

## Unit 5

### **Resolving disputes**

As the 'Overview' emphasises, although it may be anticipating the worst, differences are likely to arise at some point. It could be over the interpretation of the agreement or an issue such as confidentiality. Organisations, especially those where trade unions are recognised, may already have an all-purpose procedure for resolving disputes, which they would wish to extend to cover information and consultation. The discussion here assumes that no such procedure exists or that, where it does, management and unions wish to have a dedicated procedure for dealing with information and consultation issues.

### **Scope of procedure**

Given that it is difficult to anticipate the precise form of the problems that may arise, it makes sense for the scope of the procedure to be general in coverage. A simple formulation would be to say that the procedure covers 'any disagreement or dispute regarding the implementation or interpretation of the agreement'. If there is a consensus that the agreement is to be a living document to be revised in the light of experience, the wording could go further and say 'implementation, interpretation or modification'.

### **Steps in procedure**

It is also sensible to think in terms of combination of internal and external steps. Trying to resolve matters internally fits very much with the philosophy of working through problems together – going outside for help at the first sign of a problem is not going to help to build trust. Equally, however, it has to be recognised that it may not always be possible to reach agreement.

Having external steps in place in advance is therefore to be strongly recommended.

### *Internal*

In many larger organisations there is a growing recognition of the value of shifting the focus of thinking from dispute resolution to conflict management<sup>1</sup>. The former seeks an effective resolution to an immediate crisis. The latter embraces the wider strategic objectives of anticipating and dealing with issues that could lead to disputes, bearing in mind the uncertainties and incompleteness associated with the employment relationship. Specific activities include:

<sup>1</sup> For further details, see *Employment Relations Matters* Issue No 2 Winter 2004/5. 'Managing conflict at work – lessons from Acas' experience'. See also *Acas Policy Discussion Papers* No 1 January 2005. 'Making more of alternative dispute resolution'. Both can be downloaded from the 'Policy' section on [www.acas.org.uk](http://www.acas.org.uk).

- training managers and employee representatives to be more aware of how conflict can arise and how it can be handled
- taking advantage of the implementation of the Information and Consultation of Employees Regulations to develop more effective information and consultation processes
- promoting the more widespread use of joint working parties to handle sensitive management of change issues
- developing in-house mediation services that are capable of handling at least the first stage of individual and collective issues

It is against this background that it makes sense to think in terms of a small group of management and employee representatives trained in mediation, who might be given the responsibility for using their 'best endeavours' to resolve differences over the information and consultation agreement. Alternatively, the task could be given to individuals not directly involved in the immediate situation such as head quarters management and trade union officials.

### *External*

Supposing that it proves impossible to resolve the matter in-house. One approach is to agree the use of mutually agreed third parties in principle, leaving open the question of who is asked to fill the role, which would depend on circumstances. The other, and more efficient, approach is to specify the identity of the party in advance. Many general procedures for resolving disputes cite Acas, for example, as do some UK-based European Works

Council agreements. It will also be sensible to clarify the nature of the third party involvement. It could take the form of conciliation, in which the third party seeks to encourage the parties to find a settlement. Or it could go further to embrace mediation in which the third party is expected to make recommendations. Or it could even embrace binding arbitration, in which the third party is effectively asked to adjudicate between the positions of the parties.