

Research Paper

Trade union officers' preferences and attitudes towards dispute resolution

A qualitative follow-up study with non-users of Acas Collective Conciliation

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The views and opinions expressed in this report are the authors and may not represent the views of the Acas Council. Any mistakes are the author's own.

1. INTRODUCTION AND METHODOLOGY

1.1 Context

This paper reports on a qualitative research project conducted in February and March 2011 that set out to better understand the attitudes of certain trade union officials towards a specific service provided by Acas – that of collective conciliation.

Collective Conciliation

Collective conciliation refers to the process of resolving collective employment disputes through negotiations between employee representatives (usually trade unions) and employers, facilitated by Acas. Collective conciliation normally takes place when the relationship between the employer and the employee representatives has reached some sort of crisis point, be that a break down in communications or the imminent threat of industrial action. Either party in the dispute can request Acas involvement, or a joint approach to Acas may be made; Acas can also offer assistance on its own initiative on hearing of a dispute. Whichever way Acas is made aware of the collective dispute, collective conciliation can only proceed with the agreement of both parties. Conciliation differs markedly – both in content and level of usage – from arbitration and mediation, Acas' other collective dispute resolution services (*see box*).

Acas collective dispute resolution services

Conciliation A voluntary process in which parties retain the power of settlement. *Acas does 1000+ a year.*

Mediation Parties retain the power but ask a third party to make recommendations for a settlement which they agree in advance to consider. *Acas does 2/3 a year.*

Arbitration Parties agree to give up their power in advance and be bound by the decision of an independent arbitrator. *Acas does about 40 a year – though more requests which are settled in conciliation on terms of reference.*

Since the late-1970s, there has been an overall decline in the annual volume of collective conciliation cases. This decline is not so surprising when set against the backdrop of the changing political and economic environment of the 1980s and 1990s, which saw declines in unionisation, stoppages and other forms of industrial unrest. However, these declines have abated in recent years. A study of the patterns of disputes in Britain by Dix, Forth and Sisson shows that, following the substantial decline in strike action since the early 1980s, since 1994 the numbers of stoppages and working days lost have actually stabilised at what are historically low levels (Dix, Forth and Sisson, 2008: 8). Set against this stabilisation, the *overall* trend for the collective conciliation caseload has been one of decline: in 2010/11 there were a little over one thousand requests to conciliate, a modest increase on previous years but still a quarter lower than the c.1,300 annual requests regularly received in the 1990s.

There is a need to explain this disparity. Given that the decline of industrial action has settled, it may be that the continuing overall decline of the collective conciliation caseload in recent years is attributable to factors that are *within* Acas' control – such as the way it promotes or provides the service – rather than to external, societal factors. The need to understand the factors behind the non-use of collective conciliation is particularly important given the post-recessionary economic climate of 2011, with increasing concern about UK industrial relations in response to public spending cuts.

Labour Research Department survey of full-time officers

With this overarching context in mind, in 2009/10 Acas commissioned the Labour Research Department (LRD) to conduct an exploratory piece of research investigating the experiences of trade union full-time officers (FTOs) in dealing with collective employment disputes, with a particular focus on the extent of their use of Acas collective conciliation and possible factors influencing their non-use of the service. The focal point of the research was a structured quantitative survey to map officials' views, strategies and behaviours: more than one thousand FTOs from 63 trade unions responded. The results were published as an Acas Research Paper: "Trade union negotiating officials' use and non-use of Acas conciliation in industrial disputes" (see Ruhemann, 2010), hereafter referred to as the 'LRD study'. The survey went some way towards identifying trends in behaviours and actions among FTOs. However, given the methodological restrictions of a quantitative survey, there is a need for further, qualitative, research to explore and unpick the findings from the LRD's research, in order to more fully understand the barriers and preferences of trade union officials.

This research was designed specifically to contribute to the filling of this knowledge gap. It is hoped that a better understanding of FTOs' attitudes towards dispute resolution and collective conciliation will ensure that Acas is in the best position to tailor the content of its services and how these are communicated to ensure that the organisation is best placed to meet the likely future requirements for trade union officers.

1.2 Research aims

As noted, the LRD's research began the process of exploring the attitudes of full-time officers towards dispute resolution in general and Acas collective conciliation in particular. By building on a number of the findings in the LRD study and theorising more widely about other possible factors that may influence officials against using Acas collective conciliation, three main themes were identified that this research should centre on:

A – Understanding Established Preferences for Dispute Resolution

One aim of this research was to gain a better insight in to how a specific sub-set of full-time officers – those identified as low or non-users of Acas collective conciliation – prefer to handle collective employment disputes. By exploring more deeply FTOs' own preferred method(s) for approaching dispute resolution, the research aimed to see how collective conciliation compares to other dispute resolution techniques and to see if there is an obvious juncture at which collective conciliation *could* be utilised, but is not being so.

B – Attitudes Towards Acas and Knowledge of Collective Conciliation

Second, the LRD's research suggested that there may be some degree of confusion amongst FTOs in terms of their understanding of the services that Acas provides. Most obviously, a majority of LRD survey respondents confused characteristics of 'conciliation' with 'arbitration'. A quarter of them had not even known that Acas is independent of government. It follows that misconceptions such as these could be limiting FTOs' willingness to use Acas. Therefore, it was decided to use this project to explore in greater depth their understanding of Acas in general and collective conciliation specifically, in order to establish the extent and nature of any confusion amongst officials surrounding collective conciliation.

C – Specific Factors Driving the Low/Non-use of Collective Conciliation

The final area that the research sought to explore was to investigate the attitudes of officials – whether based on past experience, word of mouth or simply conjecture – towards using a third party mediatory-type service such as collective conciliation, with the ultimate aim of identifying specific attitudes that could be potentially driving the low or non-use of collective conciliation amongst certain officers. Related to this, the research aimed to recognise any steps that might sensibly be taken to overturn such attitudes.

1.3 Research design

Given the need to gather a more in-depth understanding of FTO behaviour and the reasons that govern their behaviour and decision making, it was decided to examine the above three themes via a piece of qualitative research, using semi-structured, in-depth interviews with those full-time officers who had made little or no use of Acas collective conciliation in the past decade.

1.3.1 Sampling and recruitment

The sample-frame of potential interviewees was generated in March 2011 by emailing a follow-up "invitation to participate" to the original database of full-time officers constructed by the LRD for the purposes of its own quantitative survey of FTOs¹. As the main drive of this research was to understand the low or non-use of collective conciliation by certain officials, the invitation asked for FTOs to respond only if they had (a) been involved in collective employment disputes within the last decade but (b) had *not* used (or only once used) Acas' collective conciliation service to assist in the dispute's resolution. This qualified invitation generated 116 responses. Further screening calls were then undertaken to ensure that the officials met the criteria, and 18 'low/non-user' officials were eventually selected for interview².

The rationale in selecting those to be interviewed was to ensure diversity of coverage across certain key variables rather than to select a sample that was statistically representative of the wider population of FTOs. Accordingly, the participants were selected to ensure a wide geographic spread – interviews were conducted in Cardiff, Edinburgh, Leeds, London, Sheffield and Swindon – and a

¹ In fact, the original LRD database was abridged for the purposes of this research in recognition of the fact that a small number of contacts had been provided to the LRD expressly for inclusion in its research rather than for research purposes more generally.

² Perhaps indicative of confusion regarding the term 'collective conciliation', one interviewee believed he met the criteria of having never or only used the service, only to subsequently realise during the interview that he had, in fact, used conciliation multiple times. His views were included in the data regardless.

broad coverage of unions – 14 trade unions were represented including seven of the biggest ten (by 2010 membership numbers).

Purposively sampling in this way resulted in a suitably diverse sample. For instance, interviewees' job experience ranged from as little as two years as an FTO to over 20 years' experience, and a number of participants also had previous lay representative experience. A range of industries were represented and a mix of regional and national officers, assistant and general secretaries were included in the sample, as were a mix of graduates and non-graduates. Finally, the number of bargaining units covered by participants varied wildly, from as few as two or three units in some cases to upwards of thirty to forty units in others. Such a diverse sample equipped the research to identify a wide range of factors, influences and experiences underlying the research questions.

1.3.2 Interviews and data analysis

The in-depth interviews were conducted face-to-face, using responsive questioning and probing so that all relevant issues were explored as fully as possible. Interviews were conducted using a topic guides to ensure similar sets of issues were discussed (see Appendix A). Where possible, the interviews were conducted in a quiet office at the official's own premises; some interviews were conducted at Acas National offices in London. All the interviews were conducted in a two week period towards the end of March 2011. Interviews usually lasted around 60 minutes and were audio recorded, with participants' permission, transcribed verbatim and stored in secure electronic files.

Analysis was undertaken on the data using an approach based on the 'Framework' method developed by the National Centre for Social Research. This firstly involves familiarisation with the transcribed data and identification of emerging issues. This informs the development of a thematic framework, with data being summarised in a series of thematic matrices. Thereafter data interpretation involves reviewing the range of views and experiences, identifying patterns and where possible drawing comparisons between individual cases and groups of cases.

1.4 Structure of the report

The next three chapters of this report examine the main objectives of the study. Chapter two explores the typical dispute encounters of the non-user population and reports on the preferred methods of dispute resolution currently adopted by low/non-users of collective conciliation. Having considered non-users' behaviours and attitudes towards employment disputes in general, chapter three goes on to unpick and describe the interviewees' attitudes towards and knowledge of Acas and in particular, its collective conciliation function. Chapter four builds on this by centring more closely on the views and attitudes revealed in the interviews that could be seen to be driving certain FTOs to specifically not use Acas. The final chapter draws conclusions from the findings of the evaluation and discusses some recommendations for how Acas might seek to address the issue of non-use and under use of its collective conciliation service.

2. DISPUTE RESOLUTION: EXPERIENCES AND PREFERENCES

In order to better understand the drivers behind the non-use of Acas collective conciliation by certain FTOs, it is first necessary to explore the typical dispute encounters of the non-user population. This chapter therefore reports on non-users' experiences, behaviours and attitudes towards collective employment disputes in general: how they prefer to handle the disputes they face; the main influences that shape their approaches to dispute resolution; and any changes that they perceive to have occurred in the last decade in the disputes that they are facing and their approaches to dispute resolution.

2.1 Typical dispute resolution processes: The 'Pressure-Building Approach'

The strongest theme that emerged from the data when discussing approaches to dispute resolution was not an individually identified method per se – such as industrial action – but rather a multi-faceted process of 'ratcheting-up' the pressure on the employer by means of a variety of techniques in a seemingly step-by-step build-up of pressure. A commonly expressed way of portraying this approach was that of using *multiple stages*, with the employer being offered a chance to re-engage and return to the table with a better offer *at each stage*.

2.1.1 The Pressure-Building process

The fieldwork identified a consistent approach to negotiations amongst the interviewees; this process can be described as a 'pressure-building' approach. Under this model the dispute resolution process typically starts with face-to-face negotiations between the FTO and employer representatives. After some point FTOs will conduct an informal ballot to gauge members' attitudes to an employer's latest offer or stance – these were referred to either as "indicative ballots" or "consultative ballots". If the result of this ballot is a membership rejection of the employer position, this is presented to the employer with the aim of eliciting (further) movement. If the response from the employer is negative, an indication of the intention to conduct an industrial action ballot – for full strike action and/or action short of strike – may be given, providing another chance for the employer to respond. If, again, the employer does not respond then the industrial action ballot will proceed. Importantly, at each stage the FTO will keep the employer informed of the progress as a way to pressure them in to returning to the bargaining table. Although this process centres on increasing pressure on the employer, it was seldom described as an aggressive approach.

"it's about putting pressure on" [Interview 30006]

This process was reported by FTOs across the sample as being the logical way to approach disputes as it allowed maximum opportunity for a resolution to be reached before the members had to lose money through taking industrial action.

"Hopefully they'll say let's have a dialogue, let's suspend, let's lengthen our time limits ... we'll start usually ... with action short of strike leading to strike action with a view to try and get the company back to the table before our members have to lose any money" [Interview 30001]

"At each stage we would say well we're thinking of balloting. We are now in a position to ballot. We have sent the ballot papers out. We are in the balloting period. We've got the ballot result." [Interview 30005]

“we try and start everything we can at a low level ... sometimes just the balloting for action itself can be that little extra bit of pressure that unlocks the employers ... we do get a lot where we actually just put the notice that we’re going to ballot, and actually that brings people back to the table” [Interview 30020]

Industrial action was generally seen as a last resort, to be used when the talks have perceptibly stalled or reached an impasse situation. Balloting for industrial action was understood to be effective because it “focuses minds on both sides of the table” [Interview 30017]. However, industrial action was generally seen as expensive in both financial terms to all involved, and in terms of political capital with employers, members and, in some cases, the public. A solution achieved through negotiations was generally said to be the best outcome.

“it’s always in peoples’ best interests to reach some sort of resolution through negotiation rather than industrial action” [Interview 30008]

When discussing industrial action, there was a mild aversion expressed by some FTOs to using action short of strike. There was an underlying shared sense that if the situation had reached a point where the FTO believed that industrial action was required, it was best to conduct full industrial strike action. Action short of strike, such as a work-to-rule or an overtime ban, was felt to be piecemeal, effect workers unevenly, expose them to possible management pressure, show less of a solid strength of feeling, and in some cases to be impractical.

“very rarely [use action short of strike] ... it’s very messy to organise and it very often leaves individuals isolated” [Interview 30010]

One participant referred to the recent legal difficulties that unions have been facing in conducting industrial ballots, suggesting that action short of strike was perhaps more open to legal challenges than full industrial action³.

“we are able to ballot for action short of strike and strike action, we tend to ballot for industrial action full stop. The reason being that obviously it covers the lesser form of industrial action and also in legal terms you can never be absolutely confident that something you will regard as less than strike action, that view will be shared by either the employer or the courts” [Interview 30005]

Third parties were rarely said to be included within the pressure-building process and from officials’ descriptions it seemed that there was no obvious juncture at which to ‘interrupt’ the process to allow for the insertion of a conciliation stage. Where the use of third parties was described by FTOs it took the form of either a more senior official from within the trade union side becoming involved – for example, a national officer – or else the elevation of the whole dispute to the next level ‘up’ of negotiations, where more senior representatives on both sides become involved. This approach was most strongly – but not exclusively – described by those FTOs that negotiate predominantly in the public sector. There was no obvious relationship between an interviewee’s level of experience and the reference to calling in senior officials to assist. The reference to ‘internal’ third

³As has been widely reported in the media, from the mid-2000s onwards there has been an increase in the number of cases where employers are challenging the legality of impending industrial action and seeking injunctions based on technicalities surrounding the balloting process. Recent examples include: *Metrobus vs. Unite*, Aug 2009; *EDF vs. RMT*, Oct 2009; *BA vs. Unite*, Dec 2009; and *Network Rail vs. RMT*, Apr 2010 (*Financial Times*, 02 April 2010)

parties by interviewees substantiates data from the LRD study that showed around half of the officials surveyed considered the reference of an issue to “a higher level within the employer or union” as a potential strategy to aid in dispute resolution (Ruhemann, 2010: 18).

The notion of a pressure-building process was described throughout the interviews and across the participants, a number of whom saw it as an ‘obvious’ and ‘logical’ way to deal with disputes. A secondary strand of discussion centred on the use of the media to augment the pressure-building approach.

2.1.2 Supplementary use of the media

The use of the media as a technique to assist in dispute resolution was a consistent if comparatively minor theme that ran through all of the interviews. There was no discernable pattern amongst specific sub-sets of respondents as to a preference for or against using the media, rather an ambivalent attitude was expressed towards its use to assist in dispute resolution.

On the one hand, using the media was seen as being a useful technique to highlight the issue and bring added pressure to the employer either from senior officials or the public; the senior officials could be either those responsible for sub-contracting the employer, such as government ministers at a local or central level, or senior executives of an over-arching, reputation-conscious, multi-national employer. The media was seen as particularly useful in cases where it could capture public imagination and sympathy, particularly where issues related to health and safety.

However, varying degrees of unease were also expressed about using the media, with a range of opinions voiced stretching from FTOs believing that negative media coverage would adversely affect future industrial relations (or in extreme cases, lead to de-recognition), to officials worrying that it was “much harder to control the message” [Interview 30005] once it was playing out in the media. There was a sense among some respondents that it was best to resolve disputes out of the public eye, sometimes using the idea of publicity as a “veiled threat” [Interview 30015] rather than an actual method to employ.

These views of considering using the media but being dubious about the level of assistance it can provide are loosely mirrored in the LRD study, which showed that the media was considered an increasingly likely option as the severity of the disputes increased, but one that wasn’t always given a solid rating of effectiveness. The LRD study (Ruhemann, 2010: 18-21) shows that the number of officials who considered using the media as a method for assisting in dispute resolution rose from a little over two-fifths of respondents to around three-fifths of respondents as the severity of the dispute went from “facts disputed” to a “complete impasse”, but that a majority of officials only rated the media as “sometimes effective” in resolving disputes (62%). This suggests that officials are willing to consider using the media as the situation becomes more intense, but have doubts about its efficacy.

2.2 Influences on the approach to dispute resolution

Across the interviews, several factors emerged that were seen to influence to what extent the FTOs adopted the pressure-building approach as a way to resolve disputes.

2.2.1 Habit

Although never overtly stated, there was a sense from the research that an officials' approach to dispute resolution is habitual. There appeared to be a view amongst FTOs that because the pressure-building approach has historically been successful, there is no need to vary it; negotiations are pursued as far as possible, a final position is stated by the employer, the membership will either agree with the employer stance and drop the dispute or reject and see if a step-up in pressure by resorting to industrial action of some sort can influence the employer to change their offer.

"we haven't got a track record of taking industrial action. We've got a track record of having ballots and having disputes, but we get to a point where, I think, that leverage is sufficient to resolve a dispute" [Interview 30014]

"the traditional approach for us is we've gone as far as we can, we'll now ballot for industrial action" [Interview 30017]

More often than not, this combination of negotiations and balloting was said to be enough to achieve a resolution, resulting in confirmation to the FTOs that this was the best model to achieve their outcomes. Some interviewees directly expressed the view that as long as the employer side is willing to negotiate, this avenue should be pursued directly. The historically successful nature of the pressure-building approach means that the FTOs acquire the habit of approaching dispute resolution with this tactic.

Related to this idea of a 'habitual approach', the idea of a 'constrained approach' also emerged across the interviews. This was that as there is no automatic reference to Acas in the established dispute resolution processes, it is not used. It could be hypothesised that Acas not being written in to established dispute resolution procedures is a reason behind non-use of collective conciliation by certain FTOs. This will be addressed in chapter four.

2.2.2 Pressure to resolve at the 'lowest' level

A strong theme running through some of the interviews was the idea that for the benefit of future industrial relations within the workplace, all efforts should be made to resolve the dispute at the 'lowest' possible level and with the minimum fuss. This attitude was slightly more common amongst those FTOs negotiating in the public sector, but not exclusive to them. The costs of elevating the dispute to higher and higher levels – in terms of the impact this had on post-dispute employment relations – were reported to be a consideration of some of the FTOs when they decided how far they should push an issue.

"whether the employer will feel comfortable at the end of it or not is a factor. You've got to work with them again so you don't want to rub their nose in it" [Interview 30014]

"if you can get it locally agreed it's far better than escalating up to a national dispute, everybody gets angry and it's ridiculous" [Interview 30019]

So this pressure to resolve an issue at the 'lowest' level seemed from the interviews to influence some FTOs in how quickly and far they would pursue the pressure-building approach in some cases.

2.2.3 The bargaining unit

Another factor that appears to be key in influencing the approach of an FTO to dispute resolution concerns the nature of the bargaining unit; certain characteristics of a bargaining unit may force an FTO to proceed more quickly or slowly with the pressure-building approach as well as influence to what extent they can build the pressure on the employer. Specifically, four sub-themes relating to the role of the bargaining unit were apparent.

First is the impact of union density: the density of membership was seen to be a key contributor to an FTO's confidence in being able to exert pressure on the employer. In areas where union density was particularly high, FTOs were confident that a 'yes' vote in an industrial action ballot would create enough pressure on the employer to elicit some compromises: a higher union density will mean that an FTO can more confidently rely on the threat of action being sufficient to force the employer back to the table.

"If we've got numbers of people who feel sufficiently strongly about certain things and are willing to express that in a particular way that drives the agenda ... union density is particularly important." [Interview 30005]

In cases where union density is low, some FTOs indicated that they would pursue legal action, if possible, instead.

"we'll take action – it won't be strike action because the number of members involved compared to the organisation is small – but we'll take legal action if necessary." [Interview 30017]

Secondly, in a similar vein, what a bargaining unit can deliver in terms of the impact of action is a critical consideration. If a bargaining unit has few members but the industrial action of those members could have a significant impact, this can allow the FTO to build the pressure more quickly and perhaps curtail a long negotiations phase.

"sometimes a relatively low level of membership can have a massive impact if they do key jobs. So obviously anything where you have a production line, if you can close one part of the production line you effectively stop the entire factory." [Interview 30018]

Third, the strongest sub-theme relating to the role of the bargaining unit was that of membership attitude, their willingness to act influencing potential action. If union density and/or the ability to deliver action are high but the membership is unwilling to walk out, then the FTO is constrained as to how much pressure he or she can build in the negotiations process. Nearly all the interviewees stated, to varying degrees, that the attitude of the membership and of the lay representatives drives the situation along; in some cases the attitudes may constrain the options available for the FTO to build pressure on the employer. As one official said of a dispute that failed to advance:

"[the members] had the desire to make noise of the situation but they didn't have the passion to follow through" [Interview 30002]

A fourth sub-theme that emerged in some of the interviews centred on the idea of officials having to manage the expectations and attitudes of the membership; some FTOs reported situations where, instead of being frustrated by members' apathy, they felt they had to discourage member action. If an FTO believed, for example, that an offer on the table really was reasonable or the best that could

be achieved and that owing to the characteristics of the bargaining unit industrial action would not change this, they may try and highlight the impracticalities of pursuing industrial action.

“you always have on all committees, what I would call, the awkward squad ... you’ve got to sit down and walk them through it and say ... I think we should accept that [offer]” [Interview 30007]

It should be noted that these attitudes towards the role of the bargaining unit were in evidence across the interviewees rather than being confined to certain sub-sets of officials.

The combination of these bargaining unit characteristics can be said to influence how an FTO will approach dispute resolution, in terms of the pace and how far they are willing/able to pursue the pressure-building approach.

2.2.4 Employer attitudes and actions

There were mixed views expressed on the attitudes of the employer and how they influence the FTO’s approach to dispute resolution. At one extreme, there was an attitude of complete indifference to the employer’s approach. At the other end of the spectrum, FTOs described how the actions, responses and relationship with the employer hold a major sway over their decision as to how sharply to build the pressure and escalate the situation:

“There are certain employers we have a good relationship with ... but if we don’t have an agreement with the company, you can bang your head against a wall, and you would probably go in strong armed” [Interview 30003]

“we are not a union that is philosophically committed to achieving our means by industrial action as a first resort ... we have long established and robust and mature relationships with the employers who employ most of our members” [Interview 30005]

The middle ground was also occupied:

“the dynamic [around how to approach the situation] is really around the management side’s approach and in a way how militant our side is” [Interview 30017]

Some FTOs seemed to go to great lengths to ensure that informal channels were held open in order to maintain a better working relationship with the ‘other’ side, and to ensure that they could express themselves frankly to the employer both in and out of dispute situations.

2.2.5 Union culture and fellow union actions

No indication was given that officials from particular trade unions adopt characteristic, union-specific attitudes towards dispute resolution; the attitudes and actions of *other* trade unions, however, did appear to exert an influence over some FTOs’ individual approaches. Obviously this is only possible in situations where the workforce is represented by more than one trade union, but it was not tied to one particular sector. Examples of this influence include: situations where fellow unions accept an employer’s offer, which limits the scope for action if the FTO’s own members do not want to accept the offer; situations where a fellow union is being much more confrontational towards the employer, which then colours the employer’s attitude towards the FTO’s own union; and issues

concerning mixed messages in the media, which result in less of a solid front being presented to the employer. In one reported case, there was even mention of inter-union rivalry, culminating in an employer-union deal where the second union was derecognised as a result.

2.3 Changes in dispute resolution in the last decade

One of the motivating factors for this research was the overall decline in levels of use of Acas collective conciliation despite a backdrop of stabilising levels of industrial disputes in the past decade generally. Theoretically, it *could* be that a shift in the nature of dispute resolution negotiations has contributed to some degree to a decline in the need to look to third parties for assistance. With this in mind, the interviews covered officials' views on the evolution (or otherwise) of dispute resolution negotiations over the past decade. Based on the first-hand experiences of the FTOs, three main trends were in evidence. These were:

- Changing attitudes of employers to dispute resolution negotiations
- Changes to the nature of the HR role
- Removal of the 'power to decide' from the negotiations

2.3.1 Changing attitudes of employers towards negotiations

The evidence here was very mixed with no view attributable to any particular sub-set of respondents. At one extreme, there were reports of perceived increases in employer ruthlessness and of more confrontational and dismissive attitudes being taken by employers towards the trade unions, coupled with a decreasing focus on good industrial relations.

"They are becoming a lot more ruthless" [Interview 30003]

"what else I'm finding is increasing dismissive attitudes [from the employer] when they're saying that's our decision and that's it and they seem to be more and more confrontational over the past 18 months." [Interview 30004]

"maybe less willingness to deal with [the unions] but I think that's partly due to the pressure of downsizing and everything else ... which mean that they pay less attention to their industrial relations than they might have done in the past" [Interview 30006]

FTOs reported such changes in employer approach as occurring in both the private and public sectors. Some participants attributed these changes in attitude to recent economic circumstances: in the wake of the global economic recession there was a perception that a stricter financial environment existed, thus leading to more confrontational negotiations. Some officials perceived that employers felt that the current economic conditions enabled them to take a harder line in their negotiations with the trade unions:

"I think now [employers] know that people aren't in a position to leave a job and walk into another one, a lot of the mentality out there in the last 12, 18 months is, 'well if you don't like it, you know where the door is'." [Interview 30003]

One interviewee linked the change in employer stance directly to the election of a new Government in 2010, reporting a near-instant change in the attitude of employers who had been engaged in ongoing negotiations pre- and post-election.

Messages were mixed, however, with other FTOs stating that there had been no change in employer responses to unions or negotiations within the last ten years; these two opposing attitudes were sometimes expressed by FTOs operating in the same industry. However, none of the officials interviewed reported any perceived increase in employer co-operation and willingness to work with the unions.

So from the officials' perspective, it does not seem that there have been improvements in the attitudes of employers towards trade unions during dispute resolution negotiations. This means that it is unlikely that the overall decline in collective conciliation can be in some way attributable to an increase in in-house negotiated solutions *resulting from* improvements in the quality of the negotiating relationship as perceived by FTOs. There may, of course, be an increase in in-house negotiated solutions owing to *other* pressures on the negotiation dynamic, but the fieldwork is unable provide evidence here.

2.3.2 The changing nature of the HR role

Several officials operating either wholly or predominantly in the public sector reported that, within the last decade, they had seen changes in the nature of the role played by Human Resources (HR) professionals in the employers with whom they negotiate. It was noted by some officials that the HR role seemed to have evolved to be more of a management tool, more business-focused, rather than what they described as its historical role of being welfare-orientated. The situation they described echoes references to the 'specialisation' of the HR role that were set out in the 2004 Workplace Employment Relations Survey (WERS) (Kersley *et al.*, 2006: Ch 3).

"We now have HR people who work on the basis of risk management ... there has been a massive change over the past few years and in particularly the last year in the way HR departments deal with whatever the matter might be" [Interview 30004]

It was also reported that there seemed to have been an increase in the number of HR managers being brought in from other sectors, such as an ex-NHS HR Director being brought in to an college, as well as quicker turn-around time in the post among HR professionals.

"so you've got those two added features. You've got [HR Directors] coming in from outside [the industry], and secondly you tend to have the role which is somewhat forged around a business type role" [Interview 30016]

"you probably won't get one HR director for more than three to five years at a time" [Interview 30017]

These descriptions of changes in the HR role could suggest that officials are feeling frustrated that the employer representatives they are dealing with are becoming increasingly business-focused, increasingly transient in the role and possibly less related to the industry they are in. Such frustrations might be assumed *a priori* to lead to an increase in the numbers of officials turning to third parties for assistance – but in fact the overall decline in collective conciliation does not support this. This may perhaps be because levels of frustration have not reached a significant enough level to impact upon officials' use/non-use of third parties, or perhaps because their frustration is being voiced in other ways, e.g. through officials taking an increasingly firm approach towards negotiations (for example, building pressure more quickly via earlier balloting). However, the interviews provided no evidence on this. Similarly without evidence but nevertheless a potential explanation is that the changing nature of the HR role

has resulted in business-orientated HR professionals who are themselves less willing to take on third party assistance – however this group was outside the immediate scope of the research.

2.3.3 Removal of the 'power to decide' from negotiations

A further theme that emerged from the interviews was a shared sense of frustration among some of the officials at the perceived loss of power to take action by negotiators representing employers. Two particular trends were described.

First, on some occasions the loss of power was said to be due to the fact that the employer – although nominally independent – was having their hands tied at a higher, inaccessible level of authority. In the public sector this was most obviously manifested by the setting of pay by central government, effectively tying the hands of the employer representatives with whom officials negotiate. A similar occurrence was reported in the private sector. One case cited was that of a UK employer that had been taken over by a multi-national corporation; despite being nominally independent of the multi-national, the FTO reported that the employer found that their hands were tied in pay negotiations by edicts issued from headquarters overseas.

“the dynamics are vastly different from dealing with an employer that's got autonomy of decision making and I think that's become increasingly complex the last few years as a lot of the smaller companies have been bought up by bigger groups” [Interview 30017]

“Even a lot of the people you're dealing with who are theoretically independent ... there seems to be less discretion than there once was ... we're tending to find is far more prescription on the other side” [Interview 30018]

This trend was said to have influenced FTO attitudes towards calling third parties into disputes because there was a sense that a third party would be equally powerless to pressure the employer in to making a change.

Another trend that was expressed concerned the loss of power of the employer negotiating team to make decisions due to key decision makers stepping back from the negotiation process.

“the [key decision makers] have taken a further step back from those negotiations. They tended to be much more leading and directing, be part of those negotiations, whereas now they tend to step back and let those people try and sort it out. But often those people will go to the [key decision maker] for a final decision anyway” [Interview 30016]

It is unclear how this second trend interacts with officials' attitudes towards asking for third party assistance but it *could* be argued that, theoretically, the effects of this increased frustration are similar to as explained in section 2.3.2 above: the rising levels of frustration may precipitate an increasingly firm approach being taken by officials towards employers in order to pressure the key decision makers back into the room. However, the interviews do not provide evidence either way on this.

2.4 Summary

This chapter has recounted how the FTOs interviewed tend to approach dispute resolution. As reported, there is a strong preference for adopting a step-by-step 'pressure-building' approach, with negotiations leading to balloting, which may in turn lead to industrial action. This process can evolve at a variety of paces, and is sometimes supplemented by bringing in the media to add additional pressure (but there is also some ambivalence about employing the media). Within this pressure-building approach, there seemed to be no obvious juncture at which to 'interrupt' the process to allow for the insertion of a conciliation stage.

The main factors that seemed to be driving the decision to utilise a pressure-building approach and the pace at which it evolves are: a reliance on historically successful techniques; a desire to resolve matters at the lowest possible level; and the characteristics of the bargaining unit. To a lesser extent, the attitudes and actions of the employer, and the interactions between unions may influence an FTO's approach to the dispute. These factors all influence the extent to which the FTO pursues the pressure-building approach. The implications of these factors for officials' attitudes towards using Acas will be discussed in chapter four.

The evidence from the research as to whether or not the negotiations forum has changed within the past ten years is mixed: some officials reported increases in hostility and bluntness amongst employers whereas others reported no changes at all. Changes were noted in the HR role, which was perceived by officials to have become more business-orientated, as well as changes in the ability of managers to decide autonomously. These changes do not seem to support a hypothesis that improvements in the negotiations dynamic between employers and trade unions have led to an increase in in-house resolved issues and, hence, a reduced requirement for third parties.

It is possible that the use of Acas in dispute resolution may simply be related to an FTO's understanding of Acas and its services; chapter three reports on officials' knowledge and perceptions of Acas. Any attitudes and other factors that may influence officials specifically against using Acas will be discussed in chapter four.

3. OFFICIALS' KNOWLEDGE AND PERCEPTIONS OF ACAS AND COLLECTIVE CONCILIATION

This chapter looks at officials' general perceptions of Acas as well as their more specific understanding of the function and potential benefits of collective conciliation.

3.1 Knowledge of Acas at a organisational level

The LRD survey of FTOs found that even if officials tend to *think* that they know about Acas services, in reality this is often not the case. In particular, officials were found to be unclear about what conciliation entails; it has not been previously established whether this confusion is semantic or deep-seated. An official's understanding of a service will most likely affect his or her motivations and propensity for using it. For this reason, the interviews included some discussion about Acas at a general level, in order to determine participants' basic understanding of and attitudes towards the organisation. Specifically they were asked about Acas' organisational status, its basic purpose and about the main services that it provides.

3.1.1 High levels of 'assumed' knowledge

In line with the LRD study, which showed 95% of officials reporting that they knew "a lot" or "a reasonable amount" about Acas (Ruhemann, 2010: 35), all of the interviewees were loosely familiar with the organisation. More interesting to note is that, despite being confirmed as low or non-users of collective conciliation, when probed broadly about the purpose of Acas, interviewees' responses tended to centre on dispute resolution. When asked to give a *general* description of the role of the organisation, officials tended to speak of Acas as being a means of bringing two parties back together where relations had become so adverse as to be considered completely 'broken-down', helping the sides reach a consensus where unassisted negotiations could not do so.

"[Acas' purpose is] to assist two parties to reach some form of consensus agreement, whether it be individual or collective." [Interview 30001]

"[Acas is] there to provide an intervention between employer and groups of affected individuals when there are tensions, conflicts or issues that can't be resolved or feel they were difficult to resolve by conventional negotiation and they provide an impartial way of guiding the parties towards a midpoint with a view of agreed consensus." [Interview 30002]

One official spoke for several when referencing the acronym 'ACAS' as being a strong indicator of the organisation's purpose:

"Acas is like Ronseal isn't it, that's what it says on the tin; arbitration and conciliation." [Interview 30006]

A strong theme to emerge was that officials' confidence in their own knowledge of Acas was not matched by actual clarity of understanding of its range of individual services. This seemingly echoes the LRD's finding that the "self-declared knowledge [of Acas] was not borne out" when questioned on service specifics (Ruhemann, 2010: 35). However there was actually *less* of a knowledge gap in evidence across the interviews for this research than had appeared to be the case in the LRD study. This will be discussed and clarified in section 3.2.1.

3.1.2 Acas as an information source

Use of Acas as an information service – whether that be through its guidance booklets, Codes of Practice, the Acas helpline or the Acas website – was mentioned by a wide range of respondents as being an important and very assistive role of Acas. It was not uncommon for interviewees to report using Acas advisory publications as something to take to an employer as bargaining evidence. The Acas helpline was directly cited on several occasions as being a useful service for both experienced and newer officials.

“a lot of people who have only recently come in to representing ... the Acas helpline is there ... it is a very useful tool to be able to ring them and say, look, what would happen if this or this happens?” [Interview 30019]

However, in some cases there were negative associations with the information received, such as where a publication was perceived to be biased and so influenced the official against Acas. As this could clearly be a driver behind the non-use of Acas, it will be explored in more detail in chapter four.

3.1.3 The shifting emphasis of Acas

When discussing the services that Acas provides, interviewees tended to mention its training services at some point. Here, two strands of opinion about training are interesting to note.

First, several of the interviewees highlighted that they perceived an increase in training services provided by Acas, in one case describing it as a shift in Acas’ role away from a being “legislative body” to more of an “advisory body” [Interview 30013], with a stronger emphasis now on training and advisory work:

“I think their emphasis has changed to a certain extent and with that emphasis changing, [Acas’] importance within the actual nitty-gritty of industrial relations, I think, has reduced” [Interview 30013]

Second, and to a lesser extent, there was a line of reasoning that the Acas training was charged for, and that it was the sort of service that business consultants would have previously provided.

“Well I know they offer a lot of training, which is costed” [Interview 30001]

“I’m also aware, and have come across, the sort of training aspect in a couple of circumstances, both in terms of the training that Acas do for union officials, management side and also, I think more noticeably the sort of going out to businesses and doing what a relatively short period of time ago you’d have expected a private business to have done.” [Interview 30018]

This could indicate the emergence of an attitude that sees Acas as taking a more ‘consultant-style’ role than previously.

3.1.4 Independence

As a non-departmental public body governed by an independent Council, Acas’ independence from employers, trade unions and government is one of its most valuable assets. However, whilst most interviewees would readily testify that they saw Acas as being completely unbiased in its approach towards and dealings with employers and trade unions, a slightly more complex theme arose surrounding the Acas-government relationship. The range of opinions on the Acas-government

relationship were from those FTOs that had no opinion on the relationship, those who regarded Acas as part of the government apparatus (established and funded by the government) but did not see this as a problem, through to those who saw potential limitations on Acas' independence because of this relationship.

"Acas' role ... they're a public body to start with. Sometimes people aren't clear who the paymaster is. Who do they work for? Do they work for the government or the independent and all the rest? I think a bit of both" [Interview 30013]

"It's a government funded body ... Is it independent? It is within a certain framework, yes I will accept that ... You may see that Acas is an establishment body, and I think that is inevitable, you can't do much about that, but, I think, generally on balance they bring something to industrial relations" [Interview 30014]

"some people may see it as not an independent but may see it as part of a government tool" [Interview 30019]

This echoes findings in the LRD study that showed a slightly higher level of suspicion surrounding the Acas-government relationship compared to the Acas-trade union or Acas-employer relationships. The LRD study specifically asked officials to say whether Acas was independent from the trade unions, employers and government. Although there were extremely high levels of perceived independence on all three counts, Acas' relationship with government received the lowest of the three sets of scores: over 90% of respondents saw Acas as being fully independent of all unions and employers, but this fell to around three-quarters of officials when discussing the Acas-government relationship (Ruhemann, 2010: 36). The implications for this as a reason for non-use of collective conciliation will be discussed in chapter four.

A separate but related strand of opinion emerged concerning the perceived fragility of Acas' impartiality; specifically, how an employer can raise doubts in lay representatives' and FTOs' minds about the neutrality of Acas. One interviewee reported that on several occasions the employer has presented 'factual' information during negotiations, allegedly obtained through contact with Acas but which the FTO knows to be incorrect. Although the FTO believed this to be 'bluffing' on the part of the employer, the presentation of pro-business information attributed to Acas was said to have seeded doubts in the lay representatives' and members' minds. The same interviewee reported a high level of damage to members' perceptions of Acas' independence because of the recent publication by Acas of written guidance on disciplinary and grievance procedures that was perceived by some of the members to be pro-business⁴.

"one point I need to make about Acas and why there is a bit of doubt with our members [about Acas' independence] is recent Acas guidance that came out ... Quite a few people looked at that when it came out and they've said it's very heavily set in favour of employers because there is sparse reference to trade unions and the importance of them in dispute resolution" [Interview 30004]

⁴ Although the interviewee was unable to specifically name the piece of guidance at issue, it is believed that the reference was to the 2009 Acas Code of Practice on disciplinary and grievance procedures. A dedicated evaluation of the Code of Practice exploring this and other issues was published in 2011 (see Acas Research Paper Ref. 06/11, available at: www.acas.org.uk/researchpapers)

The implications of views on neutrality as potential drivers for non-use of Acas will be explored in more detail in chapter four.

3.2 Collective Conciliation and its perceived benefits

After a general discussion on the purpose of Acas and an overview of its services as they saw it, interviewees were then asked to focus specifically on Acas' collective conciliation service and their familiarity, or otherwise, with it. A range of themes emerged, many of which can be seen to build on and further elucidate findings identified in the LRD study.

3.2.1 Service terminology confusion

The term 'collective conciliation' was largely unknown to participants, but the characteristics of the service were widely familiar across the sample. When the collective conciliation service was defined by the researcher, respondents tended to explain that they referred to the service under discussion either as 'mediation', 'conciliation' or 'negotiation assistance'. On hearing collective conciliation explained by the researcher, one FTO replied:

"Some of that actually I would have been thinking about as the mediation aspect" [Interview 30015]

In an interesting contrast to some of the findings in the LRD study that showed a high level of confusion concerning who decides the outcome in arbitration and conciliation (Ruhemann, 2010: 35-6), the interviewees for this research seemed to have a clear distinction regarding the differences between arbitration and the mediation/conciliation services. However, there was a high level of confusion amongst the respondents concerning the precise difference between mediation and conciliation. Respondents tended to identify, correctly, that there is a clear difference in terms of who decides the outcome of a dispute in arbitration versus mediation/conciliation, but generally were not able to elaborate on any precise distinctions between Acas' mediation and conciliation services.

"Well I think mediation... conciliation is when there's basically been a dispute and they conciliate to bring the parties together, I think mediation is slightly... I'm trying to think how I can... what sort of... Mediation is maybe a situation whereby there's a bit of a stand-off and you can sort of bring together, I think conciliation would be more if there is the sort of dispute that's taken place, you know, there's been a strike" [Interview 30007]

"I know there is a difference [between mediation and conciliation] but I can't remember what it is. Is it one [where] both sides come to a resolution and one the conciliator maybe suggests it? I'm not sure." [Interview 30008]

Whereas the LRD study could not identify whether FTO confusion about collective conciliation was "simply semantic, or if they fundamentally misunderstand the services" (Ruhemann, 2010: 35), these interviews would appear to suggest the former. They seem to imply that there may not be a deep misunderstanding of the conciliation service amongst FTOs, but that there is a lack of awareness of the distinctions between mediation and conciliation, as well as a general lack of clarity about the names of the dispute resolution services that Acas offers.

None of the interviewees gave the impression that semantic confusion or a lack of knowledge of Acas were drivers behind their low/non-use of Acas collective conciliation.

3.2.2 Outsider advantage

Although participants were known to be non-users of Acas, when they were asked hypothetically what they saw as being the potential advantages that collective conciliation could bring to the dispute resolution process, several themes emerged. One idea expressed fairly strongly was that by bringing in Acas, it was presumed that the 'emotional heat' would be taken out of the situation. Some FTOs believed that if both sides have become worked up in to a stalemate situation, both sticking to their mandate, it could potentially be useful to have a dispassionate third party involved so that negotiations could be restarted without any emotional interference. Related to this theme is the idea that the third party presence would possibly bring with it a fresh perspective, a new pair of eyes to help move the dispute forward. One FTO saw a potential benefit as being:

“having somebody looking in at a situation, rather than being in it, and not seeing the wood for the trees, that kind of thing. I think that’s probably the biggest advantage” [Interview 30010]

This notion of outsider advantage was thought to be potentially particularly useful in situations where the dispute was hampered by personality clashes rather than the nature of the dispute itself. There did not seem to be an overt relationship between particular sub-sets of the interviewees and the attitudes expressed. The fact that a broad range of interviewees, who are all low/non-users of collective conciliation, can see the hypothetical appeal of an 'outsider advantage' suggests that one of the basic principles of collective conciliation is not entirely lost on low/non-users. Therefore, when looking for drivers behind non-use of collective conciliation by certain groups of FTOs, it can reasonably be argued that it is not that the officials are unaware of potential benefits that the service can bring to the situation but rather there appear to be other, more salient factors driving their non-use. Chapter four is dedicated to identifying these more significant drivers.

3.2.3 Bolstering the FTO's position

There was a sense shared by some FTOs that calling in a collective conciliator could be a way to strengthen their own position – that is to say, a way to put extra pressure on the employer to see things 'their way'.

“it might bring some common sense to an intransigent employer” [Interview 30011]

Similarly, some FTOs envisaged a use for collective conciliation in situations where they might themselves be in a weak position. For instance, where members were unhappy but for some reason unwilling or unable to act, some FTOs saw a potential role for using collective conciliation as a 'last ditch' attempt move the employer.

“I would use Acas where I was worried. I'd be more inclined to use Acas where either the other unions hadn't aligned themselves with us and therefore we might be fighting on our own, or where I thought our membership was weak or not willing to do something” [Interview 30006]

These attitudes were more strongly expressed by officials from what might be thought of as historically more 'militant' trade unions, i.e. unions with a track

record of favouring industrial action to advance members' interests, but they did arise to a lesser extent elsewhere, too.

However, generally speaking, officials did not report using Acas even in these situations either because they never felt themselves to be in a weak position, or else the apathy of the membership just led to the dispute being resolved/dropped.

3.2.4 Helping to manage other parties

Another theoretical advantage of Acas collective conciliation that FTOs cited related to the idea of helping to 'manage' other parties involved in the dispute, whether that be the employer or the FTOs' own lay representatives.

Several FTOs hypothesised that in cases where their own lay representatives were stubbornly sticking to a particular agenda, the introduction of a third party to explain the situation from a 'neutral' perspective could be a potential advantage. Although there was a shared sense – already mentioned in section 2.2.3 – of officials having to manage their lay representatives' expectations in certain situations, there was nevertheless a feeling that because the full-time officers are effectively operating on their members' mandate, even if they saw their lay representatives' stance as being unreasonable they could only be seen to disagree or discourage their membership from pursuing further action to a certain extent. Hence, a third party could be useful to put forward arguments to an official's own lay representatives that he or she feels they can not put forward them self. One FTO recalled a particular case where the collective conciliation service, although not used, could possibly have been able to bridge the communications divide between management and his membership in a way that he felt unable to:

“perhaps something like [collective conciliation] could have been useful in a way to try to get the membership to see some of the issues that management were coming from” [Interview 30002]

In a similar vein, some officials saw collective conciliation as a potential way to help deal with employers who were either unfamiliar in dealing with unions, or else were seeing the union in a very negative, 'unreasonable' light.

Although several FTOs raised these hypothetical situations where Acas collective conciliation could be advantageous, none of the officials indicated that these were common dispute situations that they faced. However, as mentioned in 3.2.2, it is interesting that the interviewees, identified on the basis of being low/non-users of collective conciliation, are all able to envisage potential benefits of the service. This suggests that factors other than a lack of understanding of what the service might bring are behind their non-use, which will be explored in chapter four.

3.3 Summary

This chapter has described participants' attitudes towards Acas and their knowledge of its collective conciliation function. The FTOs interviewed were generally familiar with Acas, and saw it as being a useful information service through its helpline, website and so on. There was a shared sense that there has been a recent shift in emphasis within Acas towards advisory training and training delivery, perceived by some to be a service more associated with private sector consultants. In one case, Acas' shift towards training provision was seen as constituting a move away from its role at the heart of industrial relations.

Acas' independence from the employers and the trade unions was not in doubt for most interviewees, although some FTOs did state that they saw Acas' relationship with government as being a little more complicated. The organisation's reputation for neutrality was said to be easily damaged where FTOs or their members felt that the Acas 'voice' was too pro-business, especially in its published guidance documents.

On the subject of collective conciliation, there was a lack of clarity among the officials about the details of mediation and conciliation and how these two services differ from one another, but crucially, in contrast to some of the LRD study findings, they were both perceived as being distinctly different from arbitration. A conciliation-style service – whether being called 'conciliation', 'mediation' or something else – was perceived as only being needed in extreme circumstances. However it was hypothesised that conciliation could possibly bring advantages to the situation in terms of a fresh perspective and a way to help the FTO deal with some of the other actors in the dispute. In some cases, resorting to a conciliation-style service was envisaged as being a potential way to improve the FTO's position in a dispute; this could be where the FTO felt themselves to be in a weak position or else as a means for exerting more pressure on the employer.

Although the interviewees could in theory see a use for Acas, it remains the case that they were themselves at the time of the research confirmed low/non-users of collective conciliation. Chapter Four looks more specifically at the factors driving this non-use.

4. DRIVERS BEHIND THE NON-USE OF ACAS AND COLLECTIVE CONCILIATION

Having looked at officials' overall knowledge of and attitudes towards collective conciliation in previous sections, this chapter centres more closely on a parallel set of views and attitudes revealed in the interviews that could be seen to be driving certain FTOs to specifically *not* use Acas – specifically its collective conciliation function. This is of particular importance given that the sample was comprised exclusively of low/non-users. Even if – as we have seen – these participants could envisage some of the potential *benefits* of conciliation, the very fact that they do not use the service raises questions about the attitudes or factors that *are* influencing their non-use of the service.

4.1 Implications of FTOs' stated dispute resolution preferences

As identified in chapter two, there was a strong preference among the officials interviewed to pursue what has been termed a 'pressure-building approach' to dispute resolution. This preference and the factors that influence the pace and to what extent the official pursues this approach can also be seen to *indirectly* affect officials low/non-use of collective conciliation.

Section 2.2.1 has described how the pressure-building process develops into an habitual approach – largely owing to perceptions of its success – and this leaves little room for third parties to be involved. Recourse to this semi-formulaic process therefore implies that the official will be less inclined to use collective conciliation because there is no obvious juncture at which to 'introduce' the service.

Although no strong theme emerged to suggest that use of Acas was interpreted as increasing the 'seriousness' of the situation, it might nevertheless be argued that the introduction of a third party runs counter to the idea of resolving the dispute at the 'lowest' level. The desire to resolve the dispute at the 'lowest' level – as recounted in section 2.2.2 – can be seen as a pressure to resolve the situation in-house, i.e. without using a third party. This parallels data reported in section 2.2.4 regarding the efforts of some officials to keep informal channels open with the employers they negotiate with. Although it was never stated, the introduction of a third party may be taken by some as an warning sign about the state of the relationship with the employer. The desire to preserve these informal channels of communication may therefore put pressure on the FTO to avoid introducing external third parties to the dispute resolution process.

The interviewees did not give the sense that there were union cultures that prevented or discouraged the use of Acas, although there were reports about the presence of *other* unions in the dispute affecting how an official approaches dispute resolution. Section 2.2.5 described how the presence of other unions was said to affect how and to what extent an official pursues the pressure-building approach; there was no direct evidence of the presence of other unions affecting the use or non-use of Acas in a dispute. That said, since the presence of other unions increases the number of actors who are required to be in favour of using Acas this does carry the potential to affect whether or not conciliation is used.

Finally, chapter two concluded with reference to the perceptions of officials towards what they see as changes in the 'negotiations dynamic' with the employers over the last ten years – e.g. changes in employer approach and changes in the nature of the role played by HR professionals. Some of these perceived changes might be expected to increase an official's frustrations towards

dispute resolution. However, these frustrations could in theory result in an either an increase or a decrease in officials' use of collective conciliation, and there was no evidence to point either way.

4.2 Conciliation as a sign of weakness

Although section 3.2.3 reported that some officials hypothesised that using collective conciliation might bolster their position, a more readily discussed outlook that emerged from the interviews was the idea that an employer might interpret any union request for Acas to enter the dispute as a sign of weakness in the union's position:

"I think the employer would see it probably as a move of weakness ... by the time you call Acas in, or if you're thinking about it, it's because you can't move it or the strength of your branch can't move anything further" [Interview 30013]

"I can rely on the members and I know the members are going to walk out the gate ... when you have a long-term relationship with the management you're dealing with, to suddenly use something you're never used beforehand would suggest, potentially, that there was an element of weakness" [Interview 30018]

Although this theme arose when FTOs were discussing the implications of calling in Acas collective conciliators to assist in a dispute, the impression given was that this was not an Acas-specific stance; rather it was a general concern towards calling in an 'external' third party to assist in the dispute. It should also be stressed that the opposing view – i.e. that it would *not* be seen as a sign of weakness to call in Acas – was also expressed by several FTOs.

4.3 Circumstances under which conciliation is taken to be unnecessary

There was a shared sense among officials that, in certain specific situations such as the examples given in the sub-sections below, collective conciliation either would fail to add anything useful to the dispute process that would help the union side, or else that utilising the Acas service would actively *hinder* the union side. There were four clear themes that arose relating to this idea that Acas was sometimes unnecessary:

4.3.1 *Simplicity of the dispute*

First, there was a particularly strong argument expressed across the sample that in disputes where the case could be described as being particularly 'straight forward' – for example a contractual 'Yes/No' dispute or an outsourcing 'Do/Don't' dispute – there is no benefit to be had from bringing in Acas or any other third party because there is no mid-way or compromise position to be reached. Thus turning to a third party in these situations was seen as being futile because the binary nature of the disputes meant that there was no scope to conciliate. These types of disputes seemed to be viewed as 'zero-sum' scenarios – as opposed to possible 'win-win' scenarios – implying that there is no room for conciliation.

"there are some disputes where it is quite black and white, to be perfectly honest, not abiding by contractual provisions and so on. And to be honest, I don't see any point in Acas, I mean the [employer is] either complying

with the contract or [is] not. What could we arbitrate on? What could we conciliate on that? How could we conciliate?" [Interview 30020]

Interestingly, on the subject of pay negotiations, pay disputes were portrayed by some FTOs as being in this 'straight forward', binary-type dispute category because although there might in theory be a compromise position to be had, they felt almost morally obliged to push for the maximum rather than entertain the notion of compromise.

"In most circumstances [using Acas] wouldn't fit because I deal with very simplistic disputes in ours over pay, or something like that ... you see some things are very black and white. Pay is very black and white, and that's most of the disputes I deal with." [Interview 30001]

4.3.2 Strength of the trade union position

A second line of reasoning – particularly strongly expressed by some officials – was that involving a third party for the purpose of dispute resolution would be a superfluous 'extra' in cases where the FTO already saw him/herself as being in a strong position. Examples cited included so-called clear-cut cases of contract violation or cases where the FTO is confident that they have the necessary membership numbers and willingness to impose significant pressure on the employer via the credible threat of industrial action.

"If you were in a position where you were in a quite strong position anyway and you think that by putting the squeeze on the employer, for want of a better phrase, that you could actually achieve a result in your win window, you might think Acas would be a hindrance rather than facilitate what you want." [Interview 30006]

The strength of a bargaining unit – as expressed by union density and the willingness of members to act – was also seen to influence an official in respect of how far he or she can pursue the 'pressure-building approach' (see section 2.2.3). The strength of the bargaining unit might similarly be seen to have some bearing on an official's use of collective conciliation insofar as the 'stronger' the unit, the more likely an official is to feel that they have the necessary resources to resolve the dispute themselves without needing to introduce a third party.

4.3.3 The risk of losing momentum

Third, there was a shared assumption that collective conciliation could sometimes be a possible hindrance to the official's ability to pursue their side of the dispute. This appeared to be linked to a fear that the process of collective conciliation could be quite time consuming and would not necessarily conclude the dispute. These factors, coupled with the view that the willingness of the membership to take action was sometimes quite transient, were seen as meaning that the FTO might find them self in a situation where the conciliation talks had not resolved the dispute but the willingness of the membership to act had ebbed away. Under such circumstances the FTO would be unable to return to the threat of industrial action as a viable means of imposing pressure on the employer to return to negotiations.

"Delays in moods of members about to take action are quite quick ... they have external pressures on, you know, on taking action, so you can lose the mood for action because delays or talks are going on" [Interview 30013]

“there are times when you build up a head of steam in a membership and sometimes procedures can be seen as sort of causing that head of steam to evaporate because of the amount of time it takes ... a yes vote [for action] turning in to a no vote because you’ve lost your momentum.” [Interview 30018]

4.3.4 Gravity of the situation

Fourth, a view voiced strongly across the participants was that collective conciliation is only relevant in extreme situations, when all dialogue has collapsed. Clearly echoing the findings of the LRD study that around half of the officials identified in the survey as low/non-users of collective conciliation said that not having “reached a total impasse” was a factor in their non-use of Acas collective conciliation in dispute resolutions (Ruhemann, 2010: 29), the interviewees tended to report that they see conciliation assistance as a service only to be used in extreme circumstances, when there is complete breakdown of the union-employer relationship (a view that is perhaps reinforced by Acas coverage in high profile industrial disputes).

“it’s the point when both parties aren’t talking ... it will be a case when there is no other way other than particularly a dispute and you think, ‘well, we’ll give one last ditch attempt before we enter looking at running industrial action ballot” [Interview 30002]

“we remain optimistic that we will be able to resolve [the dispute] and just by go through the process and eventually the pressure will begin to tell and you’ll reach a compromise. I suppose you test that out before you come to, you go to a third party.” [Interview 30010]

“I think hypothetically [I would use collective conciliation] if I got to a situation with the employer that the industrial relations itself had broken down.” [Interview 30013]

“I would see it as a last resort really ... like sort of the Unite and BA dispute.” [Interview 30016]

“I think where [the problem is that] relationships have broken down, I actually think there’s a role for Acas” [Interview 30020]

It was common for the respondents to state that the service is not relevant for their disputes as they never reach a point where the relationship completely breaks down; for example, one interviewee indicated that Acas collective conciliation is not needed because in most cases the two sides are working together:

“The two parties are together. I can pick up the phone during the dispute, prior to the dispute and talk to the employer at any time” [Interview 30001]

Even if a dispute proceeds to balloting and/or industrial action, the door for negotiations remains open and so the FTOs do not see the need for assistance. Focusing on one particular example where the dispute had progressed up to balloting for action, one FTO explained:

“[we] gave a week’s notice of the intention to ballot, balloted over a two week period, declared the result, said to the employer at each stage we will engage with the employer.” [Interview 30005]

Several interviewees voiced the idea that all efforts should be made to resolve the problem in-house and amongst themselves, including the possibility of bringing in more senior officials from either side as a fresh pair of eyes, before considering 'outside' options such as Acas. It seems that the officials view the service as only relevant when communications completely break down; prior to that, if negotiations were ongoing, external third parties were seen as unnecessary.

4.4 FTO reluctance to use collective conciliation

Alongside concerns that using collective conciliation would be interpreted by others either as a sign of an FTO's weakness or as an unnecessary 'extra' step, participants expressed several other loosely related reservations about using Acas that stemmed more from an overarching personal reluctance on the part of the FTO to use collective conciliation. This sense of reluctance can be categorised into seven strands:

4.4.1 The self-styled role of the union negotiator

One argument that was strongly and widely expressed across the interviewees centred on a shared feeling that collective conciliation was unnecessary because it was the FTO's own job to resolve disputes. This argument corroborates the strong feelings identified in the LRD study: around one-fifth of officials identified as low/non-users of collective conciliation said that "I see my job/my union's job as to find solutions without using outsiders" was a factor in their low/non-use of collective conciliation, and over a third said that "I didn't see what solutions Acas could find that we couldn't have found ourselves" was also a factor (Ruhemann, 2010: 29), which is a similar conceptual idea of 'it's our role/we can solve the problem ourselves'.

[On having had collective conciliation explained] "It is like our role where we've got an employer and an employee who we are trying to [reach a resolution with]" [Interview 30003]

"I think it's my role to sort it out or assist in the industrial relations." [Interview 30013]

"[Acas are] basically doing the job that I think I'm doing as a National Officer, full time official, compared to a local lay rep" [Interview 30011]

Some FTOs saw their own role as being that of 'the conciliator' – i.e. the FTO as a mediator who steps in to resolve a dispute that has arisen between the employer and the union members. As such, these officials did not see any need to involve Acas.

"My role is to settle disputes, not to lead out members towards a dispute. To use everything I can to settle a dispute, so I don't see that as a bad thing. That's my role, so I carry out the role of a conciliator" [Interview 30001]

"the feedback I've had from both senior managers in my previous role ... and colleagues ... [is] that the style they see me adopt is much more the mediation approach." [Interview 30015]

It was argued by one FTO that as the lay representatives also saw dispute resolution as the role of their full-time official, and that calling in a third party could lead members to question the point of using the union at all:

“the way our members might look at it [if I called in Acas] is why are we paying you, just go to Acas then!” [Interview 30006]

4.4.2 Sense of failure

Associated with the feeling that conciliation was the official's job, some interviewees felt that turning to a third party could be seen to constitute a failure in the carrying out of their own role. 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 'sense of failure' idea was taken further still by one FTO who predicted that the membership may question the purpose of having the union involved *at all* if the FTO was unable to negotiate a solution unaided and instead had to rely on Acas.

“I wouldn't want to bring a conciliator in because that would be a demonstration that I had failed in the role that I see my role as being” [Interview 30011]

“I think that would be my own egotistical wish not. I wouldn't want to be seen to bring Acas in” [Interview 30001]

4.4.3 Ceding ground and losing control

There was a sense among some interviewees that turning to Acas for collective conciliation meant that there was an implicit assumption that they would be willing to cede ground on some of your negotiation points; some officials said that they, or their colleagues, were reluctant to use collective conciliation as they were perhaps not willing to 'back down' in disputes:

“I suppose the downside, and this is a perception of quite a lot of our representatives, is that [Acas] will move you towards the middle ground and sometimes you don't want to be moving” [Interview 30014]

“I mean with a pay claim and a pay offer there's always a compromise position somewhere in the middle but in a, almost, I hate to say this, but almost a matter of principle” [Interview 30010]

Closely related to this feeling of being pressured to 'back down' on certain issues if engaging in collective conciliation, was the view that by resorting to conciliation – with the possible move towards the middle ground that it may entail – there is some 'loss of control' over the evolution of the dispute.

“I think we like to keep control of the process and when you bring in a third party you are effectively handing over a degree of control” [Interview 30006]

This impression of conciliation was seen to be driving some officials' reluctance to use Acas because they were either in a position where they did not wish to make concessions to the employer and/or they feared that by using conciliation they would lose some control of the situation (although they tended to acknowledge that this was obviously much less of a 'loss of control' than if they engaged in arbitration).

4.4.4 Competing interests and altering 'the IR dynamic'

An interesting but more narrowly expressed view was that of the goals of Acas were not the same as those of the union, and hence the interests of the members would not be helped if Acas became involved. The underlying premise here seemed to be that Acas' primary aim is solely to broker an agreement that

resolves the dispute rather than an agreement that maximises the interests of the trade union members. This thinking was particularly strongly expressed in some cases:

“They’re agents of the Government at the end of the day, and their interest is not the same as me and my members. Their interest is not sorting out our members’ terms and conditions or improving their pay, their interest is to get in whatever their agenda is” [Interview 30013]

The same FTO argued also that, because of the differing aims of the trade union and Acas, using collective conciliation would alter the traditional dispute dynamic; specifically it would move negotiations away from a traditional confrontational dynamic based on competing interests. This was seen negatively because of the FTO’s own politicised view of the nature of dispute resolution. For this participant, negotiations seemed to be a means for the trade union to ‘enable’ and ‘empower’ the members through confrontation.

This idea contrasts with the manner in which Acas and conciliation was referred to by other officials. In general, Acas and conciliation were spoken of as a way for two sides to reach “some form of consensus agreement” [Interview 30001], arriving at a resolution “with a view of agreed consensus” [Interview 30002], which although never overtly stated always seemed to imply that the resolution arrived at had to be acceptable to both sides.

4.4.5 Doubts about neutrality

Two sets of doubts relating to Acas’ neutrality/independence emerged; both warrant inspection as potential reasons for the non-use of collective conciliation.

First, as raised in section 3.1.4, there were some suspicions regarding the Acas-government relationship, echoing the LRD study findings. However, no strong sense emerged that this heightened sense of awareness over the Acas-government relationship was acting as a driver for non-use of collective conciliation. This seems to further parallel the LRD study findings, which showed that although there were slightly lower levels of confidence in Acas’ independence from government than in its independence from trade unions or employers, this did not appear to be a driver for low/non-use of Acas: 18% of Acas *users* said that Acas was *not* independent of government, compared to only 12% of Acas low/non-users (Ruhemann, 2010: 37). This suggests that doubts about the Acas-government relationship are not a major explanatory factor of the non-use of Acas services.

Second, as already cited in 3.1.4, Acas’ independence from business was called into question with regard to the publication of Acas guidance that was perceived by one FTO as being ‘pro-business’. This perceived bias in the voice of Acas clearly influenced the interviewee in question – and reportedly the members also – against using Acas:

“When Acas has been suggested [the members have] said, ‘well actually I’d rather not because we’ve read the guidance that’s come out ... it’s too heavily weighted in the favour of employers’, they don’t see it as neutral” [Interview 30004]

Therefore, whilst doubts about the Acas-government relationship do *not* appear to be driving the interviewees’ low/non-use of collective conciliation, perceptions about Acas’ relationship with employers might be playing a part, among this sample of officials at least.

4.4.6 Industrial expertise

Having an insider perspective on the industry where a dispute is taking place was thought in some cases to give the FTO a strong advantage in approaching negotiations. It follows that a third party outsider could be viewed as lacking the industrial knowledge to effectively understand and contribute to the dispute resolution process. This idea found some expression in the research. One FTO believed that their industry knowledge and greater familiarity with the characteristics of particular employers would inevitably lead to a better outcome for members than Acas assistance could hope to achieve:

“my local knowledge assists the member better than Acas could ever do”
[Interview 30013]

4.4.7 Suspicions about employers’ motives

Certain FTOs reported that they would be reluctant to agree to use collective conciliation if they were suspicious of the employer’s motives for involving Acas. There was a feeling expressed that an employer who calls in Acas may just be doing so as “a publicity stunt or a deferral” [Interview 30016], but not be actually willing to meaningfully negotiate. Some FTOs felt that, by entering into Acas conciliation, the employer may just be attempting to show themselves as the more reasonable party, or else to provide themselves with enough time to prepare for industrial action properly, i.e. using Acas as a stalling tactic. Similarly, there was a feeling that where management turned to Acas, this was occasionally a symbolic snub by the employer towards the unions (in which case the FTO would refuse to co-operate):

“If the employers are doing it, sometimes they’re trying to suggest or have a pop that we’re being unreasonable and that can get members backs up” [Interview 30013]

“I think there is always a danger that employers will use [Acas] to buy time” [Interview 30006]

“I would interpret [the employer calling in Acas], in most cases as the company wanting to try teach some sense into our Shop Stewards, or whatever ... [that] is how I would see it if the employer pulled them in.” [Interview 30001]

Some FTOs stated that they occasionally felt that the employer would call in Acas simply as a way to put a gap between themselves and the trade union, because they were unwilling to deal with the unions *at all*. In one case, an FTO felt that the employer representatives in a certain sector were calling in Acas at the initial stages of a dispute, without first attempting to negotiate at all with the union – almost using Acas as a shield to prevent having to be in direct contact with the union. Again, in these situations, the FTO would be suspicious of the employer motives and therefore be reluctant to agree to have Acas involved.

“our concern at the moment is that we are now being faced with people in disputes who are ... immediately contacting Acas and saying we want you involved. And, in our view, that’s completely inappropriate and so we say ... ‘you haven’t even spoken to us yet’” [Interview 30020]

The interviews revealed that FTO suspicions about employer motivations for requesting Acas involvement clearly affects whether or not the official will agree to Acas participation. Therefore, these FTO suspicions are acting as possible drivers behind the non-use of collective conciliation by certain officials.

4.5 The pressure of members' perceptions

When asked to anticipate how their members would feel if Acas was brought in to conciliate in a dispute, some officials stated that, much like the FTOs themselves, the members would be most likely to seriously question the motives of an employer who sought to bring Acas in. It was reported that members tend to harbour the same suspicions as their officials that the employer is not actually seriously committed to the conciliation process and therefore must have ulterior motives, such as preparing to defend against potential industrial action. One FTO, representing mostly public sector bargaining units, reported that the members were always cynical when an employer proposes that Acas should be brought in. This cynicism was said to be borne of the members' belief that an employer will only call for conciliation if they know that Acas will support their stance.

Regardless of the exact nature of their reluctance, if an FTO's members are seen to be resistant to the idea of using Acas, it can be reasonably assumed that this could be a potential driver for the FTO not to utilise collective conciliation.

4.6 The influence of employer reluctance

In contrast to the above views, there was a strong sense across the sample that – either based on experience or conjecture – some employers are reluctant to have Acas involved in a dispute. The feeling here was that employers are generally against the idea of getting an 'outsider' involved on the basis that disputes should be resolvable in-house.

“when we've said to employers we would like to use Acas, for example, their response to that has been we have got a fairly adult relationship and we should be able to resolve our own issues without recourse to a third party” [Interview 30014]

The LRD study revealed a similar theme amongst the sub-set of low/non-users identified in the survey, almost a quarter of whom reported that one factor behind their low/non-use of Acas was that the employer was unwilling to have a third party involved (Ruhemann, 2010: 29).

Related to this, some employers were said to be of the opinion that because they had already negotiated directly with the trade union to a point as far as they were willing to go, there was no point in a third party becoming involved, i.e. because there was no more room for movement:

“[The employer says] we're quite clear in our position, we are not going to do this or we are going to do this and we've told you why so that's the end of it. So, if you're going to ballot your members, get on with it” [Interview 30002]

4.7 References to Acas in dispute resolution processes

A range of interviewees made reference to the fact that Acas is not part of the established dispute resolution processes that they have with employers. Here this view was that if Acas is not written in to the dispute resolution process then the FTO would not be able to use collective conciliation even if they personally wanted to.

"[the employer says] this is our policy, our policy doesn't allow for Acas ... I would always work within whatever the policy and procedures are [for dealing with that employer]" [Interview 30004]

"we have dispute procedures, we have procedures for industrial action ... we don't have any automatic reference to Acas" [Interview 30010]

However, some interviewees suggested that the fact that Acas was not written in to their dispute resolution agreements was *not* the main factor behind their non-use of collective conciliation. As one FTO put it:

"Could I involve Acas? ... Yes, never have done ... It's just not something I've done, and ever been part of that process at all. It's not written into any of the Agreements [for dispute resolution]" [Interview 30001]

This finding builds on evidence from the LRD study, which indicated that the absence of an Acas stage within organisations' written dispute resolution procedures is not a driving factor behind the non-use of Acas: only 12% of those respondents identified in the LRD study as being low/non-users of Acas reported that not having "established procedures to involve Acas" was a contributing factor to their low/non-use of collective conciliation, with less than 2% highlighting it as the main reason for their low/non-use (Ruhemann, 2010: 29-31). This sense of inconsequentiality was echoed across the interviews.

On a related point, several interviewees – across both public and private sector unions – reported that, even though there *was* an 'Acas stage' or a clause in their dispute resolution procedures that allowed for Acas involvement, in practice this stage tended not to be used. This could potentially be because either the dispute tended not to reach the stage where the clause came into effect, or else because the FTO had a preference for an alternative approach and hence eschewed the clause altogether. For example, one FTO stated:

"A lot of our internal disputes resolution procedures with the employer have a clause that allows for Acas to be called in, even though we don't use them very often" [Interview 30013]

after previously stating that:

"I would prefer to go down the industrial action route and exert external pressure for my members for that movement [from the employer] rather than a mediation" [Interview 30013]

On the whole, the interviews conducted for this research would therefore appear to suggest that the inclusion or otherwise of Acas in dispute resolution procedures does not have a decisive bearing on whether or not officials use Acas collective conciliation.

4.8 Negative experiences of Acas

The LRD study indicated that previous experience of using Acas was not a strong driver of non-use amongst the low/non-user sub-set of officials in the survey (Ruhemann, 2010: 29-30). However there was some evidence in the current study that previous experience of Acas, direct or indirect, had affected some officials' views on the service and therefore can be seen as a reason for non-use of collective conciliation.

First, some FTOs reported that they come across Acas most commonly through its involvement in the Employment Tribunal (ET) claims process – i.e. in those instances where a tribunal claim has been made and Acas *individual* conciliation is offered to both sides with the aim of settling the matter without the need to attend a hearing. There was a range of attitudes expressed by FTOs towards their experience of Acas from this contact, ranging from generally positive to quite negative.

“when I’ve dealt with them for tribunal settlements, they have been great. You do get the odd one that never calls you. You will get a letter from Acas to say “I’ve been appointed as Conciliator”, then that’s it, you never hear from them.” [Interview 30003]

“I’m aware, every time a tribunal claim goes off, there’s always a correspondence from Acas and, at times, although it’s not been consistent, you know, Acas have approached me” [Interview 30002]

“most people get a bad view of Acas because nine times out of ten on an ET ... you get a letter saying your reporting officer is Fred Blogs and you make a note of the number and one in ten roughly for me will ring up and say right [NAME], what are the issues here? How can we resolve it? The majority of them will sit and wait and they may give you a call a week out in the tribunal and say how are you getting on? ... if you then say to that full-time official someone like me for [XX] years who’s been dealing with Acas people at that level, oh we can help you resolve a dispute, then your perception will be oh well, they’ll sit on the sidelines while we do it and then they’ll come in and claim the glory” [Interview 30017]

It stands to reason that a negative experience of Acas individual conciliation might colour an officials’ judgement about using Acas as some future point, perhaps in a different (collective) capacity. It follows, therefore, that a negative impression of Acas’ conciliation in Employment Tribunal cases may be acting as a driver of the non-use of collective conciliation for some FTOs.

Second, alongside reports of some negative experiences of conciliation from Employment Tribunal cases, there were examples given where an officials’ previous experience of Acas in an unrelated context had made a negative impression. One such example was discussed in the previous chapter, where a negative view of Acas was gained through what was taken to be a pro-business slant of an Acas publication. This was said to have given rise to more general suspicions over the neutrality of Acas, and influenced future usage (see sections 3.1.4 and 4.4.5). A second example raised by another FTO centred on Acas’ involvement in a large-scale, nationwide industrial dispute where they were perceived by the FTO to have acted improperly. In the eyes of the official, Acas had issued a public statement on the case without investigating the situation fully; this action was said to have given a bad impression to all the officials at that particular union. Whilst with this second example it was not overtly stated that the experience would directly affect the FTO’s decision on whether to call in Acas in the future, it might be reasonably surmised that such occurrences have the potential to act as drivers for non-use of collective conciliation (together with other Acas services).

4.9 Summary

This chapter has unpicked a series of themes that arose from the interviews that point to some potential drivers of officials' non-use of Acas' collective conciliation service.

Firstly it was noted that in certain circumstances FTOs believe that a deviation from the 'usual' course of the pressure-building approach (as outlined in chapter two) by calling in Acas would potentially be seen as a sign of weakness in their position by the employer.

Next, there were situations where FTOs envisaged that calling in Acas would be a waste of time. These include where the FTO believed: the dispute lacked a 'middle ground'; their own position was strong enough to achieve the desired outcome; that any delay caused by extra negotiations would make industrial action harder to effect if direct talks failed.

The FTOs' own reluctance to use Acas was expressed in several ways – most forcibly through the perception that it was the official's own role to resolve disputes independently, without recourse to a third party. Loosely associated with this idea was a shared sense among officials that they would somehow have 'failed' in their jobs if they needed a third party to aid in the negotiations. Some FTOs expressed a further reluctance to using Acas on the grounds that they simply did not *want* to move towards the middle ground – seen to be the inevitable result of conciliation – and that the use of Acas might remove an element of their control of the situation.

Elsewhere, it was felt by some FTOs that the differing aims of Acas and the trade unions meant that negotiations involving conciliation would not end as favourably as if the FTO was left to pursue members' interests on their own. Related to this was a sense that the traditional 'oppositional' dynamic of industrial relations would be weakened if a third party was introduced. There were also some issues raised over the independence of Acas from government, but generally speaking these did not seem to act as drivers for non-use (thus corroborating findings from the LRD study).

Where FTOs felt that the employer's motives for asking Acas to become involved in the dispute were disingenuous – for example, in order to give the employer time to prepare for industrial action or as a symbolic snub to the trade union – they would be more likely to reject Acas' involvement. Also, if the FTO felt that the employer was trying to shield themselves behind Acas rather than genuinely engage in direct negotiations, this would lead to FTO resistance to Acas involvement.

As well as FTO reluctance to use collective conciliation in specific situations, themes also arose around members' and employers' reluctance to engage with Acas generally. Members were said to potentially share the same doubts that an FTO may have concerning employer motivations in asking for Acas assistance. As for the employer side, there was a perception amongst participants that, more often than not, an employer would prefer to resolve a dispute in-house. Both of these lines of reasoning can be seen to influence officials' use of Acas services.

Finally, negative past experiences of Acas in other contexts – especially its conciliation in Employment Tribunal cases – were seen to have a detrimental influence on FTOs' opinions of Acas, and thus to potentially curb willingness to utilise its services at a later date.

5. CONCLUSIONS

This research set out to build on the results of the LRD study, seeking to explore in more detail the attitudes of and influences on full-time officers towards handling collective employment disputes, focusing specifically on those officials who are infrequent or non-users of Acas' collective conciliation service. The report explored these issues by looking at three main areas:

- Officials' established preferences for dispute resolution
- Their attitudes towards Acas and knowledge of collective conciliation
- Specific factors driving their low/non-usage of collective conciliation

5.1 'Compromisers' versus 'pressers'

In the LRD study, an attempt was made to classify the responding officials based on the basic stance they took towards dispute resolution; the two significant categories of officials which emerged were labelled 'compromisers' and 'pressers' (Ruhemann, 2010: 14-15). The 'compromisers' were those officials who expressed a strong preference towards the aim of seeking "a compromise that suits both sides without confrontation or disruption" whereas the 'pressers' aspired to "press for as much as possible for the members, even if that means industrial action" (*ibid.*). As shown in the LRD study, these categories are not necessarily mutually exclusive: although around one third of respondents fell in to the category of 'compromisers' and a little under one sixth of respondents were classified as 'pressers', there was a significant number of respondents that did not fall in to a specific category showing instead a combination of these attitudes. The richness of the data from the interviews with the low/non-users of collective conciliation conducted for this research echoes this, pointing to a much more complex picture than simple, demarcated 'compromiser'/'presser' attitudes. From the interview data it seems that officials on the whole tend to see themselves as *negotiators* – or even *mediators*, in some cases – seeking to arrive at a *compromise* with the employer but who – to varying degrees – are also willing to add *pressure* to the situation to assist with the negotiation (as per the so-called 'pressure-building approach' detailed in chapter two). Some cases could be seen to more closely fit the 'pressers' mould; these officials were from trade unions that have historically demonstrated a clear preference for using industrial action to advance members' interests. But even they acknowledged that dispute resolution will involve some degree of compromise.

On the whole, interviewees tended to express a willingness to co-operate with employers in collective employment disputes. There were, of course, a wide range of opinions as to what is the desired *level* of co-operation with employers. Some officials signalled a high degree of pragmatism towards dispute resolution, seeing themselves almost as a service provider for the membership or even as a quasi-third party that comes in to resolve disputes between either the lay representatives and the employer or between a more junior FTO and the employer. Others identified themselves more closely with the membership, expressing less trust towards employers, but still articulated a sense of 'willing' and were 'pro-compromise' in their attitudes towards dispute resolution negotiations.

Chapter three showed that the interviewees were broadly aware of the collective conciliation service and, barring a little – mostly semantic – confusion as to the finer details of mediation versus conciliation (less so than was suggested in the LRD study), were reasonably well informed as to what conciliation would entail;

officials were able to envisage the hypothetical benefits of using such a service. One might suppose that officials who display conciliatory tendencies and attitudes towards dispute resolution and who are themselves aware of collective conciliation would be likely to use the service. However, the fact remains that the interviewees were all confirmed low/non-users of conciliation. The motivating force behind their non-use appears *not* to be caused by a lack of knowledge of the service or from an 'uncompromising' approach to dispute resolution.

5.2 Factors behind the low/non-use of collective conciliation

A combination of three – interrelated – sets of attitudes can be summarised as being most influential in driving the interviewees' low/non-use of collective conciliation.

First, officials generally reported a deep-seated predisposition towards an established pattern of dispute resolution; a semi-formulaic so-called 'pressure-building' approach. This approach allows for direct negotiations with the employer to be supplemented with increases in pressure on the employer – if needed – in order to facilitate a return to negotiations. The pace and extent to which the pressure-building approach is pursued varies according to a number of factors. These factors – which themselves vary in how much significance they are given by individual officials – include: the characteristics of the bargaining unit; pressure on the official to resolve the dispute at the 'lowest' level; the actions of the employer; and the actions of any other unions involved. The historical success of this approach means that it has become an almost habitual approach for officials. To the official, the pressure-building approach seems to be a fluid continuum with no obvious juncture for the insertion of a collective conciliation 'stage'.

Second, officials tended to perceive Acas collective conciliation as only being relevant at the point where a complete breakdown in communications between the two sides has occurred. Although officials occasionally referred to talks that had stalled, they tended to report that in those situations the channels of communication with the employer remained open and the action of calling for or conducting a ballot tended to focus minds on both sides, providing sufficient extra pressure to allow the negotiations to resume or conclude. In these situations, turning to an external third party was seen as unnecessary and, in some cases, even had perceived risks attached. These risks included obfuscation of the true motives of the employer and a fear that use of a third party would prolong the process, thus curtailing the official's options for stepping-up the pressure should external talks fail (due to members' willingness to act having waned by this point). On top of this idea that collective conciliation is only relevant where communications have completely broken down, officials also reasoned that the disputes they encountered were not suitable for conciliation on the grounds that: a) internal dialogue channels tended to remain open; b) their disputes were typically 'straight forward' in nature, and; c) they saw themselves as being in a 'strong' enough position to resolve the dispute unaided. For these reasons, collective conciliation was not an option that these officials would actively consider.

Third, an officials' professional self-image – that is, how they see their own role – appeared to influence whether or not they would consider introducing a third party to their own established approach. This sense of an official's self varied hugely across the sample. Some officials displayed a very strong sense of themselves as being a 'conciliator' or 'mediator' whose own job it was to resolve disputes, in some cases even describing the sense of personal failure they

associated with resorting to use of a third party. Other officials placed less of an emphasis on themselves as 'problem solvers' but did see dispute resolution as being the exclusive remit of the trade union (i.e. third parties not being necessary). Variations in these attitudes did not correspond to particular characteristics of officials – i.e. those from certain unions or with certain levels of experience – but were instead richly diverse across the sample. The stronger an official's sense of it being *their job* to resolve the dispute, the less likely they were to even consider introducing Acas collective conciliation to their dispute resolution process.

Other factors did emerge across the interviews that were seen to influence certain individual officials' attitudes towards using collective conciliation – for example doubts over Acas' neutrality or fears that the introduction of Acas would negatively affect the industrial relations 'dynamic'. However it was the three factors listed above that emerged most clearly and strongly as factors driving the interviewees' non-use of collective conciliation.

5.3 Concluding thoughts

Apart from a few isolated cases, the factors influencing officials' low/non-use was not characteristically active hostility towards Acas. Any 'opposition' tended to be *indirect* and stemmed from the aforesaid issue of officials' professional self-image: where FTOs saw themselves as a quasi-'conciliators' or 'mediators' there were suspicions that Acas could usurp what was seen as being the officials' own role. Yet in the main, as chapter three showed, officials were reasonably well informed about Acas and were able to envisage some potential benefits of using collective conciliation – for example as a means of bolstering their position or helping to manage other parties involved in the dispute.

The LRD study showed that, of those officials who have brought in Acas to their collective disputes in the past ten years, a majority have done so on multiple occasions (Ruhemann, 2010:24), suggesting that there is no real problem with the service itself. Rather, one of the main issues may be that, on the face of it there is no 'ideal' or obvious stage at which to 'add' collective conciliation to the established dispute resolution processes of low/non-users. In order to encourage low/non-users such as those interviewed for this research to use the service, consideration needs to be given as to *where* and *how* collective conciliation might most appropriately be incorporated within officials' established 'pressure-building approach'.

The pressure-building approach typically opens with direct negotiations between employer representatives and the FTO before progressing to the stage at which the employer states their 'final' position. At this stage the FTO ascertains through some form of consultative ballot or referendum whether or not the members are happy with the 'final' position, or if they wish reject the offer and move to industrial action. If the result is a rejection, an indication of the strength of feeling is normally passed to the employer with the aim of putting pressure on them to re-negotiate. Refusal to do so might typically lead to further balloting and, potentially, industrial action. There are possible advantages to specifically promoting the opportunity of entering into collective conciliation at one of several appropriate stages of the pressure-building approach, none of which would require officials to forsake their *modus operandi*. Instead, officials might benefit simply from having the message reinforced that – as evidenced by previous research – conciliation carries possible benefits at various stages throughout the lifespan of a dispute; not just when an outright impasse is reached (*see box below*). Moreover these benefits are specific to Acas owing to its unique position

as an *independent external actor*; this is an important message which full-time officers who see themselves as performing the role of mediator may not have fully appreciated.

Possible benefits of conciliation at different stages of the dispute

Where parties do not agree on the facts of the dispute

- Create a more open environment for discussion
- Bring a third party's 'weight' to the evidence
- Bring an independent view of parties' positions

Where parties want to settle but don't know how

- Improve understanding of positions
- Generate new ideas/re-visit old ones
- Provide a shield behind which to put forward options, make concessions

Where parties aren't talking anymore

- Force consideration of the consequences of continuing failure to agree
- Allow dialogue to resume

Based on findings from Molloy, Legard and Lewis (2003)

Seen in this way, conciliation is not an *alternative* to officials' favoured approach to collective dispute resolution and indeed has the potential to work at any stage *within* the process. Given that the low/non-user group are already conscious of some of the potential benefits of collective conciliation, it may be that if some of the misconceptions about the service can be dispelled – particularly that it is a time consuming process only appropriate in extreme situations – officials might prove receptive to the message that collective conciliation would not require a step change in their preferred approach but might instead be used to supplement their usual way of doing business – with the ultimate aim of resolving disputes earlier and with less cost to all parties.

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APPENDIX A – TOPIC GUIDE

INTRODUCTIONS

- Purpose of the research:
 - *Building on research conducted last year, the research aims to understand the reasons for and the ways in which FTOs use and don't use Acas services.*
- Timing
- Recording and confidentiality
- Questions

SECTION ONE: ABOUT THEM

- Age
- Gender
- Educational background
- How become FTO (i.e. lay rep)
- Previous FTO experience(s)?
 - Time in role
 - Number bargaining units represented (size / sector / characteristics)
 - Training in role?
- Current FTO role
 - Time in role
 - Number bargaining units represented (size / sector / characteristics)
 - Training in role?

SECTION TWO: DISPUTE RESOLUTION

- Collective disputes experience:
 - Disputes handled
 - Main type (complexity, industry)
 - Trends over time
- Thinking of a specific / recent (NOT ongoing) dispute.... your role in, how arose, how evolved, outcome... rough timeline...
 - PROBE tactics mentioned.... why that method, why then, worked?...
 - Use external sources to gather evidence in support of case? (web / help lines / market research / other)
- Sum tactics mentioned... Is this typical actions/tactics in dispute?
- Alongside tactics mentioned, others?
 - Direct negotiations (why not?)
 - Ballots (why not?)

- Real / Indicative
 - Non-strike actions (why not?)
 - Work-to-rule / go-slows / sit ins
 - Media (why not?)
 - 3rd Parties on the cards? (why not?)
- 3rd parties
 - In terms of dispute resolution... 3rd Parties familiar with?
 - Acas
 - IPA (Involvement and Participation Association)
 - (TUC) Partnership Association
 - Specific Law firms
 - Attitude towards
- What key influences govern choice of tactics:
 - Standard procedure
 - Flexible?
 - Expectations of union
 - *TUC influence (if affiliated)*
 - HOW DO Employer characteristics
 - Predicted/experienced reaction of employer
 - Expectations (i.e. wait for ballot)
 - Firmness of stance
 - HOW DO Bargaining unit characteristics
 - Expectations of workforce (militant etc)
 - Union density
 - Strength of legal stance
 - Experience

GOING BACK TO EXAMPLE DISCUSSED EARLIER...

- YOUR view on employer you negotiated with in terms of COMPETANCE and ATTITUDE to negotiations:
 - Who negotiate with?
 - Attitude to working with TU (willingness)
 - Negotiating experience
 - Power to make decisions
 - Public Sector – rep limited in what can offer?
 - Does this influence choice to use 3rd party?
 - Relationship with
- Is this typical of the employers you deal with?
 - Changes over time
 - More/less skilled

- More/less willing
- Vary across sector/industry

SECTION THREE: ACAS – THEIR KNOWLEDGE

- Knowledge of purpose
 - Brief description of purpose
 - Services (CC, IC, Cot3/ET, arb, med, helpline)
 - Relationship to business/Government/unions
- How know about
 - Can remember where first heard of?
 - Where see mentioned/hear about it now
 - Letters / phone calls from a rep
 - Leaflets / brochures
 - Emails
 - Mentioned in training
 - Seminar invites
 - Know / use website
 - Frequency of coming across Acas
 - Just hear of high profile media cases
- Any experience of any of the services/info?

If interviewee specifically with 'collective conciliation' term proceed through section four in full – if not, show explanatory text and proceed hypothetically from 'in recent example' questions onwards.

SECTION FOUR: ACAS – THEIR VIEWS ON CC

- Their views on CC
 - What aim / purpose
 - Who decides
 - Enforcement of decision
 - Legally binding?
 - Likely to be honoured
- Know how to contact / start process (how?)
- Perhaps thinking about your example, was Acas ever on the cards?
 - Hypothetically, at what point would be relevant? Why then?
 - Can you authorise to use
 - National / regional / local union policy on using CC
- Thinking in general terms, pros and cons of such a service?
 - Affect the outcome of dispute (+vely or –vely)
 - Specific characteristics of industry to understand?

- Lack industry/situation experience
 - Prefer industry specialists?
- Give certain impression to employer (aggression / weakness)
 - Affect decision to use?
 - Employer reluctant to engage with CC
 - If so, why? How can change?
- Give certain impression to workforce representing (lay reps AND membership base)
 - Trying all angles to resolve
 - Can't handle the problem / point of union?
 - Affect decision to use?
- Can CC offer anything extra (that FTO can't)?
 - Face-saving environment
 - Improvements longer term to performance indicators due to more "long term" solution?
- What would like to see Acas/CC include to be useful as an aid to resolve/avoid disputes?
- In summary, why haven't used more?

SECTION FIVE: CLOSING DOWN

- Thank respondent
- Questions/queries/concerns

