

The Changing Landscape of Employment Relations in Britain

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**Responses from: John Cridland, Frances O'Grady
and William Brown**

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Preface and Introduction

The Warwick Lowry Lecture has now become an established annual event. Launched in March 2002 the lecture is named in honour of Sir Pat Lowry, a distinguished practitioner of employment relations who was an honorary professor at Warwick Business School, and a valued member of its Advisory Board for many years. The lecture is organised by WBS Industrial Relations Research Unit in conjunction with Acas, whose Chairman Sir Pat was between 1981 and 1987. The 2005 lecture was kindly hosted by the Engineering Employers Federation, where Sir Pat worked at various times between 1938 and 1970.

At each previous lecture the role of chair has been performed excellently by Rita Donaghy, the current Chair of Acas. On the occasion of the 2005 lecture, which coincides with the 30th Anniversary of Acas, we persuaded Rita to be the main speaker within a rather different, panel format. Other speakers on the Panel, providing their views in response to Rita's paper, were John Cridland, Deputy General Secretary of the CBI; Frances O'Grady Deputy General Secretary of the TUC and Professor William Brown, Montague Burton Professor of Industrial Relations at the University of Cambridge and Master of Darwin College. This Warwick Paper brings together the contributions presented to an invited audience in May 2005.

The title – the Changing Landscape of Employment Relations in Britain was seen as an opportunity not to indulge in nostalgia and reminiscences (as interesting as they may have been), but rather to identify and discuss contemporary challenges and to look forward. The title of this year's lecture consciously echoed the title of a book based on a survey undertaken by IRRU in the late 1970s: W.Brown (ed) *The Changing Contours of British Industrial Relations* (1981). This was a forerunner of the Workplace Industrial/Employment Relations Surveys which now provide a nationally representative account of the state of employment relations and working life in British workplaces. Surveys have been conducted in 1980, 1984, 1990, 1998 and 2004 – relieving our speakers from having to provide detail of such changes as level of unionisation, scope of collective bargaining, management practices, pay determination and so on which inform much of the analysis and comment.

A key theme emerging from the main presentation is that of refreshing and renewing the institutions of industrial relations. As Rita argues, it is clear that the oft-observed individualisation of the employment relationship does not mean de-institutionalisation. But this change – and others – does raise questions as to the nature of institutions and the role they should play. All contributors consider what are the implications of the changes in employment relations for policy and practice.

There is also the question of the objective being served. Rita Donaghy's presentation articulates the 'mutually supportive objectives of improving organisational performance and working life'. One issue for debate is the basis of the mutuality of these objectives (which I would argue is contingent) and the particular contexts within which any such symbiosis is likely to emerge.

One change over the thirty years is the way in which considerations of employment relations increasingly cross previously drawn boundaries. For example the 'work-life balance' agenda means that the employment relationship is being required now to address and accommodate considerations which in the past may have been seen as external to the workplace. At the same time, as our contributors indicate, there are 'new' actors on the employment relations scene – citizen advice bureaux for example, or the Gang Masters Authority, reflecting the needs of 'new' and often vulnerable workers, and new challenges.

New institutions may be called for and some have emerged – the Low Pay Commission, discussed by Willy Brown, is a notable success among them – while others have vanished. A number continue although with changing mandates and emphases – including Acas itself - and others grow apace, as with the Employment Tribunals. The latter reflects the growth of legal intervention in employment. This was one of the areas on which our speakers held differing views. Is there ‘too much’ law and an unfortunate rise of legal dependency, as Rita, John and Frances (in different ways) indicate? Is the best way forward to ensure that employers get the necessary information and advice to enable them to abide by the law, as Rita suggests, or should the growth of legal standards be encouraged and more attention paid to effective enforcement? Willy Brown argues the need for a new institution – a kind of labour inspectorate. Such an enforcement, investigative body with a role in upholding labour standards could help to fill the gap in rights enforcement left by declining union presence in the workplace.

Both Frances O’Grady (TUC) and John Cridland (CBI) recognised that their own institutions were among those necessarily reinventing themselves for new times but – as might be expected – there were sharply divergent views as to whether the institution of collective bargaining was able to be revitalised or whether it had been supplanted. While John argues there is an inevitable market trend against collectivism with trade unions being propped up by legal regulation which institutionalises a role for them; Frances sees choices to be made, a battle of ideas and values to be waged between individualism and collectivism. She argues that individualised employment relations (the American route) is not inevitable and that a modern collectivism is the way to address the needs of 21st century employment relations.

Rita provides three reflections on how collective bargaining might be re-invigorated (or perhaps re-moulded?): shifting the focus of bargaining; recognising the likely implications of the ICE Regulations and the scope for social partner dialogue beyond the workplace.

Her presentation ends with a call for some joined up thinking – a strategic look across the overall framework of employment relations. Such an enquiry into the appropriate institutional framework for employment relations would provide the missing context within which the valuable findings of the increasing number of single issue taskforces and commissions could be located, assessed and taken forward.

Linda Dickens

IRRU

The changing landscape of employment relations in Britain

Rita Donaghy

Browsing through the Acas Annual reports for 1975-79 presents a very different picture of the world of work compared with today, although the basic purpose of Acas remains just as valid as when Jim Mortimer, the first Chair of Acas, presented his first report to the Rt Hon Michael Foot MP, Secretary of State for Employment.

It did remind me, though, that before this, in May 1972, the CBI and TUC met and agreed that “collective bargaining is best brought to a satisfactory conclusion by voluntary means; both recognise the need to improve the voluntary system of industrial relations”. The agreement provided for the setting up by the CBI and the TUC of an independent conciliation and arbitration service under their auspices.

In the event, the arrival of a Labour Government in February 1974 led to the establishment of an independent Conciliation and Arbitration Service, at first administratively and then on a statutory basis. The word “Advisory” was added to the title later.

Overall, the thing that has struck me most in preparing this brief lecture is how the emphasis of the debate has changed. In the 1970s, the main emphasis was on long-standing institutions and processes such as collective bargaining – how they were performing, what was influencing them, how they could be improved. In the 1980s/1990s, the reverse was the case – the main emphasis was on the rapidly changing environment and how this was impacting on the employment relationship and the institutions that help to shape it. In the ‘noughties’, this emphasis is still there. But there is also a further dimension that reflects some of the enduring features of employment relations – a growing debate not just about refreshing and renewing the best of our existing institutions and processes, but also the need to create new ones to achieve the mutually supportive objectives of improving organisational performance and working life. These raise wider considerations about the future of collective bargaining and employment legislation as well as trade unions.

Enduring features

As you will see from the title, my main focus is going to be on change in employment relations, with the implications for policy and practice. I’d like to begin, however, by reminding ourselves about some of the important continuities. Most obviously, there are the enduring features of the employment relationship. The employment contract is like no other. It is not only extremely difficult to tie everything down in great detail, but it also does not make practical sense – flexibility brings benefits to both employer and employee. Yet flexibility means that the contract is ‘incomplete’ and incompleteness’ means ‘uncertainty’.

Two consequences follow, which are all too often forgotten:

- nothing is automatic about the employment relationship – to put it into effect involves dialogue, day-to-day consensus building and ‘give-and-take’; and
- both ‘conflict’ and ‘cooperation’ are inherent in the employment relationship – given the ‘uncertainty’, there is enormous scope for divergent goals and behaviours as well as different interpretation.

This is where institutions come in. They can be designed to help to promote co-operation and minimise conflict. Or they can be left to happen chance on the totally false assumptions that the employment relations is automatic in its effect and that co-operation can be assumed.

There are three other enduring features that also deserve emphasis:

- employment relations is a key factor in organisational performance – indeed, probably more so than ever before as management hierarchies are stripped out and quality, delivery, service and reliability come into play;
- employment relations is a key factor in individual life experiences, raising fundamental issues of fairness and respect as well as performance.

Improving working life *and* organizational performance are sometimes presented as being mutually exclusive. Acas' experience is that there is no contradiction, which is why both appear in its mission. Improving working life and organizational performance are mutually reinforcing. Unless there is an improvement in performance, employers will not have the wherewithal to bring about a sustained improvement in working lives. Unless improving working life is taken into account, employers won't get the motivation, commitment and loyalty that are increasingly needed for success.

A third enduring feature is the need for impartial third party information/ advice/assistance. I don't say this just because this is the thirtieth anniversary of the setting up of Acas. Acas is busier than ever. The number of strikes in the UK and other major industrial countries may have declined dramatically in recent years – the number of collective dispute cases Acas conciliators are involved in is running at around 1200-1300 each year. But conflict hasn't gone away - Acas conciliators are involved in around 80,000 Employment Tribunal cases of alleged infringement of individual rights; managing absence is also a major issue. Also Acas staff are involved in satisfying a substantial and rising demand for information and advice, reflecting the complexity of the issues that people in the world of work are grappling with.

These figures will give you a feel for the scale of demand:

- in 1993, the total number of callers to the Acas Helpline was 481,392; in 2003-4, it was **796,649** roughly divided between employees and employees – it will probably top the million this year;
- the Acas website (www.acas.org.uk) is already getting more than **one million** visits a year;
- demand for Acas publications is also up - following a major advertising campaign last year, the number of advice booklets being downloaded from the Acas website increased from an average of 50,000 to **90,000** per month;
- also up is demand from employers for training to help them keep up-to-date with legislation and 'good practice'; in 2003/4 Acas ran **2,462** events for **35,000** delegates from a broad range of organizations – this is in addition to 'bespoke' training for individual organisations.

For many people, it seems, Acas is not just about resolving disputes. It is now the first choice provider of employment relations information and advice. It's a development that I'm particularly proud of.

The drivers of change

I'm only going to touch very briefly on the main drivers of the changes in the world of work that people are having to grapple with as I think an audience like this will be very familiar with them.

Patterns of demand: the rise of the service economy

- although its overall contribution to wealth generation continues to be substantial, manufacturing only accounts for some 15 per cent of total employment
- 'workplaces' are shrinking in size
 - SMEs account for more than 99% of the UK's 4m enterprises and 46% of employment
 - most large enterprises are networks of small units
 - 'workplaces' are more 'mobile' and 'dispersed'
- working patterns are increasingly diverse
 - there is more 'round-the-clock' working
 - there is more part time/temporary/agency working

International competition and a global market place are especially important in manufacturing. It also looks as if there is going to be no let-up in the pressure, with China already laying claim to be the manufacturing workshop of the world.

Globalisation is also important in services, with countries like India posing equivalent challenges to those of China in manufacturing. Also important here, though, are increasing customer demands for greater availability and extended opening hours - much of the service sector cannot be off-shored, but is nonetheless experiencing significant changes in patterns of demand.

Patterns of supply: the demographic dimension

It isn't only changes in demand that are important, however – supply side issues also fundamentally important:

- declining birth rates mean that by 2011 under16s will make up only 18 per cent of population
- increases in longevity, plus more young people going into higher education, means the 'greying' of the workforce - by 2006, 45-59 year olds will form the largest group in the work force
- the workforce is becoming increasingly 'feminised' - by 2011, 82 per cent of extra jobs will be taken by women
- the role of people from ethnic minorities is likely to become increasingly significant – it is estimated that they will account for no less than 50 per cent of the growth in the working population over the next decade
- migrant/immigrant workers already make up much of the shortfall in labour supply and are likely to continue to do so.

All of this is changing the context of employment relations quite radically. It is also posing major challenges for practitioners and policymakers alike.

The end of 'institutional' employment relations?

The changes I've described are often presented as meaning the end of 'institutional' employment relations. Certainly there has been a decline in our traditional institutions. Most obviously, there has been a decline in collective bargaining. I don't want this evening to get involved in a debate about the extent of the decline, because I'm aware that there is some difference of opinion about this. I don't think that anyone could seriously quarrel with the statement that there has been a substantial decline or, perhaps, that the UK is unique, in comparison with other major EU member countries, in the extent to which pay and conditions are no longer covered by collective bargaining.

The main consideration, of course, is the decline of national multi-employer agreements. Outside of public services, there are very rare these days. I think it stands to reason that a workplace-based system of recognition, coupled with the impact of changing patterns of demand on the size of workplaces and working arrangements, does not create an easy environment in which to recruit. Organising small workplaces *and* part-time workers is especially difficult.

The decline in collective bargaining has also had substantial implications for what, historically, were the two main actors in employment relations. Trade union membership/density are the indices that have received most attention. Today UK union membership stands at around 7.5 million. Overall, 29 per cent of employees belong to a union. In the private sector, density is less than 20 per cent or 1-in-5. It is the public sector, where around 60 per cent or 3-in-5 are in unions, that is keeping the numbers up.

Employers' organisations are the other main actors affected. Here it is not so much membership that is important – although the limited evidence available suggests that this too is declining. It's more a question of influence. Those who were present at Renate Hornung-Draus' Warwick Lowry lecture last year will appreciate how much the influence of employers' organisations is tied up with collective bargaining.

One of the results, incidentally, is that it is more difficult these days to gauge the position of employers on many things. This is not to decry the excellent work that John Cridland and his CBI colleagues do in representing employers' interests. It is just that there isn't the same sector employer perspective on issues that there used to be or that there is in many other EU countries.

So, yes, overall, there has been a decline in some of the traditional institutions of employment relations. But this doesn't mean the end of 'institutional' employment relations. It is more a question of types of 'institutional' employment relations; the scope that exists for refreshing and renewing the best of our existing arrangements; and whether there is a need to create new ones to achieve the mutually supportive objectives of improving organisational performance and working life.

Let me try to explain. For practical purposes, Acas sees the situation in terms of three systems. The nature and extent of 'institutional' employment relations are very different as are the details of the issues people are having to grapple with.

- *The 'knowledge workers' sectors.* Here there is relatively little 'institutional' activity in the traditional sense, although I understand that there may be one or two the large IT companies among those introducing collective forms of representation for the first time under the ICE Regulations. This, essentially, is the territory of human resource management policies and processes with very much a focus on the individual.

- *Public services.* Here employment relations remain highly institutionalised in the traditional sense. Union membership levels are high, as I've already indicated, and collective bargaining, mostly national in scope, is very much the norm. It is also very high profile reflecting the major change programmes under way across the length and breadth of public services. New institutions, such as the Public Services Forum, have also appeared, with ongoing debates about the most appropriate arrangements for handling conflict.
- *Private services.* Employment relations here is essentially individual. Unlike the 'knowledge workers' sectors, however, 'command and control' is likely to be dominant rather than 'human resource management'. Trade union membership is extremely low as is the coverage of collective bargaining. Even here, however, formal institutions are not entirely lacking. Recent additions include the Low Pay Commission and the Gang Masters' Authority.

Not to be forgotten is the considerable institutional framework of equality commissions and employment tribunals that have grown up to deal with individual employment rights appeals. Citizens Advice Bureaux also have a substantial involvement.

As I've already indicated, Tribunal appeals are running at around 80,000 a year. Rising concerns here about delays and costs are reflected in major reforms such as fast track and fixed period conciliation. A major computerisation process is also being implemented.

I alluded earlier to 'unintended consequences'. Arguably, a result of the changes that have been taking place is not just a shift emphasis from collectivism to individualism, but also an increase in 'juridification' in the sense of the involvement of the law and the courts in employment relations matters. Furthermore, I think it is not unfair to suggest that a culture of legal dependency is developing, with the 'voluntarism' that characterised UK employment relations fast disappearing.

The inherent danger is not just that there is a growth in tribunal activity with its attendant costs and frustrations – it remains to be seen what impact the reforms I've mentioned have in practice. People forget about the need for the dialogue, day-to-day consensus building and 'give-and-take' that helps to maximise co-operation.

The key policy challenges: balancing flexibility and fairness

I'd like to turn now to consider the main challenges that the changes throw up. There are common challenges – reflecting the overall thrust of many of the changes - the main ones being as follows:

- recruitment & retention
- making the most of the workforce's potential
- managing 'diversity'
- managing continuous change
- raising standards/moving up the 'value' chain/closing the productivity gap – which exists in services as well as manufacturing

I think most people recognise that there is a need to balance flexibility and fairness in rising to these challenges. The devil is in the detail, however. Moreover, the detail is complicated because of the particular situations of the main groups I've identified. There is no one-size-fits-all answer.

The knowledge economy

The ‘employment relations matters’ message is largely accepted here as is the importance of the ‘high performance workplace’. Many of the UK companies involved are nonetheless experiencing considerable difficulties in making the necessary adjustments. Practicalities tend to dictate that change is incremental. Most of the practices involved are mutually supporting, however, and so their full benefit is not always being realised from incremental change.

Public services

The ‘employment relations matters’ message is also largely accepted here. There are major complications, however, because of the massive programme of change that is underway, which has far reaching implications for the people that work in public services and the relationships between employees, unions and employers. It also represents a significant challenge for all those involved in the delivering the reforms and managing the change process as smoothly as possible. On top of these new challenges, there are the many day-to-day workplace issues to deal with such as managing absence and trying to attract and retain quality staff. It is no surprise, then, that the scale and complexity of the changes taking place have led to a breakdown in employment relations in some parts of Britain’s public sector. Even the Civil Service itself has not been immune, with the announcement of a large-scale reduction in posts leading to industrial action at the end of 2004.

How best to manage change is therefore a major challenge. The setting up of the Public Services Forum is recognition of the need for more effective information and consultation at the highest levels. Likewise the growing interest in systems of ‘assisted negotiation’ and alternative dispute resolution arrangements recognises the importance of conflict management and the need to face up to it.

Private services

Especially interesting here is the way in which the terms of debate have been changing. SMEs continue to be seen as a major engine of economic growth with pressures to retain as flexible a labour market as possible. But there are also increasing references to ‘vulnerable workers’, reflecting incidents such as the Morecombe Bay disaster. The worry is that, unless something is done, the position of many employees in these sectors is likely to become more and more embarrassing as the decade progresses.

The reason, to paraphrase John Denham’s Fabian lecture, is that plenty of jobs does not automatically generate plenty of opportunities. Many of the jobs in these sectors, which would have been recognisable 50 years ago, are relatively unskilled with few prospects of upward mobility. Trade unions have always found it difficult to organise employees here and, today, find it doubly difficult to do so – partly because workplace-based recognition provisions mean they have to have members before they can reach collective agreements and partly because extensive outsourcing and subcontracting have removed activities like catering and cleaning from the collective agreement coverage of the larger companies. Many workers are likely to have to find their way through an economy which is flexible, insecure and based on SME sector. Many are also likely to be migrant or immigrant workers, adding to the complexity of the issues.

Two views appear to be emerging, with very different policy implications. At the risk of caricature, there are those who put the emphasis on employment rights and their enforcement, which leads them to call for a ‘Fair Employment Rights Commission’. The alternative view, which Acas inclines to, is that there is a need in the first instance to significantly increase the information and advice that is available. The Acas experience is that, whilst it is true that there are a number of rogue employers who operate on the margins or indeed outside the law,

the vast majority is law-abiding. The main problem is that they need much more information and guidance. Not only do they struggle to keep up with employment legislation, but are often unfamiliar with the ways that a change in working patterns, for example, or improved information and consultation arrangements can benefit the business.

The coming of *employee.direct.gov* should help here in that it will make information about employment rights much more widely available. There is also a lot in John Denham's proposal for a network of one-stop-shop Advancement Agencies. The idea is that these agencies would deliver information and advisory services to employees not only on employment rights, but also employment opportunities, training and development programmes, and career development.

Acas is also developing proposals for dealing with the information and advice needs of SMEs. Depending on government funding, this might take the form of a specially tailored subscription service. Crucially, SMEs would *automatically* receive information and advice on key matters, along with the offer of a range of Acas products and services including for instance, a dedicated helpline number, good practice publications, and free or subsidized attendance at training courses

One of the initiatives that is flagged up in the 'Warwick agreement' is also beginning to attract attention. It is the proposal to have forums in each of the main sectors where significant numbers of disadvantaged workers are to be found. A concerted sector-based effort here, it is argued, could help to raise productivity as well as standards in health and safety, pay and conditions, skills and pensions.

There are of course disadvantaged groups in every sector. The danger of focusing on avoidance of employment rights is that it encourages compliance and no more. Tackling ignorance means it's possible to put the emphasis on raising standards. A sector approach makes it possible to deliver tailored solutions to practical problems of such industries, for instance, the high proportion of transient employers and employees and the implications for organising pension funds.

Wider considerations

I want to close by looking at three of the wider considerations the analysis I've attempted raises.

The future of trade unions

The first of these is the future of trade unions. I appreciate that for many people the future of trade unions is a matter for unions themselves. Arguably, though, the issues are too important just to be left to unions themselves. Trade unions play major roles in engaging their members in democratic activity, representing their interests (the 'sword of justice') and reaching collective agreements on their behalf. They also help to ensure that employment relations issues receive the priority they deserve in contributing to improving organisational performance as well as the quality of working life.

Keeping their operations and activities up-to-date is proving a major challenge at every level. While I can understand the starting point of employers' criticisms of the present government's *Union Modernisation Fund*, I think that there is a respectable case to be made for intervention of this kind. In Acas' experience trade unions very much need the kind of help and assistance that I understand the Fund envisages

The future of collective bargaining

For many people, the future of trade unions is inextricably linked to collective bargaining. The thing that unions are valued for above all else, goes the argument, are the collective agreements they negotiate with employers. Such agreements not only enable the parties to tailor arrangements to suit local circumstances, but they also bring ownership and commitment, which helps to maximize co-operation and minimise conflict.

Three reflections about the way in which collective bargaining might be re-invigorated:

1. There is a need to expand the agenda. All too often collective bargaining in the UK remains rooted in an annual pay bargaining ritual. Moreover, at the risk of raising lots of hackles, such a ritual is of declining relevance given monetary policy and low rates of inflation. With central banks targeting inflation of 2 per cent or thereabouts, the scope for pay bargaining is relatively limited. Issues like training, pensions and working time flexibility need to be given higher priority. I appreciate that trade unions are putting more and more emphasis on these issues, but this needs to be translated into practice across a much broader scale than it is at the moment.
2. It may be too that there will be a need to re-visit the operation of recognition arrangements in the light of Information and consultation of Employees Regulations. It has been hardly commented on, but the ICE Regulations effectively introduce two-tier recognition. Those who have studied the Regulations' provisions will appreciate that a trade union only has to secure 10 per cent of employees to enter into and/or 'orchestrate' negotiations about an information and consultation agreement. They can do so too in the knowledge that a failure to agree could bring with it the 'standard provisions'.
3. There may also be scope for different forms of "collective bargaining" beyond the workplace – I deliberately put the phrase in quotation marks. The CBI/TUC/DTI framework agreement leading to the introduction of the Information and consultation regulations has set a useful precedent for transposing EU Directives. It may not be possible to reach a consensus about the dot and comma of every issue. The process of dialogue can nonetheless sort out many problems as well as clarifying the ones that the Government needs to focus on.

I also think there could be some potential in the sector forums proposed under the 'Warwick agreement'. Everything here, though, will depend on whether it is possible to reach a consensus about some of the difficult questions to do with membership and activities.

The future of employment legislation

I appreciate that many people will find talk about new institutions rather odd – the emphasis should be on putting in place appropriate individual employment rights. The trouble, as I said in my opening remarks, is that individual employment rights are not automatic in effect – if they were, there wouldn't be the debates over tribunal reform or enforcement. Also as I've said, the danger of focusing on employment rights is that it encourages compliance, when it is our interests to put the emphasis on raising standards more generally. In my experience, a culture of legal dependency won't help very much here – what is really needed is to encourage the day-to-day consensus building and 'give-and-take' that have been associated with the best of collective bargaining and 'voluntarism'.

I would suggest more imagination, then, in the way that individual rights legislation is implemented. For example, I would recommend doing more to encourage implementation by agreement. No one knows how the ICE Regs are going to work out. Most sensible people, though, have welcomed the flexibility they give to reach agreements that allow

implementation to be tailored to suit local circumstances. This could/should be a precedent for the future, helping to encourage the development of dialogue and the structures to make this possible.

Concluding remarks

To sum up, I see the big challenge in the rapidly changing environment as two-fold:

- to refresh and renew the best of our existing institutions and processes; and
- to fashion new institutions and processes that fill the gaps that the position of 'vulnerable' workers is beginning to expose.

These are major challenges. I don't pretend to have all the answers. I don't think anyone has. I do believe, though, that this is the time to have a serious debate about the appropriate institutional framework.

A final thought, therefore. It is not just thirty years since Acas was formed. It's also forty years since the Donovan Commission was set up to look at the overall framework. Maybe the time is ripe for another enquiry. Not a Royal Commission, I hasten to add, but may be something that the Acas Council might consider undertaking. I appreciate that there are already commissions on everything from low pay to women in work to pensions to equality. The problem is that each of these is looking at just one element of a much bigger picture. I think that what is needed is some joined-up thinking. I'd also like to think that it's the kind of ambition that Pat Lowry, whose memory we honour this evening, would fully support.

The changing landscape: Individual employee relations outgrow collectivism

John Cridland

Trade unions need to adjust in order to be relevant. Nationally, unions are facing challenges as employees increasingly want a direct say on issues. The desire by the union movement has been to prop themselves up and move towards a more institutionalised role in employee involvement and consultation. The focus of senior union officials has been on developing a structured model which is transferable across all workplaces. The union movement is increasingly institutionalising itself in the UK through social dialogue, which doesn't always add value and isn't always the most appropriate approach to take.

Some employers have very effective and supportive trade unions but other employers have unions who fail to recognise that the drive to compete – nationally and globally – places significant demands on business and improving success is increasingly dependent on the speed at which organisations can respond to change.

Some unions look to the European Commission to impose ever more stringent employment regulation – whether on working time or agency temps or to restrict restructuring. The debate is one we should have at home, not in Brussels.

There is a worrying trend to legalism. An insidious effect of legislation is that it can lead to centralisation of decision making rather than empowering line managers. Law can also institutionalize a role for trade unions, masking the underlying trend of union decline.

The continuing rise of individualism in the workplace poses challenges to both employers and unions. More and more workers want to set their own pay, hours and conditions, rather than have them set rigidly by management – the flip-side of this is that more and more workers respond individually when grievances arise in the workplace.

The need to reduce reliance on tribunals

Currently we do not have an effective Employment Tribunal (ET) environment. New workplace dispute resolution regulations were introduced last October – the jury is still out on the effect they will have on the numbers of tribunal claims. But CBI members are reporting that the complexity of the regulations are making them difficult to implement.

Last year saw 115,042 employment tribunal cases brought against employers – the second highest in the system's history – and a 61% rise over the past decade. Employment litigation costs UK firms both time and money. The costs and inconvenience of fighting a claim can be large and an employer will begin to accrue costs from the moment the complaint is lodged, even if it is later withdrawn.

Of course courts (ETs) are the most appropriate place to hear the most serious complaints but it is important that the legal process is not seen as the only remedy to every individual employer or employee complaint. On many counts the courts can be seen as too litigious, expensive and often do not resolve the situation satisfactorily for either party.

Some cases which are settled at conciliation (because of costs) should be heard. Some cases which go to an ET should have been disposed of without a hearing. The CBI's latest survey data indicated that employers are far from satisfied with the current employment tribunal system. Just 35% (27%) of businesses thought employment tribunals were effective, primarily due to the system being too adversarial (50%) and too costly (30%). Sixty-nine percent reported a rise in weak and vexatious claims brought against them in recent years.

That is why it is essential that the Government continues to investigate methods of alternative dispute resolution (ADR) looking at how models such as arbitration and mediation and the increased use of bodies such as Acas can be utilised to help bring the number of claims down.

Key issues and challenges in the changing landscape of employment relations

Finally, I would identify the following as among the key issues and challenges. Firstly there are plenty of drivers to greater individualism including a market trend of union decline; flexible working and work life balance, where individualized responses are required. In relation to flexible working there are new rights to request flexibility within companies; employees are spending shorter periods of time with the same company and developing portfolio careers – this is expected to increase.

There is increased complexity in the employee/employer relationship. Employees are having a more demanding relationship with their employers – they don't just want a say on pay, hours and training – they want clear development opportunities at a quicker pace. Employees are exercising choice. Brand / corporate reputation increasingly becomes a key component to attracting high caliber applicants. More and more people are ranking organisations according to their brand reputation.

Employee engagement is another challenge. Organisations are seeking to improve practices and engage employees more in the business. Retention is key to improving productivity; developing better understanding of customer needs/expectations. What is sought is increased commitment to the organisation's long-term success; increased willingness to consider and embrace change.

The changing landscape of employment relations: a response

Frances O'Grady

Let me begin by saying I agree with much of Rita's contribution. The labour market is changing, with a greater role for women, older workers and increasingly migrant workers too. The way people work is changing, with the traditional nine-to-five routine being replaced by atypical work and, for want of a better phrase, 24/7 working. And the economy is changing, with services becoming more dominant and manufacturing industry contracting.

But while transformational change may bring opportunity for some, for others the reality will be discrimination and exploitation. All of this has major implications for industrial relations. The challenge, as Rita rightly says, is to combine flexibility with fairness. And I would draw the debate in more stark terms. We are engaged in a major battle of ideas – and values – between individualism and collectivism. There is, after all, nothing natural or inevitable about the drive to individualise employment relations. On the contrary, politicians, employers, unions and workers can make a choice.

We could, as some employers advocate, choose to go further down the road of U.S.-style individualism – that favours individual rights and litigation over collective bargaining and negotiation - although it should be noted that those who champion individualisation are often the very same who then complain about the 'compensation culture'. Or we can choose to build a new modern collectivism fit for the 21st century employment relations, that addresses the changing political, economic and social patterns of power within which we live and work including: the accelerating pace of globalisation, the rise of multinational corporations and, in a year when the UK holds the presidency of both the EU and the G8, the dispersal of decision making that regulates employee protection and employer behaviour beyond the corridors of Westminster.

Today, I want to restate the case for collectivism. I don't under-estimate the scale of the challenge. It will require a renewal of trade union membership and a re-education of business management but it's the best way of securing equity at work. It's the best way of promoting productivity at work. And I believe it is the future.

I want to make just three key points.

Point one: the employment relationship has swung too far in favour of the employer. The relationship between employee and employer has always been intrinsically unequal. Globalisation and competitive pressures have made it more so. The rise of India and China have become a well worn cliché too often an all-encompassing excuse for employers to get staff do more in return for less.

A small minority of highly-skilled professionals may be able to stand up for themselves in this brave new world. But the vast majority of the workforce are not in the driving seat. There are deep-seated grievances about a range of issues, from pensions to working time to unequal pay. We have the best educated, most aspirational generation of workers ever. Yet far from feeling 'empowered', as John Cridland suggests, many workers feel frustrated in their jobs – nearly four in ten are over qualified for the work they do and one in three graduates hold non-graduate jobs. At the same time, middle management in the UK is worse educated and worse trained than their EU comparators. But what we lack in management quality, we make up for in numbers with a higher ratio of managers to workers than most of the rest of the EU. So many workers are not only stuck in under-skilled jobs they feel they could do standing on

their hands, they're also more likely to have a supervisor looking over their shoulder telling them how to do it.

What is more, the rise of the service economy and so-called "emotional labour" means workers are increasingly expected to subvert themselves to the values of the corporation. For a large swathe of the workforce, command and control management has not disappeared – it's merely re-branded itself. But employees have had enough – they want the pendulum to swing the other way. Without a renewal of collectivism, improvement through collective agreement, workers will increasingly invoke individual legal rights. This takes me to my second point: individualised employment relations are in nobody's interest. The legal route is expensive, inefficient and time-consuming – and, let's not forget, personally distressing, for example, for the 1,000 women sacked unlawfully in Britain every year simply because they are pregnant.

There is a better way; a union presence means a much greater likelihood of resolving workplace issues through agreement before they become a major problem; for unions, legal action is always a last resort.

And that takes me onto my third and final point.

The need to revitalise collective bargaining and institutions for facilitating it – and that includes Acas. A collective approach delivers the best outcomes for workers. And – with Information and Consultation regulations coming on stream next month – it's worth remembering the benefits and opportunities for employers and unions alike. Studies by respected analysts like the OECD and the Work Foundation consistently point to significant productivity gains in workplaces with effective collective bargaining machinery. That's why it's crucially important employers adopt the spirit as well as the letter of I&C. And it's why we also need to think about national and sectoral level bargaining. We need to build institutions that reflect a rapidly changing environment. This is already happening to a limited extent. The Low Pay Commission is a good example of an institution fit for purpose. And bodies like Sector Skills Councils, which include union and employer representation, are getting to grips with the skills question. We need to build similar institutions for addressing other crucially important issues like pensions. And we need to broaden the scope for bargaining to issues workers care about which therefore employers should care about too – pensions, training and equal opportunities.

There is one essential pre-condition for revitalising collective bargaining and social partnership for the 21st century. That's a strong trade union voice. Unions must be allowed to operate on a level playing field. Rita mentioned the importance of SMEs – yet unions are excluded from operating in large swathes of the economy, because small firms are exempt from the statutory recognition procedure.

And finally, I don't for one moment accept the argument that trade unionism is a spent force. Try telling that to the public servants taking industrial action next Wednesday in protest at punitive changes to their pensions. Try telling that to the women workers at North Cumbria NHS Trust who today have just won the largest equal pay award in history.

And try telling that to the cleaners in the City who work for some of the richest bankers in the world and took them on to win a living wage, better holidays and a pension – and to assert their right to join and be represented by a union.

Collectivism is as relevant now as it ever was. It will take new measures to broaden the scope for bargaining to address the wider concerns of the modern workforce – skills, pensions, work/life balance and equal opportunities. It will take new institutions, such as the union proposed Sectoral Forums agreed at Labour's National Policy Forum in Warwick. And it will

take a new culture that values the collective approach and respects employees fundamental human right to a collective voice at work.

All the parties present in this room have the opportunity to influence the shape of industrial relations for a generation. I look forward to our debate.

The Changing Landscape of Employee Relations

William Brown

Can I first say what a pleasure it is to speak at an event in honour of the memory of Sir Pat Lowry. In all his roles – at the Engineering Employers Federation, at British Leyland, and at Acas – Sir Pat was a firm and enthusiastic supporter of academic research on industrial relations. His active interest, at a time when the subject was often controversial, was greatly appreciated.

With one exception, I cannot take issue with the many points covered in Rita's authoritative survey of the changing employee relations scene. So let me underline what seem to me to be particularly important features of that scene, and explain why I differ on one policy prescription.

The central question with which we are concerned is this: how does society uphold decent labour standards? Looking back, it is remarkable how distinctively the twentieth century was the period for which this was left to collective bargaining. For much of the industrialised world, acceptable labour standards were upheld by strong trade unions concluding mainly multi-employer agreements. These standards were then extended, by various means, to non-unionised sectors.

The collapse of that system over the past twenty years has been substantial and irrevocable. Some indication of how substantial it has been is provided with the sharp decline in trade union membership, in strike propensity, and in coverage of collective agreements. Why can we be so confident that it is irreversible? For the private sector the driving force has been the opening up of the world economy. For some decades now, the growth of world trade has been at twice the rate of the growth of the world output, and the growth of foreign direct investment has been at twice the rate of the growth in world trade. For more and more goods and services, the main competition is overseas, far from the reach of any collective agreement. And more and more of us work for firms owned by people who have no particular attachment to the country we work in.

On top of this steady erosion of national economic independence, upon which collective bargaining depended, we have, since about 1990, experienced the massive shock of what Richard Freeman calls 'The Great Doubling'. To the 'old' post War capitalist trading world of about 1.5 billion economically active people, has suddenly been added another 1.5 billion economically active people with the arrival of the old Soviet bloc, China's market socialism, and India's emergence from a cocoon of protection. Trade unions struggle to retain a grip in an awesomely open world economy.

Even their once-safe heart-lands of public service employment have been shaken by varied innovations of privatisation, quasi-competition, out-sourcing and league tables. Indeed, it is a reflection of how much variation is occurring with what were once monolithic collective agreements, that there was a report in the FT this week on the growth of multi-employer co-operation in some public service sectors.

One of the clearest signs of the collapsing state of collective bargaining is the erosion of trade unions' long-standing achievement in reducing the length of the working week. Last month we saw the vociferous popular response to the French government's efforts to undermine Jospin's 35 hour week. But perhaps more eloquent is the pressure on the highly unionised elites of Europe. Last year the workers at the Siemens mobile phone plant in North Rhine-

Westphalia, faced with the prospect of their jobs being moved to Hungary, agreed to work 40 hours for the same pay as they were previously getting for 35 hours. At much the same time, workers at the French Bosch plant near Lyons made a similar concession to prevent (or postpone) their jobs moving to the Czech Republic. Are the hard-fought achievements of collective bargaining unravelling? Are we witnessing a reversion to the situation of the mid-19th century, where labour is effectively unprotected from the vagaries of the market?

The source of protection that has been growing in recent years, especially in Europe, has been the state. A role that once concentrated on upholding collective bargaining has increasingly shifted to providing individuals with legal employment rights. And this development has in many ways been successful. Probably the most effective individual right in Britain has been the National Minimum Wage, introduced in 1999. A look at earnings movements before then makes clear that the position of the very low paid had been getting steadily worse. The Minimum Wage has changed that dramatically. The worst-paid 5 or 10 per cent have seen substantial and sustained improvements in relative pay. No less remarkable is the fact that intensive research has failed to detect any significant consequent job loss.

What I want to draw attention to for the purpose of this discussion are some aspects of the Low Pay Commission, which has responsibility for maintaining the Minimum Wage. First, it is a 'social partnership' body, with trade union members acting as a 'conscience' for the very low paid even though their members are not directly affected. Second, it operates not simply by setting a legal wage rate, but by widespread consultation, research, and negotiation. Third, and this is very important, it has the tough and energetic services of the Inland Revenue as its enforcer.

This is where I want to take issue with Rita. British employees have a host of individual rights now, but the only one that is effectively enforced is the Minimum Wage. The others are dependent upon the individual aggrieved employee having the confidence and stamina to pursue matters through to Employment Tribunals. We know that they are more likely to do this when they are members of trade unions. But what about the remaining two thirds of the workforce, which includes the weakest and most vulnerable, who need external support most? Are we serious about employment rights?

Winston Churchill famously introduced Wage Boards in 1909 with the words '...where you have no organisation, no parity of bargaining, the good employer is undercut by the bad, and the bad employer is undercut by the worst'. Does this not apply just as much to maternity leave, race discrimination, holiday entitlement and every other employment right? The Citizens' Advice Bureaux is now campaigning for Britain, long after most other countries, to introduce a labour inspectorate, a Fair Employment Rights Commission to uphold these rights. Employers traditionally have opposed this as another bundle of red tape. Trade unions have opposed it as potentially undermining their own role. Acas's view is that better information would lead to miscreant employers mending their ways.

But are these any longer sensible positions? Employers have in practice welcomed the Minimum Wage – so long as it is prudent and enforced – because it protects responsible employers from being undercut by the unscrupulous. Trade unions must privately realise that the greatest threat to effective collective agreements is that the employers who adhere to them will be undermined by those who ignore them. And as for the 'better information' argument, if only it were so! Unscrupulous employers – like some of the gang-masters prosecuted in recent months - know the law all too well, and do very nicely out of breaking it.

You can get some idea of the potential for an investigative body, with trade union involvement, from the operation of the Ethical Trading Initiative, in which the TUC is a

partner. It is apparent from Low Pay Commission visits that in very recent years a major constraint on employers who supply the big retail chains is their concern to be 'clean' when they have their periodic ethical trading audit. They are checking pay, health and safety, employee documentation, National Insurance payment, and so on as never before. And you can see a similar effect internationally if you visit the web-sites of, for example, Gap, Ikea, and Wal-mart. These firms are auditing their suppliers worldwide, for fear of adverse consumer campaigns, and it is benefiting millions of otherwise vulnerable workers.

Where is this leading? Is it to a culture of legal dependency? I do not think so. I would prefer Frances' vision of 'a modern collectivism'. Trade unions are increasingly (through market necessity) being involved in co-operative rather than confrontational relationships with employers. Employers in such relationships often speak of the role of the unions as a 'conscience' and source of legitimacy. Nationally we have seen them play an important role on Acas, and on the Low Pay Commission. And perhaps we should call for a comparable development in collective employer thinking. It will take agreement by both employers and unions to achieve and uphold acceptable standards of decency in an increasingly hostile world market.