) external party upon agreement by both parties, and some made specific reference to Acas. For example, in one NHS Trust, the procedure makes reference to an 'appropriate' external individual or organisation. One college-based procedure and two university procedures did make specific reference to Acas.

One NHS Trust that currently had Acas written into its dispute resolution procedure was at the time of the research in the process of attempting to widen out this reference to include other potential dispute resolution bodies. The interviewee stressed that this was not because it did not want to work with Acas, but rather because it wanted to have as much flexibility in its procedures as possible. They did seem to have any particular alternatives in mind, but merely seemed to want to broaden the choice.

*There are other providers of [conciliation] and we don't want to restrict ourselves specifically to [Acas]. So, mediation, for example, could be offered by a whole range of people and there may be better deals available from them ... I think it's just trying to not wrap ourselves up too much in restrictive practices. Acas has the name, if you like, the brand, the trust of partners and they don't necessarily have the entire market, so we probably will pick up the phone and talk to Acas, but we don't want to only be able*

*to do that, especially if Acas say we're busy or we can't do it for three weeks or it will cost you £20,000<sup>3</sup> and there's something else we can do.*

HR Director, NHS Trust

Another HR Director in the NHS mentioned that in their previous role they had used the Partnership Institute<sup>4</sup> in the past in order to improve relationships between management and trade unions. The Partnership Institute ran a facilitated partnership exercise in the organisation. This interviewee, when asked why the Partnership Institute was preferred to Acas for this work, said that they had worked with the Partnership Institute before and that it had also been involved nationally with work at the Department of Health.

*There was a work stream that was being promoted at the time, around partnership working and I think they had had some input to that, so I thought, if we engage with them. There was a bidding process involved, in terms of accessing financial support for that piece of work. We put a bid into our SHA, and I just felt the Partnership Institute were probably going to be a more credible partner in that scenario, and more likely to be supported.*

HR Director, NHS Trust

### 3.3 Summary

This overview of the causes and handling of disputes in those public sector organisations represented in this study shows that there are certain characteristics that may be at least *more likely* to exist in the public, rather than the private sector. These will potentially have a bearing on employers' views as to whether or not to involve an external party in dispute resolution. The relationship between management and unions is likely to be more high-profile in the public sector, given the stronger presence of trade unions in the state sector. It follows that disputes are more likely, because trade unions will be inclined to fight for their members. It also means that managers will be more accustomed to dealing with trade unions and working with them productively. In some cases, the relationship may have been built up over the course of many years. It would therefore be understandable for a public sector manager to feel that he/she was the best person to deal with a dispute involving a trade union, rather than bringing in an outsider who is not party to that longstanding relationship.

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<sup>3</sup> In fact, this interviewee's contention that Acas might not conciliate for three weeks or else charge £20,000 belies his misunderstanding of the service. Acas collective conciliation is free-of-charge in all cases and all requests to conciliate are dealt with as a matter of priority.

<sup>4</sup> It should be emphasised that this was *not* a collective dispute. The Partnership Institute was launched by the TUC in 2001 and aims to provide impartial advice and guidance to unions and employers in order to improve industrial relations and develop progressive relationships. <http://www.partnership-institute.co.uk>.

Likewise, the complexity of pay and grading arrangements, their links to national conditions and often specific and complex organisational history again means that managers may feel that they are best placed to deal with any disputes arising from these issues.

Public sector organisations appear to have relatively well-developed and embedded dispute resolution procedures in place. These involve a number of formal steps – often accompanied by informal dialogue – and allow for a dispute to be referred on *within* the organisation. Although some of these procedures do include a reference to an external party, it nevertheless remains the case that, where an impasse is reached, if the majority of disputes can be resolved internally using these procedures, and if both parties are accustomed to following this path, then involvement of external third parties will be an exceptional, rather than a common, occurrence.

## 4 USING AND NOT USING ACAS COLLECTIVE CONCILIATION

### 4.1 Using Acas collective conciliation

This section looks at use of Acas collective conciliation, both in terms of *reasons for* and *experience of* using the service. Eight of this project's 15 interviewees confirmed having used the Acas collective conciliation service at some point across their career. Some reported that they had used conciliation in their current position whereas others had done so in a previous role. In terms of their *motivation* for using Acas, a number of interviewees turned to conciliation when they had reached a point of real impasse, and specifically in order to avoid industrial action or further industrial action. In some cases, as outlined in section three, reference to Acas was contained in internal dispute resolution procedures.

Individuals' *experiences* of using the service were largely positive, with interviewees appreciating qualities such as the ability of conciliators to bring the parties together and to show a new perspective on issues, their skill in gaining the trust of the parties, their knowledge and understanding of the issue at hand, and their neutrality.

Elsewhere, seven interviewees said that they had *not* made use of Acas collective conciliation, although one of these belonged to a regional employers' organisation and described themselves as being very familiar with Acas services. Another interviewee had never used *any* Acas service at all, with five others having used Acas for individual disputes, but not for collective disputes.

#### 4.1.1 Reasons for using Acas collective conciliation

A range of reasons were given for deciding to use Acas' collective conciliation service.

One interviewee in the health sector described a dispute that was said to have reached a point where the parties could no longer resolve it independently. There had already been industrial action and the organisation was keen to stop further escalation. This particular dispute involved an ambulance service and the NHS Trust was under significant political pressure to find a way to end the strike. The specific suggestion to use Acas came from the employer side once they sensed that the unity of the employees involved in the dispute was beginning to wane:

*The purpose of [using Acas] was to try and avert a further strike basically, and an escalation of the dispute.*

HR Director, NHS Trust

Similarly, an interviewee in the central government sector spoke of their prior experience of using Acas collective conciliation in a former role in the private finance sector, where the main motivation had again been to avoid impending industrial action.

A breakdown in relationships was cited by another central government interviewee as the reason for involving Acas in resolving the dispute. Here, there was no specific threat of industrial action, but it was felt that things could not carry on as they had been:

*The actual issue was just a breakdown of relationships on a number of issues where the office manager and the senior leadership team effectively stopped talking to the union because they felt that they weren't getting any responses back.*

HR Director, central government

Finally, one interviewee in the local government sector said that they had used Acas to help with a specific technical issue connected to equal pay claims, where they knew that independent advice was necessary.

#### *4.1.2 Experiences of Acas collective conciliation*

Those employers who *had* used Acas collective conciliation were generally positive about the experience - above all appreciating the fact that Acas was able to bring the parties together to talk intensively about an issue.

*I think what I would say is that the value of the exercise was that you're shut together for four or five days, talking about the issue.*

HR Director, NHS

These employers also described how they appreciated the fact that Acas could present a **new perspective** on an issue and **earn the trust** of both sides in a collective employment dispute. This was said to have helped parties to better understand each other and so move towards common ground.

*I think the positive thing would be that what they did bring was that they were new and they were able to put trust in the broker really, to be able to come to us and say what the unions really are thinking is X, Y and Z and the reverse. So it wasn't that there was a kind of magical ingredient or a solution that they came up with, it was really just helping both sides to understand each other. I think that was the main advantage. I don't think there was really anything negative. The whole thing took an awful long time and I think if you have externals involved, often that is the result, it does take quite a long time because there's a lot of shuttling back and forth and so on and perhaps a bit of posing on both sides, that happens. But ... if we had been in the same situation, would we have done what we did? I think yes.*

HR Director, university

Interviewees also described being impressed with the **knowledge and understanding** of Acas collective conciliators, even in quite complicated circumstances.

*I think, looking back, I was quite impressed with [the adviser's] level of knowledge and understanding, and how he handled the kind of conduct of the process. I thought that it was done very professionally. I didn't actually agree with his conclusions at the time, but that's a risk that you run.*

HR Director, NHS

*I got the level of service that I expected, and more to be honest, because there they were very, very quick to understand what the issues were and that it was a particular local issue. So what they did was they didn't send big national people in, they actually sent a local person from the area.*

HR Director, central government

The **neutrality** of Acas was also appreciated by those having previously used collective conciliation.

*I just think to bring somebody in that neither party knew very well, yes, it certainly brought some objectivity to the process so that... there were claims of favouritism and we just needed to bring somebody fresh into it so, yes, that really helped a lot.*

HR Director, local government

This opinion was echoed by a central government interviewee, who appreciated both the neutrality of the Acas collective conciliators and also the time they had taken to talk to all parties concerned in order to gain their trust:

*It was very good. They organised and instructed the whole day, they did speak to both sides and they were very, very good with the local management and the local PCS, and allowed I suppose myself and the national PCS team a bit more freedom to say, well, this is how we would expect it, and this is what we do in the centre and all this kind of thing.*

HR Director, central government

In another instance, management were said to have appreciated how Acas' (reputation for) neutrality had helped to give the trade union credibility in the eyes of the workforce. Acas' involvement was said to have protected the union against any misunderstanding by members that it supported managers at the expense of staff.

*I think where Acas can be really helpful is if you've got a big change programme, which we have, and you've got quite intractable people on both sides – in that particular case it was quite helpful because you had actually a very positive union who wanted to see the bigger picture, and knew what needed to happen, but they couldn't be seen to be in the pocket of management by members who maybe didn't have that bigger picture. And so actually Acas were able to just put a kind of rather dispassionate view, which actually supported the unions ... and that was what got the change through.*

HR Director, university

Elsewhere, despite the majority of very positive comments about using Acas, one interviewee emphasised that using a third party for dispute resolution ought to be seen as a last resort, to be called upon only once all other avenues had been explored and not succeeded.

*On balance, we've found them to be helpful. We wouldn't use them unless we absolutely had to, but for really intractable situations where we've got to the end of what we thought we could achieve locally, I think there's a value there.*

HR Director, university

The next section explores in more detail some of the reasons why public sector employers might be reluctant to make greater use of Acas collective conciliation.

## **4.2 Reasons for not using Acas collective conciliation**

Interviewees were questioned in detail about the reasons why they might *not* be willing to use Acas to resolve collective disputes within their organisation. A range of reasons were given, with many interviewees contrasting their situation and approach with those of their counterparts in the private sector. While only two interviewees had *never* used Acas in any capacity, just eight of the 15 had previously used Acas to help resolve collective employment disputes. Some explained that, in many previous collective disputes, the need to use Acas had simply not arisen, while for others, not using Acas emerged as a conscious decision. The main reasons given for not using collective conciliation were:

- sufficient confidence in existing internal processes
- fear of losing control
- a perception of third-party intervention as constituting a failure of internal processes and staff.

### *4.2.1 Well-developed relationships, internal procedures and processes*

Many interviewees reasoned that, because they had what were felt to be very good, tried and tested internal procedures to deal with collective employment disputes, it followed that they simply did not *need* to call in a third party in order to resolve disputes. This tended to be linked to the development of good relationships with the trade unions and a view from managers that, given the procedures and relationships in place, it should be possible, and indeed, it was important to be able to resolve problems internally.

Interviewees also made a case that good management-trade union relations would also mean that the parties were less likely to come to an impasse. This was a common theme across the different sectors.

*If we can't sit down with our people and come up with a good solution to something, then it feels wrong.*

*It would be a last resort for me because if I couldn't resolve a dispute on a local level, then it's a pretty poor show, as far as I'm concerned, and we're not working well enough with our trade unions.*

HR Directors, NHS

*I think with the support of unions we haven't needed to [use Acas], although we have had disputes, we've been able to find a way through. My*

*AD is a bit of a walking mediator really. He's absolutely brilliant at finding ways through and being quite tenacious about that and putting the time in, so I think that's why we haven't used it.*

HR Director, university

*If our relationship had got to a point where we had to go to a third party, I think it would have got to a serious turn of events.*

HR Director, central government

Another interviewee argued that, weighed against internal procedures and relationships, any externally-imposed settlement would by definition *not* be a good one since the parties would not 'own' the result in the same way. This line of reasoning might be thought to stem from a lack of understanding about Acas' role, which is focused on helping both parties to find a solution that is mutually acceptable.

*I don't think it's really possible to seek a fair resolution by moving outside of the organisation. I think the parties themselves have to develop the resolutions themselves. If they don't then there's always the issue about one side feeling they've been railroaded and not really accepting the resolution that's been put in place and I suspect they quickly come unravelling again. I think these things have to be internalised by both sides.*

HR Director, local government

Another interviewee from local government explained his non-use of Acas with reference to the fact that the organisation was so large that it had its own procedures to deal with disputes. Coupled with the fact that he had been in post for a long time and therefore had a lot of experience and knowledge about dispute handling, he reasoned that there was no need to involve a third party.

*I really don't want to sound über-negative about [Acas]. I really do think it's just with us a product of our size and our self-sufficiency and because probably I've been kicking around this sort of job too long, so just the ingrained culture of things. If we had a new director here, they may well take a different view.*

HR Director, local government

Some interviewees voiced their concerns that involving a third party could potentially hinder dispute resolution and also possibly prolong the whole process. It should be noted that this same theme also emerged from Bond's research (2011), which uncovered a fear among some trade union full-time officers (FTOs) that the process of collective conciliation would be time consuming and would not necessarily resolve the dispute. This was the view of one employer interviewee in the college sector:

*I think it's often seen as being a hindrance to the two sides ... these things tend to get quite protracted and then I think businesses tend to see it as being a hindrance to achieving what they need.*

HR Director, college

#### *4.2.2 Fear of losing control*

Fears were also voiced by interviewees about losing control of the outcome of a dispute as a result of bringing in a third party. These fears were expressed in a range of different ways, ranging from the (wrongly-held) perception that turning to Acas will mean becoming subject to a binding decision, to the concrete notion that managers need to retain control of the process, otherwise they would not be doing their jobs properly, given all the tools at their disposal, such as dispute resolution procedures.

Employer fears therefore tended to centre on the following:

- The fear that Acas may impose a solution, based possibly on a misunderstanding of conciliation as binding arbitration.

There did seem to be some degree of confusion among some of the interviewees on this point, with arbitration and conciliation being sometimes used almost interchangeably, or arbitration being referred to in the same breath as referral of disputes to an external party.

*The unions are more strongly in favour of things like, binding arbitration or at least of the ability of either party to refer the matter to [an external party].*

HR Director, central government

*The only time I think, in my professional career, where the organisation that I worked for went to binding arbitration or went to arbitration or went to Acas, was a broken down situation.*

HR Director, college

*At some point someone may say, hang on, this needs to go out to mediation or arbitration, and we might just say, well, we don't agree.*

HR Director, NHS Trust

Some interviewees pointed out that they themselves knew that arbitration was not the same thing as conciliation or mediation, but they believed that there was a confused view held by many in the public sector.

- A perception that resolving disputes is a core competence of a manager's job and this should therefore not be ceded to a third party.

This point, which is linked to the view that bringing in a third party would be seen as a failure (see below), mirrors many of the concerns expressed by trade union negotiators interviewed by Bond (2011), who found that officials were apprehensive that an employer might interpret any union request for Acas to

enter the dispute as a sign of weakness in the union's position. There was also a shared sense among FTOs that collective conciliation was unnecessary because it was the official's own job to resolve disputes. This had also emerged as a major finding from the LRD survey of trade union officers: around one-fifth of FTOs identified as low/non-users of collective conciliation gave as a reason for their non-use that '*I see my job/my union's job as to find solutions without using outsiders*' (Ruhemann, 2010).

The HR managers who were the focus for this study told us that bringing a third party into the dispute would be taken to signify that a manager was not doing his/her job properly:

*At some point someone may say, hang on, this needs to go out to mediation or arbitration, and we might just say, well, we don't agree. We certainly won't agree to anything binding, but we could try and see if we can get some discussion going.*

HR Director, NHS

*I don't have a problem with the image of Acas at all, but organisationally, the last thing you want to do is go to a third-party to resolve a collective dispute ... Because it's a third-party and you don't want a third-party to get involved. So it's nothing about Acas, you just don't want third parties involved in resolving issues ... it's a bit, who's managing the organisation? We are, the managers.*

HR Director, FE college

*I have the confidence to say okay, let's sit down and let's talk ... I have open and frank conversations and that's the way I operate, and therefore ... I can't ever think of a situation where I've thought gosh, I need a third party to support this case.*

HR Director, FE college

*[Using Acas] is not a no-no and I mean, frankly, we have considered it. I mean, when we were embroiled in the single status difficulties a couple of years ago, we did go up the road and have a word with the Acas guys to see if there was anything they could do to help, but, frankly, we didn't really see what they would bring to the party for us. We talked through our processes that we were doing and they seemed to think that what we were doing was consistent legally and all the rest of it and we really didn't see that they would add much value to it, pleasant chaps that they were.*

HR Director, local government

*I think our approach to it would be to only go outside for help if we absolutely felt there was no other alternative ... we think we should try, and we do, in practice, succeed in sorting the vast majority of problems out ourselves ... because the whole sense of solving the problem ourselves creates, if you get it right, trust and confidence in both sides, that they can work together to sort problems out really rather than the knee jerk*

*reaction that as soon as something becomes a problem, saying we've got to have help from outside. And also it's quicker and more straightforward.*

HR Director, university

*I think, generally here, we're pretty resistant to [involving external parties] because we'd like to think that we know how to deal with our own disputes internally.*

HR Director, local government

This last interviewee clarified that they could envisage potentially using Acas, but only as a last resort. However they would not consider using any third party other than Acas, with the latter being seen as a uniquely trusted organisation.

- The fear that bringing in an external party may influence the outcome in a way that is not desirable for the employer.

If a dispute is being handled in-house by management, the managers concerned will have a clear idea of the kind of outcome they want, whether they think it is achievable, and what their strategies might be to try to achieve these goals. Some managers fear that bringing in an external party could potentially take away some of this control. One interviewee told us that it was the unions who were usually keen to refer a dispute to a third party, and the HR function that often tended to resist. HR managers tended to try to resist this, feeling that it would result in a loss of control of both the process of dispute resolution and possibly the final outcome. There was no evidence that this was linked to fears of a binding outcome, but rather that managers feared that the process would, due to the involvement of an external party, take a turn that management cannot control, maybe ultimately leading to an outcome that is not what managers really want.

*You're always slightly reticent, because you feel you're going to lose control ultimately of the final outcome.*

HR Director, NHS

*Unions always want you to get a third-party involved. They always say, you should refer this to third-party and we need to keep that control. So we manage the organisation. We have to be able to say no.*

HR Director, FE college

#### *4.2.3 Third party intervention as a failure*

One theme that emerged fairly strongly from the interviews was a shared sense that involving an external third party – either Acas or another body – would signify that there had been a failure. A similar theme emerged from research on the behaviour of FTOs by Bond (2011), in which some interviewees feared that turning to a third party would be regarded as a failure to do their own job. There was a sense among some FTOs that if they were a good enough negotiator, they should have it within their grasp to resolve a situation in-house rather than have

to turn to external agencies. This same feeling was echoed by some of our employer interviewees.

*A lot of HR practitioners are actually not as confident and secure as they like to make out that they are, and I think for some of them there would be that perception that I've failed if I've had to bring somebody else in at the end.*

HR Director, college

Fear of being seen to have failed professionally was often cited as a major reason why an HR professional in the public sector would not want to turn to Acas or another external party. In the health sector, for example, HR professionals would tend to talk to other Trusts to make sure that they are not doing anything to breach sectoral norms for industrial relations practice.

*We'd rather resolve things absolutely internally and I think going externally at the moment will be seen to be a bit of a failure ... We'd rather go the extra mile internally.*

HR Director, NHS

Elsewhere, a central government HR Director explained that, in spite of the fact that Acas had already been successfully used in their organisation previously, they would nevertheless rather not call in a third party again because the feeling remained that not being able to resolve disputes internally constituted a failure.

*It worked; I would not wish to repeat it. The reason I wouldn't wish to repeat it is because I consider it to be a failure if you can't actually resolve your own issues, as distinct from, have I got a principle problem with ACAS, because no I haven't.*

HR Director, central government

Another interviewee in central government noted that it would be regarded as a failure on both the trade union and the management sides if a third party was required in order to resolve a dispute.

*I think going to a third party would probably be regarded on both sides as being a failing. We would be disappointed if we had to do it in that context.*

HR Director, central government

### **4.3 Summary**

This chapter has examined the reasons why some public sector managers use Acas collective conciliation, their experiences of the service, and the reasons why they at times decide not to use Acas or another third party. From the interviews carried out, it would appear that managers tend to turn to Acas when they feel that a dispute has reached an impasse, with a strong incentive being to avoid escalation or, if industrial action has already taken place, further industrial action. Some interviewees had referral to Acas written into their dispute resolution procedures.

Where managers had used Acas, either in their current position or in a previous role, the experience was overall very positive, with interviewees praising conciliators' skills, knowledge, impartiality and neutrality. The value of having a fresh view from an external party was also cited.

Among those who had not used Acas collective conciliation, a variety of reasons were given. Firstly, some felt that their internal procedures and processes for resolving collective disputes were robust enough to be able to resolve issues internally. This meant that it was less likely for the parties to come to an impasse (cited above as a major reason for recourse to Acas). This is linked to the development and maintenance of good management-union relationships, which tends to lead to the resolution of the majority of issues as the parties tend to know and trust each other.

There was a strong feeling that dispute resolution formed a core part of an HR manager's role and hence recourse to a third party would constitute a failure in some way, both in terms of how manager see themselves, but also in terms of how they will be perceived by others.

Fear of losing control of the process also emerged strongly from the data, with some interviewees seeming to indicate a degree of confusion between the nature of conciliation and arbitration. None of the interviewees said definitively that they thought that conciliation was binding in nature, but the way that they spoke of conciliation and arbitration, almost as parts of the same process, would suggest that there is a link between conciliation and a binding outcome in their minds.

Linked to this was a perception that bringing in a third party would somehow lead to the process moving out of the control of the manager, although not explicitly towards a binding outcome – the feeling was more that involving a third party would somehow move the process towards an outcome that the manager might not particularly welcome.

## **5 DIFFERENCES IN THE NATURE OF DISPUTE RESOLUTION BETWEEN THE PUBLIC AND PRIVATE SECTORS**

Many interviewees set in contrast the procedures, attitudes and dispute handling practices of the public and private sectors – often basing this on prior personal experience. The main issues here related to the extent of collaborative working in the public sector, the political climate in which public sector organisations operate, and the political context in which these organisations function.

### **5.1 Collaborative working**

One interviewee stated their belief that there is generally a greater emphasis on collaborative working in the public sector than in private industry, and hence the parties are more likely to want to resolve issues independently themselves, rather than relying on or feeling the need to bring in a third party (such as Acas). This sense of self-reliance may also be the result of greater trade union involvement and longer-standing relationships between managers and union representatives in the public sector.

*I think there's much more emphasis placed on collaborative working in the public sector, that we will resolve things internally, that there has been a desire to avoid any of that sort of confrontation, and if you don't do that in the NHS, there's conflict and confrontation, and we'd rather be collaborative to find a way forwards.*

HR Director, NHS

Linked to this, another NHS interviewee, who had themselves worked in both the public and private sectors, asserted that there is greater flexibility and possibly also pragmatism in the attitudes of public sector employers with regard to employment relations, meaning that they were potentially more likely than their private sector counterparts, who tend to have a more fixed position/outlook and hence are less able to settle disputes successfully without recourse to a third party.

*I just saw a degree of intransigence in the private sector in a way you didn't see in the public sector. You know, there was always a degree of flexibility with management in the public sector than you didn't have really with the private sector.*

HR Director, NHS

### **5.2 Presence of trade unions**

Trade unions are more likely to be present and well-represented in public sector organisations than in private companies. According to the most recent statistics

on trade union membership, relating to 2010<sup>5</sup>, trade union presence in workplaces was 85.7 per cent in the public sector, compared with 29.6 per cent in the private sector. Public sector employees accounted for 62.4 per cent of union members (although only 17.6 per cent of non members). This means that regular contact between managers and union representatives is more likely, making for relationships that can be well-embedded, which in turn may help to solve disputes as they arise. One interviewee reported that regular engagement with trade unions tended to mean that public sector organisations were more used to handling disputes in an orderly fashion.

*Well we tend to do things properly ... I'm not saying private sector doesn't do it properly, but it is different if you don't have unions around.*

HR Director, FE college

One interviewee in the central government sector contrasted the situation in the private and public sectors, noting that there was little need to turn to a third party when trade unions were present and the relationship is a well-established one. This is in contrast to the private sector, where the expertise and experience of dealing with trade unions may not be there:

*If you're a private company, if you have to get involved with trade unions, pretty much the trade union will encourage you to get a professional negotiator from outside. It's someone you don't know, and that requires you to get to trust that person before you can make progress. In the talks we have with the trade unions, we've already got that trust.*

HR Director, central government

Some interviewees also expressed a view that, in the public sector, the local branch of a trade union may come under a degree of political pressure from the union nationally. In some cases, it was reasoned, a branch might wish to settle a dispute locally but may also be under other pressures from their national organisation, which can complicate the process.

*We get these problems with the national overlay locally because you can see that there are people who want to say yes to you and then they can't because they're told they can't.*

HR Director, local government

On the other hand, one interviewee from the college sector said that in their organisation, the opposite situation occurred – with the local branch being more militant than the union was nationally, due to the views and attitudes of one individual at the local level.

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<sup>5</sup> Achur, J. (2011) *Trade union membership 2010*. BIS.  
<http://www.bis.gov.uk/assets/biscore/employment-matters/docs/t/11-p77-trade-union-membership-2010.pdf>

*The reason staff didn't accept [an offer] was because there was this very leftwing person ... because nationally [the union] wanted them to accept it. Then if they had accepted it, if we'd had a more reasonable local rep and they had accepted it, like the national office wanted them to, then it would have been fine. We'd have reached agreement*

HR Director, college

This type of situation is likely to be specific to the individuals involved and could occur equally in parts of the private sector where unions are very active. However, it is perhaps more likely that this situation would arise in the public sector, given the strength of trade unions, high membership levels and high engagement of some local activists. It may be that where there is a high degree of conflict between management and unions, there may be an opportunity for Acas to work with the parties to resolve impasse situations, if they could be persuaded to work with a third party.

### **5.3 Well-developed procedures**

Some interviewees who had previously worked in the private sector reported that private sector organisations tended in general to have much less 'elaborate' dispute resolution procedures which took less time to work through, but which were also said to have been less satisfactory – certainly from the employee's point of view, in that they contain fewer stages and may be perceived as less fair. As mentioned above, referral to Acas was written into the collective dispute resolution procedures of some of the organisations in this study. The interviewees who had worked in the private sector tended to say that there was generally no explicit reference to Acas in their dispute resolution procedures, although they would on occasion decide to work with Acas.

The fact that the procedures for dispute resolution will be exhausted more quickly and easily in the private sector is likely to mean that there would be greater need to use a third party in the private sector.

*As a private sector employer, they didn't really have very elaborate dispute resolution processes. I found there was like a one stage process. If you put in a dispute, it went to their Board and if it was chucked out, you had no right of appeal. That was it!*

HR Director, NHS

Another interviewee – also an NHS HR Director – attributed this lack of complex procedures in the private sector as being a reason why private sector organisations use Acas collective conciliation more often - that is, in order to publicly demonstrate that they are trying to resolve a dispute, despite not having well-developed procedures in place.

*At the end of the day I think the fact that they went to Acas probably went in their favour a little bit. I think that's what the private sector try to do really. They kind of used it as a means to say, look, we're even going to Acas!*

HR Director, NHS

Expanding on this point, one college HR Director interviewed made a direct comparison between the types of procedures they had personally encountered during previous spells of employment in the public *and* private sectors. They explained that, one of the reasons why procedures in the private sector tend to be less comprehensive stems from the fact that a 'time means money' attitude is more likely to prevail in the private sector. This in turn may lead private sector employers to contact external parties more readily, in order to resolve the dispute quickly – there being a perceived financial imperative to do so:

*In the private sector, it's much more that time is money and so if there's an interruption to service for some reason because of a collective dispute, then it has lots of pound signs attached to it, which isn't necessary the culture in the public sector.*

HR Director, college

This contrasts with the public view that involving a third party may slow things down, but this is likely to be linked to the procedural complexities involved in collective dispute resolution in the public sector.

Whether or not reduced funding as a result of government spending cuts forces public sector organisations to reconsider the complexity and duration of their dispute resolution procedures remains to be seen – but there is at least the possibility that these pressures may lead to a greater willingness within the public sector to involve external third parties.

#### **5.4 Greater exposure to political pressure**

Another view that was evident among interviewees – in keeping with the findings of Corby (2003) – was that public sector organisations are more exposed to political pressures than are their private sector counterparts, making it more difficult for them to take autonomous decisions or exercise complete control over management decisions. This was said to give rise to a reluctance within the public sector to introduce third parties to a dispute, there being a sense that an external actor – such as an Acas conciliator – will not appreciate the pressures and limitations of operating in that particular organisation which can colour decision-making.

*You've got to remember this is a politically directed organisation and so politicians will make an assessment of where it hits them in the ballot box, really and that will stimulate interest or lack of interest and when politicians get interested I get kicked and so do other chief officers. So, our job is to be a little aware and a little bit more politically savvy about things than maybe counterparts elsewhere in the private sector might have to be.*

HR Director, local government

The above-quoted interviewee felt that, given the politically charged climate in which the organisation operated, *he* would be in the best position to negotiate with trade union representatives. He could not really see how an external party could operate with the same degree of sensitivity.

*I know what turns my members on or turns them off and I know exactly what I can get away with and how far I can push them ... I know the parameters and a third party doesn't and it just feels like it would cause difficulty if we have someone who wasn't astute to the political perspectives of the council ... In the cut and thrust of a negotiation things will be said, expectations will be raised or unnecessarily squashed, which could have quite large political ramifications ... At the end of the day it's my head that's on the block, not the Acas guy, and I want to hang onto it.*

HR Director, local government

This concern was echoed by a central government HR Director, who felt that bringing a third party into a collective employment dispute would risk shifting the dispute into the public arena. It followed that, for political reasons, they preferred disputes to remain behind closed doors.

*The biggest difficulty that Acas has to overcome, even though the parties can sign in blood that it's behind closed doors, that no one will ever know, that it will not be a media issue etcetera, is that in this space we're surrounded by unions, by senior management, by politicians, all of whom may have an interest in matters becoming public that you would wish not to become public. There's a big risk in getting into a position where there might be even a moral pressure to do a particular thing.*

HR Director, central government

## 6 CONCLUSIONS AND POLICY IMPLICATIONS

### 6.1 Conclusions

This small-scale research exercise has yielded a number of insights into the collective dispute resolution practices that are in place in the public sector; its use of third parties in collective dispute resolution, experiences of working with Acas, and the reasons why public sector employers might choose not to involve Acas or another third party in the resolution of a collective employment dispute.

Many interviewees expressed concerns that public sector industrial relations would possibly deteriorate further in the coming months due to the lasting effects of the late-2000s global financial crisis, the UK recession of 2008/9 and subsequent public sector cuts ongoing at the time of the research. Pay, job security and pensions in particular were seen to have contributed to increased likelihood of employment disputes.

Where organisations *had* used Acas, the experience was mostly said to have been very positive, with interviewees praising the Acas conciliators' neutrality, skills and ability to grasp complex situations. Nevertheless, interviewees tended in the main to voice a general reluctance to use third parties to help solve collective employment disputes, with the following main reasons given:

- A belief that – particularly in comparison with the private sector – public sector organisations have sufficiently well-developed internal policies and procedures as to negate the *need* to call on the services of a third party. Related to this was a sense that procedures were such that public sector organisations were generally unlikely to come to an impasse situation in the first place.
- A sense that good working relationships with trade unions are a feature of the public sector, and hence a feeling that HR professionals would prefer to 'thrash out' a solution within the parameters of that good relationship rather than rely on an external third party.
- A fear that introducing a third party such as Acas into a collective employment dispute would result in a loss of the employer's control of the dispute process.
- A belief that disputes should be managed by the managers and trade union officials themselves – the line of reasoning here being that, if a third party was brought in, then they are not doing their own jobs properly.
- Fears that a third party would not be able to understand the specific political constraints that many public sector organisations are under; and a sense that the matter is therefore better resolved internally.
- Apprehension that bringing in a third party will be seen as a failure on the part of the HR function.
- Worries that the involvement of a third party may delay the dispute resolution process.
- Some fears – borne of possible confusion about the nature of conciliation – of a binding outcome or at least an outcome that is unwanted.

There were no patterns of differences between the various parts of the public sector represented in the sample, although managers in local government did tend to stress that their organisations operated in a sensitive political context,

meaning that they were reluctant to work with an external party which might not fully understand the local political context.

Acas was usually the preferred third party among those open to this kind of intervention, and where organisations did not use Acas collective conciliation, most said they would not involve any third party at all. One health sector interviewee reported that their organisation had involved The Partnership Institute in the past, to help with partnership working in order to improve the relationship between management and trade unions in the organisations.

Taking these conclusions into consideration in the light of recent research examining the reasons behind trade union officers' reluctance to use a third party to resolve collective disputes, it is clear that many of these concerns are common to *both parties* to the employment relationship.

## **6.2 Possible implications for Acas policy**

The views of the HR professionals interviewed during this research project can be seen to have some possible implications for Acas future policy in the area of public sector collective dispute resolution – mainly with regard to how the organisation presents and markets its services.

- Acas could emphasise the fact that 'no job is too small' – organisations can call upon Acas' services for small problems before these escalate into large disputes.
- Public sector organisations may be able to tolerate higher levels of industrial unrest than their private sector counterparts and seem more likely to be able to 'park' issues that they cannot agree on, sometimes enabling them to leave disputes unresolved. It may be useful for Acas to promote the benefits of early use of conciliation in terms of the time and money that this can save an organisation (something which is likely to become more important in the public sector in the context of budget cuts).
- Some effort to decouple organisational notions of success or failure of dispute resolution from the involvement of third parties may be helpful. This could build on making the aforesaid case for early intervention as a means of saving costs.
- It may be worth disseminating information about collective conciliation across the public sector, to dispel any myths that Acas involvement leads to the imposition of a binding solution.
- Given public sector employers' fears about losing control of the process and their preference for handling disputes internally, Acas might want to consider propagating the message that external input into a dispute supports rather than substitutes for managers' roles, and can help them to achieve a solution.
- Given the sensitivity around political decision-making in the public sector, Acas could consider how to support organisations to adopt measures to further ensure the confidentiality of disputes.
- As there seems to be a misconception among public sector employers that collective conciliation lengthens disputes, Acas might want to emphasise the message that this is not necessarily the case.

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## **8 APPENDIX 1: DISCUSSION GUIDE FOR PUBLIC SECTOR HR DIRECTORS**

Interviewer to give a brief outline of the project – IES is conducting research on behalf of Acas to try to understand the experiences, attitudes and approaches to collective dispute resolution in public sector bodies, with views and experiences of Acas collective conciliation as the focus point of the research. Collective conciliation is facilitated or assisted negotiation where Acas helps employers and employees (normally via trade unions) to try to reach mutually acceptable settlements of their collective disputes.

We are conducting a total of 15 interviews with heads of employment relations or heads of human resources in a range of public sector organisations. The purpose of this interview is to gather your thoughts and views both on collective dispute resolution quite broadly in your organisation and in your sector, and more specifically on Acas's collective conciliation service.

The interview will last for around one hour and will be recorded for ease of analysis. *Give assurances of anonymity and confidentiality. Organisations and individuals will not be named. If interviewee refuses to be recorded, take notes instead.*

Any questions?

### **About the interviewee and the organisation**

- Could you tell me a little about your organisation? This could include size, type of work undertaken, and profile of the workforce.
- Could you tell me about your role in the organisation, including whether you are involved in negotiating with trade unions?
- Which trade unions are recognised for collective bargaining purposes?

### **Industrial relations in the organisation**

- What kinds of collective disputes or grievances has your organisation faced over the past five years. Would you say that these are typical of the main employment/industrial relations problems or issues that cause/ have potential to cause conflict in your organisation? Has the economic downturn made any difference?
- Is there any overlap between individual and collective disputes? For example, do individual cases sometimes escalate into collective disputes, or do unions ever submit multiple ET cases on an issue that is really collective? Does this have any impact on the ways that disputes are resolved?
- How prominent would you say that employment/industrial relations issues are in your organisation? For example, would you say that you have a particularly high or a low level of industrial disputes/collective grievances?
- Could you tell me about the most recent/ a recent collective grievance/dispute faced by the organisation? What was it about? Which groups of employees were involved. What If any dispute procedures were followed? How (if at all) was it resolved? Who was involved?

- How typical is this example? *Interviewer to probe for whether the parties tend not to be able to agree on the facts, whether reach an impasse, whether the dispute ends in strike action.*
- What are the available mechanisms for resolving collective disputes in your organisation? For example, please describe any internal process or procedure, is there an external sector-specific mechanism, or is there the opportunity to involve other external parties? Is a reference to Acas written into your procedures? What typically happens in cases that reach an impasse? What about disputes that have not got this far?
- Are disputes relating to different kinds of issue (e.g. pay v redundancy v disputes arising from escalation of individuals grievances) typically resolved in different ways?
- Do you have any views on whether there are any organisation-specific cultural or attitudinal factors that may affect collective dispute resolution in your organisation (eg what are views re involving external organisations)?
- Are there any employment issues or difficulties that you expect to arise in the near future?
- How do you anticipate dealing with these issues?
- How much autonomy would you or anyone else in the organisation have in terms of the decision to bring a third party into a dispute?

### **Experiences and views of Acas**

- Have you ever used Acas to help solve a collective dispute in your organisation (or in your role in a previous organisation)?
  - If so, can you tell me about the experience – what was the issue and how did you work with Acas to resolve it? At what point was Acas brought in and what prompted the decision to involve Acas? Is there a reason why Acas was not involved earlier? How would you describe your experience of Acas in terms of both its positive and negative aspects?
  - If not, why have you not used Acas before? *Reasons could include the specific culture of the organisation, overall reluctance to use a third party, the existence of internal procedures, the perception of Acas as a last resort when things have broken down, a perception of Acas staff as civil servants, lack of experience in using the service, or lack of knowledge about the types of services offered by Acas.*
- Would you consider working with Acas in the future in resolving a collective dispute? If so, why would that be, and in relation to which types of issues? If not, why not, and what, if anything, would make you change your mind?

### **Final questions**

- Have you worked in the private sector before working in your current role? If so, do you think that there are any differences between the public and private sectors in terms of the use of collective conciliation?
- Is there anything else that you would like to add?

Thanks and close.



