

Qualification: CIPD Diploma in Applied Human Resources

Module Name: Understanding the Management of Employment Relations

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## QUESTION 1

Employee relations, historically referred to as industrial relations was a term widely used to describe the relationship between trade unions and employers. According to Taylor & Woodhams (2016), two types of definitions broadly define employee relations, the first highlights the regulatory nature of the relationship, where rules, regulations and agreements are established to govern the relationship (Gennard & Judge, 2010) and the second, centres around the relationship-based nature of interactions between employees and management, referring to how employers create and sustain the relationship with their employees on both a collective and individual basis (Taylor & Woodhams, 2016). In today's world of work, the emphasis is placed on managing the individual aspect of the relationship and instilling a culture of trust between line managers and their direct reports (CIPD (a), 2018).

The employment relationship is deemed indeterminate as the labour contract is not a straight forward exchange of money for services, but rather a contract founded on the capacity of individuals to supply work to a standard required by the employer (Colling & Terry, 2010). The complexity of this relationship is evident because of the potential for conflict within it, as balance of power is tipped in favour of the employer. However, if the full potential to deliver quality work is to be realised, both parties should endeavour to adjust to the expectations, needs and wants of the other (which speaks to the dynamic and fluid nature of the relationship) (Dundon & Rollinson, 2011).

When determining the context of employee relationships, one has to consider the stakeholders involved (including workers and their representatives, employers and the State), as well as the processes and key components that drives these interactions, which include the role of employment law (specifically, the Employment Rights Act 2008, the Equality Act 2010, the Working Time Regulations 1998 and the National Minimum Wage Act 1998 amongst others) the sector within which the organisation is based, whether the environment is unionised or non-unionised). A further layer of complexity has been added to the employee relationship with the shift towards globalisation and multi-national organisations integrating their systems and processes on an international level (Colling & Terry, 2010).

Fox (1966) lists two divergent approaches to employment relations, namely the unitarist and pluralist approaches. Managers subscribing to a unitarist approach retain the perspective that conflict should not exist within the employment relationship and that employees should align themselves behind business leaders and work towards the shared objective of achieving the organisation's goals. Taylor & Woodhams (2016) state that this view is based on the premise that the employee relationship is team centric and characterised by co-operation and harmony. Aylott (2018) expand on this view by highlighting that people holding a unitary perspective believe that employees should behave appropriately, which the author defines as shying away from behaviour that is deemed as disruptive or disloyal (ie: conflict) and includes opposition to union activity. Managers holding this view would, in all likelihood, link conflict to a breakdown in the communication and trust relationship between management and employees.

Conversely, managers subscribing to a pluralist perspective believe that conflict is unavoidable and instead of having negative connotations, acts as a positive driver in bringing about change (Furnham, 2005), whilst taking into account the differing agendas of employees and employers, where the former may be concerned with increasing their earnings and progressing their career and the latter focused on managing efficiencies and increasing profit margins. It is generally acknowledged that managing conflict is not a comfortable space for employees (Aylott, 2018), however, it is this difference of opinions and ideas and resultant tension that creates the scope to innovate and fosters the ability to respond to change quickly (McKenna, 2006) and it is this interactionist perspective which some would argue is a more relevant and contemporary viewpoint to subscribe to when considering how organisations function currently. A survey conducted by the CIPD of 2,195 UK employers in 2015, found that four in 10 employees reported an incidence of interpersonal conflict in that year (CIPD (b), 2015) and the UK has seen an upwards trend towards an escalation in both workplace conflict and the fear of reprisal through discrimination or victimisation over a number of years (Gallie, et al., 2013; Saundry, et al., 2014). The resultant detrimental impact that ineffective management of conflict (through the appropriate channels) has on productivity, motivation and employee wellbeing makes this an important business issue for employers and does raise the question as to how relevant and applicable a unitarist approach is in the employee relationships that exist today.

## QUESTION 2

According to the Trade Unions and Labour Relations (Consolidation) Act 1992, Section 1 (TULRCA), a trade union's primary responsibility is to regulate the relationship between employers and workers and are tasked with representing their members in pursuing democracy in the workplace (Taylor & Woodhams, 2016). Unions experienced significant growth during the 1940's and 1950's when industrial action was prevalent. Unions operate on the premise that by operating collectively, they can exert a greater influence and achieve more favourable outcomes for their members which in those days, was viewed as a means to reduce the threat of industrial action.

That said, union influence has reduced considerably in recent times (with membership falling by over 50% between 1980 and 2014) as the focus shifts towards an individual partnership based approach between employees and employers (Taylor & Woodhams, 2016). This has also impacted the role of employers' associations who, historically, played significant role in collective bargaining at a time when unions were growing in power and influence, with only 7% of British workplaces engaged in multi-employer collective bargaining according to a 2011 workplace survey (van Wanrooy, et al., 2013).

Trade unions engage in collective bargaining with employers in order to jointly agree both employment rules and decisions impacting the employment relationship and they are heavily reliant upon the negotiation and consultation process. Collective bargaining usually occurs around the issues of pay and conditions of employment (but can also include issues around working time and environmental conditions) and has wider economic ramifications (for example, non-union employers could take account of pay rates that have been agreed through collective bargaining within their sector when determining their salaries in order to remain competitive in the market and organisations may elect to pitch their salaries higher than union agreed pay rates in order to avoid unionisation). Furthermore, collective bargaining in larger organisations can be a far more cost effective means for employers to achieve agreement on pay, workplace rules and procedures.(Gennard & Judge, 2010).

The remit of UK trade unions as defined in the Donovan Commission also includes that unions represent individuals at grievances or disputes, as well as lobby government on a variety of issues (social and political) and influence government policy (Aylott, 2018).

Taylor & Woodhams (2016) define the term management as being used to describe a system of authority, person, group of people or process. Frontline managers are primarily responsible for the organisation and delivery of employees and work and this would include outlining objectives and organisational expectations and ensuring that performance meets the required standard, however, increasingly, managers are given greater autonomy to manage employee relations issues (Gennard, et al., 2016).

According to Kilroy & Dundon (2015), managers tend to adopt one (or more) of three approaches, when interacting with their direct reports as indicated below:

| <i>Type</i>           | <i>Description</i>                                                                                               |
|-----------------------|------------------------------------------------------------------------------------------------------------------|
| Policy enactor        | Executes policy indiscriminately with little or no flexibility                                                   |
| Employee coach        | Tailors the enactment of policy in response to specific situations or employee experience                        |
| Organisational leader | Is selective when applying policies to a given situation and utilises discretion in the way they are implemented |

Government holds multiple stakeholder roles in the employee relationship in the form of the ruling Conservative party (legislator), employer (primarily in the public sector where it is a major employer) and its agencies (including the Advisory, Conciliation and Arbitration Service (Acas) and the Human Rights Commission (EHRC)) (Taylor & Woodhams, 2016). Employment laws are established and implemented by government and as such, directly impacts the employment relationship. It should be noted that a number of the laws implemented by government stem from the European Union (EU). From a legislative perspective, the Maastricht Treaty signed by the Labour Government in 1997 resulted in the UK adopting EU laws and applying them to the employee policies and practices legislated in the UK. This is particularly apparent in legislation relating to the National Minimum Wage, working hours and parental leave as the EU directives in this regard favour a robust welfare state where co-operative relationships are fostered between trade unions, workers and government and employers are obliged to adhere to minimum standards within the workplace (Taylor & Woodhams, 2016) albeit that there continues to be debate regarding which categories of workers this legislation can be applied to (CIPD (d), 2017).

Government, through its agencies, also has an indirect impact on employment relations as each have different roles in regulating, monitoring, educating employers and workers in areas that impact the employment relationship and have the potential for contention – as follows:

| <i>Government Agency</i>                                       | <i>Function</i>                                                                                                                                                                                                                        |
|----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Acas                                                           | Government funded, independent, providing information, advice and training (Acas (c), 2014).                                                                                                                                           |
| EHRC                                                           | A regulatory body tasked with enforcing the Equality Act 2010. Remit includes clarifying the law, highlighting priority issues, challenging policies or practices (Equality and Human Rights Commission, 2019).                        |
| Health and Safety Executive (HSE)                              | Prevent work related death, injury and ill health through the provision of a regulatory framework, direct interventions and the increasing awareness of health and safety risks (Department for Work and Pensions, 2018).              |
| Department for Business, Energy and Industrial Strategy (BEIS) | Remit includes maximising UK investment opportunities, promoting responsible business practices and ensuring that the UK's energy system is clean and cost effective (Department for Business, Energy & Industrial Strategy, No date). |
| Low Pay Commission (LPC)                                       | Independent body (sponsored by BEIS) that provides advice to government on the National Minimum Wage and the National Living Wage (LPC, 2018).                                                                                         |
| Central Arbitration Committee (CAC)                            | Independent body tasked with resolving collective disputes in England, Scotland and Wales following a legal decision or through                                                                                                        |

|  |                                                               |
|--|---------------------------------------------------------------|
|  | voluntary agreement (Central Arbitration Committee, No date). |
|--|---------------------------------------------------------------|

### QUESTION 3

Management literature proposes that the primary functions of employee voice are to increase employee engagement and for employees to exercise their fundamental right for self-determination (CIPD (c), 2019). Employee voice is expressed using mechanisms by which employees can communicate with their employers and influence decisions that affect them in the workplace. This was legislated in the Information and Consultation of Employees (ICE) Regulations (2004) introduced in the UK in 2005 for organisations with >50 employees. The regulations stipulate that permanent mechanisms exist for managers to share information and consult with employees (or their representatives) in matters concerning the organisational developments and economic situation and finally, to provide a platform for consultation with employees regarding any changes to work contracts (CIPD (d), 2017).

There are a number of benefits to be derived within organisations that have effective systems in place to support employees exercising their right to be heard which include: increases to productivity, innovation and business outcomes for employers and improved job satisfaction and access to development opportunities for employees (CIPD (c), 2019).

There are two forms of employee voice, namely, employee participation (defined as being when employees take part in organisational decision-making utilising representatives) and employee involvement (which sees practices being introduced by management to their workforce directly as a means to acquire their co-operation or ideas) (Taylor & Woodhams, 2016).

Representative participation includes the following approaches, the key component of which is that representatives participate in these forums on behalf of the employees :

| <i>Approach</i>           | <i>Purpose / Function</i>                                                                                                                                                                          |
|---------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Collective Representation | Is concerned with negotiations between employers and, ordinarily, union representations, in order to jointly regulate conditions of employment / pay or other matters (eg: grievances) and operate |

|                         |                                                                                                                                                                                                                                                                                                                                                          |
|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                         | intermittently or on an ongoing basis depending on the issue (CIPD (c), 2019).                                                                                                                                                                                                                                                                           |
| European Works Councils | Mandatory in certain EU countries (eg: France, Germany and Spain) whose function is to represent employee rights (sometimes trans-nationally) through information sharing and consultation (covering social and/or economic rights depending on the country) (CIPD (d), 2017).                                                                           |
| Joint Consultations     | This can take the form of a Committee, Works Council or Employee Forum and is a formal mechanism for consultation (not covered by collective bargaining) where employers and employee representatives convene to discuss issues of mutual concern (Gennard, et al., 2016). These can, however, also be run in non-unionised workplaces (CIPD (c), 2019). |
| Partnership Schemes     | These schemes are devised as a means of information sharing and employers and employee representatives work co-operatively to address issues. This is in contradiction to the traditional adversarial nature of interactions between these two parties (CIPD (c), 2019).                                                                                 |

Employee involvement is a manager-led technique whereby information is shared with individual employees or groups of employees in order for them to share their views (CIPD (c), 2019), or gain their consent to a proposed action (Gennard, et al., 2016). This can take various forms, for example:

| <i>Mechanisms</i>  | <i>Function</i>                                                                                                                                                                                                                              |
|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Suggestion schemes | A formal two-way communicationa mechanism that serves as an upward form of communication from employees to management, which provides an opportunity for managers to either accept, reject or comment on the proposals or ideas put forward. |
| Team Briefings     | A platform for direct two-way communication to clarify issues (rather than a forum for consultation) to a small group of employees who are afforded the opportunity to pose questions (Gennard, et al., 2016).                               |

|                                                                      |                                                                                                                                                                                                                                                                                        |
|----------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Working<br>(Problem<br>Solving) Groups                               | An informal mechanism utilised to leverage employees' knowledge in order to "brainstorm" ideas and work co-operatively towards a resolution.                                                                                                                                           |
| Attitude Surveys                                                     | A formal mechanism used to acquire upward feedback from employees to managers (Marchington, 2015) to gauge their perception to issues such as pay systems and fairness (Gennard, et al., 2016).                                                                                        |
| Digital Media<br>(including<br>enterprise social<br>networks (ESNs)) | Utilising social media platforms and ESNs (eg: intranet Yammer groups) gives employees an opportunity to exchange ideas and network with colleagues which is in keeping with the contemporary view that organisations create an environment of trust and empowerment (CIPD (c), 2017). |

#### QUESTION 4:

(Taylor & Woodhams, 2016) state that conflict is inherent in organisations as a result of the differing interests of the parties involved in the employment relationship. This view links in with (Sisson, 2010) who described conflict as being discontent which occurs following a perceived clash of interests which is expressed in different forms on either a collective or individual basis.

In contemporary organisations, individual conflict behaviour in the workplace is more common than collective forms, most commonly, bullying, disrespectful inter-actions between colleagues or personality clashes. Whilst employees are encouraged to resolve disputes informally wherever possible, an organisation should have robust policies and procedures in place (eg: conduct management, grievance and capability) in order to manage more serious conflict issues (eg: grievances) during the formal stage (Taylor & Woodhams, 2016). Failure to resolve disputes internally, could result in an employee bringing a claim to an employment tribunal and it is imperative that the organisational policies and procedures adopted in addressing disputes to this point have followed the Acas Code of Practice as employment tribunals consider this in their determinations (and awards) (Acas (a), 2015).

It is widely acknowledged that line managers are at the heart of much of the workplace conflict (Purcell, 2014; Acas (c), 2014) highlight the importance of ensuring that managers have received the appropriate training to manage difficult conversations (and consequently, conflict) effectively which can frequently contain issues arising in the informal stages.

Collective (or group) conflicts tend to arise in team situations for example, during the storming phase of Tuckman's 4 stage model, with individuals vying for position within a project team resulting in rivalry and a lack of co-operation. There are a number of strategies that organisations can utilise in order to manage this type of conflict, which include improving the communication and consultation process between management and employees, or in the case of conflict arising over pay and employment conditions, Acas can propose the use of a joint consultative committee and/or offer advice on alternative representative committees and conciliation. If matters escalate to the formal dispute stages between unions/employee representatives and management, Acas advise that internal dispute resolution procedures be adopted and if that fails, third party intervention is the precursor to industrial action (Acas (d), 2014).

Organised conflict ordinarily occurs on a collective basis and can be organised, for example, in the form of a strike. TULCRA (1992) contains a legal framework that unions are expected to abide by if involved in organising conflict, which is then deemed official. In order to meet the legal requirements, industrial action requires that the dispute is with the employer and that there is clear support of it from those involved and law requires that such action can only be called for when a ballot produces a majority in favour of it, whereby at least 50% of those eligible to vote, have voted (TULCRA section 227). Employers are legally entitled to 14 days notice prior to the commencement of industrial action (Local Government Authority, No date).

Organised conflict can, however, take other other forms, for example, unauthorised or "wildcat" strikes that are not endorsed through ballot means that employees have no protection from dismissal (Trade Unions Congress, 2019) and this action does not meet legal requirements. Employees can also engage in demonstrations, overtime bans and work-to-rule (Taylor & Woodhams, 2016).

Unorganised conflict, frequently referred to as “misbehaviour” can occur on an individual or collective basis and includes theft, sabotage, absence and resignation. Given the unlawful nature of theft and sabotage, for example, statutory immunity does not apply and civil proceedings can be brought against the union/individuals (CIPD (b), 2018).

There are a number of interventions that can be utilised in dispute resolution as follows:

*Conciliation:* In the event of an employment tribunal claim, Acas have a statutory obligation to offer voluntary conciliation, upon conclusion of which the potential outcomes are:

- Both parties reach an amicable resolution;
- Parties agree to a work settlement agreement (usually involving a sum of money being paid to the claimant by the employer);
- the claimant can withdraw the claim altogether or,
- in the case of unfair dismissal, the case can go to arbitration.

Advantages and limitations to conciliation are as per the below:

| <i>Advantages</i>                                                                                                                                                                                                                                      | <i>Limitations</i>                                                                                                                                                                                                                                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• negates the need for the case to progress to a tribunal hearing if agreement is reached</li> <li>• early conciliation can assist in preserving the relationship before it has broken down entirely</li> </ul> | <ul style="list-style-type: none"> <li>• Acas only agree to conciliation once reasonable attempts have been made by both parties to resolve their dispute utilising internal policies and processes</li> <li>• it may be inappropriate to utilise conciliation in situations where there is a risk that collective agreements may be undermined (Acas, 2009)</li> </ul> |

*Mediation:* A voluntary intervention utilised to attempt to resolve grievance or disciplinary matters involving two or more people in a dispute to reach consensus. The mediator facilitates the process but does not advise the parties on an outcome (Acas (b), 2015).

| <i>Advantages</i>                                                                                                                                                                                                                                                     | <i>Limitations</i>                                                                                                                                                                                                                                                                                                                                       |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• utilised to address a broad range of issues (including claims of bullying/harassment and relationship breakdowns)</li> <li>• can be an effective means of addressing relationship issues arising from a grievance</li> </ul> | <ul style="list-style-type: none"> <li>• cannot be used where an employment tribunal claim is likely or been made</li> <li>• mediation is not a replacement for investigating a case (eg: discrimination) if that is what the individual is seeking</li> <li>• not appropriate in situations when a decision about right or wrong is required</li> </ul> |

*Arbitration:* A dispute resolution mechanism that can be used in settling cases related to flexible working or unfair dismissal, whereby an independent 3<sup>rd</sup> party hears the case and delivers a binding decision (Acas (d), 2014).

| <i>Advantages</i>                                                                                                                                                               | <i>Limitations</i>                                                                                                                                                                                      |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Provides a flexible, quick and cost-effective solution</li> <li>• hearings are private and the outcomes remain confidential</li> </ul> | <ul style="list-style-type: none"> <li>• not subject to the same rules as a court case so potentially, less transparency</li> <li>• no right of appeal following the decision which is final</li> </ul> |

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