EMPLOYMENT RELATIONS RESEARCH SERIES NO. 69

Employee representation in grievance and disciplinary matters – making a difference?

RICHARD SAUNDRY
VALERIE ANTCLIFF
UNIVERSITY OF CENTRAL LANCASHIRE

WERS 2004 GRANTS FUND

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About EMAR

Employment Market Analysis and Research (EMAR) is as a multidisciplinary team of economists, social researchers and statisticians based in the Employment Relations Directorate of DTI.

Our role is to provide the evidence base for good policy making in employment relations, labour market and discrimination at work. We do this through:

- Conducting periodic socio-economic benchmark surveys.
- Commissioning external research projects and reports.
- Conducting in-house research and analysis.
- Assessing the regulatory impact of proposed employment law.
- Monitoring and evaluating of the impact of government policies

We publicly disseminate results of this research through the DTI Employment Relations Research Series and other publications. For further details of EMAR's work please see our web pages at:

http://www.dti.gov.uk/employment/research-evaluation

About this publication

The project manager for this report was Carmen Alpin, Principal Research Officer in the Employment Market Analysis and Research branch.

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Postal enquiries should be addressed to:

Employment Market Analysis and Research
Department of Trade and Industry
1 Victoria Street
London SW1H 0ET
United Kingdom

Email enquiries should be addressed to: emar@dti.gov.uk

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Foreword

The Department of Trade and Industry's aims are to create the conditions for business success, and help the UK respond to the challenge of globalisation. As part of that objective we want a dynamic labour market that provides full employment, adaptability and choice, underpinned by decent minimum standards. DTI want to encourage high performance workplaces that add value, foster innovation and offer employees skilled and well-paid jobs.

The Department has an ongoing research programme on employment relations and labour market issues, managed by the Employment Market Analysis and Research branch (EMAR).

This is the second of 14 reports commissioned by DTI under the Workplace Employment Relations Survey (WERS) 2004 Grants Fund. The Fund is a Department of Trade and Industry initiative to develop the evidence base in areas of policy interest, raise awareness of this survey and encourage advanced data analysis based on the WERS 2004 datasets.

A call for proposals was made in November 2005. Proposals were selected for their contribution to the evidence base and relevance to government policy. The Fund is administered by the Employment Market Analysis and Research branch (EMAR) and the Management, Leadership and Skills Unit (MLSU). More details on the WERS 2004 Grants Fund can be found here:

http://www.dti.gov.uk/employment/research-evaluation/grants/wers

More details on the Workplace Employment Relations Survey 2004 are here:

http://www.dti.gov.uk/employment/research-evaluation/wers-2004

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Grant Fitzner
Director, Employment Market Analysis and Research

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Executive summary

The right to accompaniment at disciplinary and grievance hearings was introduced in October 2000. It was designed to increase procedural fairness and equity while promoting more effective resolution of workplace disputes. This analysis of the 2004 Workplace Employment Relations Survey (WERS 2004) found that compliance with the right was uneven. While the right of accompaniment at grievance hearings was linked to lower rates of Employment Tribunal applications, there was little evidence that it had moderated disciplinary outcomes. However, broader patterns of employee representation were found to result in lower levels of disciplinary sanctions and dismissals.

Aims and objectives

This report seeks to review the operation of grievance and disciplinary procedures and to examine whether legislation designed to increase accompaniment within the grievance and disciplinary process has aided the effective resolution of workplace disputes.

Consequently, this report seeks to:

- Measure compliance with statutory provisions relating to accompaniment;
- Examine the importance of a range of key variables including procedural formality, management-union trust, union presence, workplace size and composition in determining rates of dismissal, disciplinary sanctions and Employment Tribunal applications;
- Outline the implications of these findings for policy-makers and key stakeholders;
- Provide a foundation for more detailed quantitative and qualitative investigations in this area.

Background

Fairness at work has been a central tenet of the current government's approach to employment relations. A key principle underpinning this is the importance of employee representation. This is not only seen as providing vulnerable individuals with advice and support but also as facilitating the resolution of workplace conflict. Accordingly, the right to accompaniment in grievance and disciplinary hearings was introduced in October 2000. This was followed in 2004 by the introduction of statutory grievance and disciplinary procedures. Consequently, workplaces now have a statutory duty to hold formal grievance and disciplinary hearings at which employees are entitled to be accompanied by either a work colleague or a trade union representative. This report examines the impact of this important change.

Accompaniment - uneven compliance, limited impact

It was found that compliance with the right to accompaniment was patchy and uneven. Accompaniment at grievance hearings was linked to lower levels of Employment Tribunal applications. However, there was little evidence to suggest that rates of disciplinary sanctions or dismissals were lower in workplaces that complied with the right. It could be argued that accompaniment at disciplinary hearings will do little to alter the outcome. Instead effective representation at earlier stages of conflict, when some sort of resolution is still possible, may be more influential.

- Employees in more than one-third of workplaces did not have access to either a colleague or a trade union representative when asked to attend a formal grievance or disciplinary hearing.
- Managers in 20 per cent of workplaces did not allow an employee's companion to ask questions, while in 15 per cent of cases employees were not allowed to confer with their companion in private. However, in more than a half of workplaces, the companion was allowed to answer questions on behalf of the employee, a practice which the employer is not required to permit under the legislation.
- Unionised workplaces and to a lesser extent those with a specialist HR manager were more likely to meet statutory requirements regarding accompaniment.
- Very large workplaces (with 250 or more employees) all met statutory requirements regarding accompaniment. The smaller the workplace the less likely it was that employees had access to accompaniment.
- Thirty per cent and 29 per cent of employees worked in establishments in which the legal requirements for accompaniment were not met in respect of grievance hearings and disciplinary hearings respectively.
- Those workplaces that permitted accompaniment at grievance hearings were less likely to be taken to an Employment Tribunal.
- There was no evidence to suggest that the provision of the right to accompaniment at disciplinary hearings had a significant impact in reducing rates of disciplinary sanctions and dismissals.

Formal procedures and formal outcomes

Formal grievance and disciplinary procedures were widespread. However, there was little evidence to suggest that greater procedural formality helped to avoid disciplinary sanctions and dismissals. Therefore, although formality does provide workplaces with greater legal protection, it may also cut off more effective informal routes of dispute resolution.

- More than eight out of ten workplaces had formal procedures for dealing with employee grievances (83 per cent) and discipline (88 per cent).
- Eighty-one per cent of workplaces with procedures always held a formal disciplinary meeting. A further 12 per cent held a meeting depending on the circumstances. More than three-quarters set out the reasons for taking disciplinary action in writing.
- Workplaces adopted a more contingent approach in respect to employee grievances. Employees were routinely asked to submit a grievance in

writing in 40 per cent of workplaces and employees in only 63 per cent of workplaces were guaranteed a meeting to discuss their grievance.

- Procedures were more formal in workplaces: where union members were present; that employed a specialist HR/Personnel Manager; within the public sector; and that were part of a larger multi-site organisation. In general terms procedural formality consistently increased with the size of the establishment.
- More formal procedures did not appear to moderate disciplinary outcomes. There was little evidence to suggest that more formal grievance and disciplinary procedures led to lower rates of sanctions and dismissals.

Union representation crucial to conflict resolution

Disciplinary sanctions and dismissals were less likely to occur at workplaces with higher levels of trade union density. This was bolstered by the presence of specialist HR managers and was particularly evident where employee representatives trusted their management counterparts. Given the findings outlined above, this might suggest that broader patterns of representation and dispute resolution are key to managing individual conflict in the workplace.

- Unionised workplaces were likely to have more formal procedures and were more likely to comply with legislation regarding accompaniment.
- Union density had a strong impact in moderating disciplinary outcomes. It had a statistically significant negative association with rates of disciplinary sanctions and dismissals.
- The presence of HR/Personnel professionals appeared to have a significant impact in reducing rates of dismissals and disciplinary sanctions.
- Disciplinary sanctions were likely to be lower where employee representatives had higher degrees of trust in their management counterparts.

Gender crucial in shaping disciplinary outcomes

Compositional factors related to gender, ethnicity, age and occupation were found to be important in explaining disciplinary outcomes.

- Higher proportions of men within the workforce were associated with higher rates of dismissals and disciplinary sanctions and Employment Tribunal applications.
- Higher rates of sanctions and dismissals were also seen in workplaces with higher proportions of unskilled workers and those employees from ethnic minorities.
- Those employing a higher proportion of employees over the age of fifty were more likely to be taken to an Employment Tribunal.

Small is not necessarily beautiful

The relationship between workplace size and disciplinary outcomes was complex. Very small workplaces (between five and nine employees) were significant in predicting higher rates of dismissal. However, they also had a significant negative effect on the rate of Employment Tribunal applications.

- Small family-owned establishments were likely to deal with grievance and disciplinary issues in a more informal manner than larger workplaces.
- Very small workplaces (between five and nine employees) were significantly associated with higher rates of dismissals.
- Very small workplaces were significantly associated with lower rates of Employment Tribunal applications.

Policy and research implications

Overall our analysis suggests that an over emphasis on procedural formalisation may neither provide greater fairness for employees nor help resolve workplace disputes. Instead, measures that support robust structures of employee representation may have more impact in improving disciplinary outcomes in British workplaces. However, in order to be able to draw firm conclusions, more detailed qualitative analysis is needed to explore the process and patterns of workplace representation in respect of:

- the impact of companions at hearings;
- the role that unions and other employee representatives play in earlier and more informal stages of discipline and grievance;
- the effect of procedural formality on the resolution of workplace disputes, particularly in smaller workplaces.

About this project

This research was carried out as part of the Department of Trade and Industry's employment relations research programme, and was funded under the WERS 2004 Grants Fund. Further details on the Fund can be found here:

http://www.dti.gov.uk/employment/research-evaluation/grants/wers

The research reported in this report is based on secondary analysis of WERS 2004. Two elements of the survey were used in this research. The first was the cross-section survey of managers in which data were collected using face-to-face interviews with around 2,000 managers responsible for employment relations. The second element used was the survey of employee representatives, in which around 1,000 representatives were interviewed.

About the authors

Richard Saundry is Senior Lecturer in Industrial Relations and Valerie Antcliff is a Research Fellow, both at University of Central Lancashire.

About WERS 2004

The Workplace Employment Relations Survey (WERS 2004) is a nationally representative survey of British workplaces employing five or more employees and covering all sectors of the economy except agriculture, fishing, mining and quarrying. More information on the survey can be found here:

http://www.dti.gov.uk/employment/research-evaluation/wers-2004/

The survey is jointly sponsored by the Department of Trade and Industry, the Advisory Conciliation and Arbitration Service (Acas), the Economic and Social Research Council and the Policy Studies Institute. It follows in the acclaimed footsteps of earlier surveys conducted in 1980, 1984, 1990 and 1998.

For further information please refer to the main published outputs from WERS 2004: the first findings booklet (Kersley et al, 2005), a report on small and medium-sized enterprises (Forth et al, 2006), and the 400-page sourcebook of detailed findings (Kersley et al, 2006). The sourcebook is published by Routledge, while the first two reports are available free from DTI: http://www.dti.gov.uk/publications Please quote the URN when ordering.

The data from WERS 2004 is now available to users through the UK Data Archive (study number: 5294): http://www.data-archive.ac.uk/

1 Introduction

Background

Improving the effectiveness of grievance and disciplinary procedures in British workplaces has been a key theme of government employment policy in recent years. A range of measures has been introduced, designed, in part, to strengthen processes of dispute resolution and to contain the growth of Employment Tribunal applications. However, academic interest in the operation and implications of workplace procedures for dealing with discipline and grievance has been limited (Dickens et al., 2005; Edwards, 2000).

A notable exception to this is Knight and Latreille's (2000) analysis of data from the 1998 Workplace Employee Relations Survey (WERS98). WERS98 identified the existence of grievance and disciplinary procedures but did not explore their operation. Knight and Latreille's analysis was restricted, therefore, to the effect of the presence of disciplinary procedures on Employment Tribunal applications which they did not find to be significant.

However, since then, new rights to accompaniment have been established under the Employment Relations Act 1999 and minimum statutory grievance and disciplinary procedures have been introduced through the Employment Act 2002.

The 2004 Workplace Employment Relations Survey (WERS 2004) contains valuable data regarding the operation of disciplinary and grievance procedures and, in particular, the extent and nature of accompaniment and representation. In this report this new data was used to examine the relationship between rates of disciplinary sanction, dismissal and application to Employment Tribunals and the extent of workforce representation in the grievance and disciplinary procedure. Following Knight and Latreille, a number of independent variables were included that measure characteristics of the workforce and workplace. These included: demographic features, such as gender, ethnicity and age of the workforce; workplace size, type of establishment and union density. New measures of procedural formality, legal compliance and management-union trust were developed. Separate models were estimated for each rate using a common set of explanatory variables. In light of the resultant findings, an alternative model was developed including additional independent variables.

The report firstly sets out the aims of the study followed by an overview of the legal framework underpinning disciplinary and grievance procedures. The data and methods are described in Section 3. Sections 4 to 7 examine relevant academic literature and present preliminary findings from WERS 2004 to provide a broad picture of both the operation of grievance and discipline in British workplaces and the nature of accompaniment. The results of the analysis are presented in Section 8 followed by a discussion of the implications of these findings both for existing academic research and public policy.

Aims of the study

For the first time, WERS 2004 provides data that measure the extent to which workforce representation is part and parcel of grievance and disciplinary processes in British workplaces. The broad aim of the report is to provide an overview of the current operation of grievance and disciplinary procedures and to examine whether legislation designed to increase accompaniment within the grievance and disciplinary process has aided the effective resolution of workplace disputes.

Consequently, this report seeks to:

- Measure compliance with statutory provisions relating to accompaniment;
- Explore the significance of accompaniment in determining rates of dismissal, disciplinary sanctions and Employment Tribunal applications;
- Examine the importance of a range of key variables including management-union trust, union presence, workplace size and composition in determining rates of dismissal, disciplinary sanctions and Employment Tribunal applications;
- Outline the implications of these findings for policy-makers and key stakeholders;
- Provide a foundation for more detailed quantitative and qualitative investigations in this area.

2

Legal framework

Discipline and grievance – The legal framework

The right to accompaniment within grievance and disciplinary hearings was introduced in September 2000 as part of the Employment Relations Act 1999. It was hoped that by providing access to workplace representatives, employees would be treated more fairly within grievance and disciplinary processes. Moreover, effective representation was seen as crucial in reducing workplace conflict and facilitating the successful resolution of disputes between employers and employees, so reducing the growing burden being placed on the Employment Tribunal system.

The right not to be unfairly dismissed and the subsequent introduction of the Industrial Tribunal system had their origins in the recommendations of the 1968 report of the Royal Commission on Trade Unions and Workplaces' Associations (the 'Donovan Report') which made the case for an 'accessible, speedy, informal and inexpensive' system to rule on workplace disputes. Donovan saw the ability of employees to take claims for unfair dismissal to an Industrial Tribunal as a way of attenuating the relatively high incidence of industrial action over disciplinary issues.

These recommendations were incorporated in the Labour government's White Paper 'In Place of Strife' and subsequently introduced by Edward Heath's Conservative administration in the Industrial Relations Act 1971. Although this was later repealed in 1974 by the incoming Labour government, the provisions relating to unfair dismissal and Industrial Tribunals were immediately retained within the Trade Union and Labour Relations Act 1974 (and subsequently consolidated in the Employment Rights Act 1996).

Consequently, the ACAS Code – Disciplinary Practice and Procedures - was introduced in 1977 to provide guidance on fairness and equity in dealing with disciplinary issues. Paragraph 11 of the Code summed up the essence of procedural fairness as follows:

'Before a decision is made or imposed the individual should be interviewed and given the opportunity to state his or her case and should be advised of any rights under the procedure, including the right to be accompanied'

While the ACAS Code of Practice was not legally enforceable, it did set out 'best practice' in dealing with disciplinary issues and was taken into account in tribunal proceedings. Over time failure to allow accompaniment at disciplinary proceedings has been seen as a breach of Natural Justice and hence a fatal procedural flaw liable to render consequent dismissals unfair (see Rank Xerox (GB) Ltd v Goodchild [1979] IRLR 185). Yet, despite this there was neither a statutory right to accompaniment nor any provisions compelling workplaces to

adopt formal written disciplinary and grievance procedures. The Employment Rights Act 1996 introduced the first statutory requirement in relation to grievance and disciplinary procedures. Section 3 of the Act required workplaces with more than 20 employees to provide them with details of any workplace disciplinary or grievance procedures, as part of their written statement of terms and conditions of employment, as required under s. 1 of the Act. Importantly, this did not itself compel workplaces to introduce formal disciplinary and/or grievance procedures.

Despite the essentially voluntaristic approach to discipline and grievance in the workplace prior to 1999, formal procedures became commonplace during the 1980s and 1990s. Millward et al (1992) estimated that by 1990, 90 per cent of establishments employing 25 employees or more had formal disciplinary procedures. Furthermore this was not confined to sectors of industry with high levels of trade union organization. In fact more than eight out of every ten establishments that did not recognize trade unions had a formal disciplinary procedure. However, whether procedural formalisation had spread to smaller establishments is questionable. WERS98 did not include workplaces with less than ten employees. Moreover, earlier analysis suggested that the bulk of workplaces employing less than twenty employees did not have a written procedure for dealing with discipline and dismissals (Evans et. al, 1985).

Evidence from WERS98 (Cully et al., 1999) also suggested that accompaniment at disciplinary hearings was almost always provided for within written formal procedures. However no data was collected regarding the nature of accompaniment offered. It is likely that in most workplaces in which trade unions were not recognised, accompaniment was not extended to trade union or employee representatives with many procedures only allowing representation by a 'friend'.

It has been suggested that the threat of unfair dismissal and the experience of defending Employment Tribunal applications triggered much of the formalisation outlined above (Edwards et al., 2004). Yet despite this, there was a rapid increase in Employment Tribunal applications from 1988 onwards, with the rate more than trebling between 1988 and 1996 (Burgess et. al, 2001). The reasons for this rapid increase are complex and are discussed at greater length below. However, this arguably represented a shift in the nexus of industrial conflict from the collective to the individual arena.

In this context the new Labour government introduced its 'Fairness at Work' White Paper that has set the benchmark for the programme of employment legislation in recent years (Department of Trade and Industry, 1998). The White Paper outlined the aim of the government, which was to create 'the most lightly regulated labour market of any leading economy of the world' while at the same time argued the need for a 'minimum infrastructure of decency and fairness'. Importantly, the focus was placed firmly on extending 'the rights of the individual…as a matter of choice'.

While stressing the right of individuals to defend or advance their interests at work in an effective manner, irrespective of trade union membership or recognition, the White Paper did acknowledge that employees may need assistance in representing those interests. The ACAS Code of Practice on Disciplinary Practice and Procedures had long recommended that employees

should have the option of being accompanied by a trade union representative or fellow employee of their choice. The White Paper therefore proposed that this recommendation should be made a statutory right during grievance and disciplinary procedures.

Consequently section 10 of the Employment Relations Act 1999 established a right to accompaniment at disciplinary and grievance hearings. This provision took effect on 4 September 2000. For the purpose of the legislation a disciplinary hearing was defined as a meeting that could result in:

- a formal warning being issued to a worker;
- the taking of some other disciplinary action (such as dismissal, demotion, suspension without pay) or other action; or
- the confirmation of a warning or some other disciplinary action (such as an appeal hearing).

Importantly the right to accompaniment did not extend to informal discussions or counselling over a disciplinary issue. Meetings held to investigate a disciplinary issue were also excluded from the definition of disciplinary hearing. Grievance hearings, for the purposes of the legislation, were defined as meetings at which an employer examined a complaint about either a statutory or common law duty owed by them to a worker.

Requests for accompaniment had to be 'reasonable' and the companion could be either a fellow worker or a full-time or lay trade union official, irrespective of whether that trade union was recognised by the employer. The right did not extend to partners, relatives, spouses or legal representatives although workplaces were free to allow accompaniment by such parties. Companions were entitled to take a reasonable amount of paid time off to carry out their responsibilities.

When accompanying a worker at a grievance or disciplinary hearing, the companion was permitted to confer with the worker and to address the hearing, however, the legislation did not provide a right for a companion to either answer questions or attend a hearing on the worker's behalf.

In 2003, the government completed a review of the Employment Relations Act 1999 (Department of Trade and Industry, 2003) including the right to accompaniment. In general, the review claimed that the Act had been a 'resounding success'. The review concluded that the right to accompaniment had operated 'smoothly' since its introduction with only 136 Employment Tribunal applications resulting from alleged breaches of the right. Much of the controversy and debate surrounded the distinction between accompaniment and representation and the definition of a hearing under the legislation. In terms of the latter, the courts appeared to have found little difficulty in interpreting the legislation. In two cases - London Underground v Ferenc-Batchelor [2003] ICR 656, and Skiggs v South West Trains [2005] IRLR 459 - the Employment Appeal Tribunal (EAT) provided clarification that investigatory meetings and meetings that impose training, coaching and counselling did not attract the right to accompaniment. However, in Harding v London Underground Ltd [2003] IRLR 252, the EAT found that a meeting at which a warning described as an 'informal oral warning' was issued did attract

accompaniment as it was confirmed in writing, entered onto the applicant's file and had effect for up to 12 months.

However, it was the scope of accompaniment that caused most controversy. In particular trade unions called for a widening of the role of the companion into that of a representative. They claimed that workplaces were restricting the role of the companion on the grounds that they were not entitled to answer on behalf of the worker. In some instances, this restriction was being used to prevent the companion from making any comment on behalf of the employee. Consequently, the government proposed to clarify the scope of accompaniment. These proposals were formalised in s. 37 of the Employment Relations Act 2004 so that the companion was permitted to address the hearing in order to:

- put the worker's case;
- sum up that case;
- respond on the worker's behalf to any view expressed at the hearing.

But, the employer was not required to permit the companion to:

- answer questions on behalf of the worker;
- address the hearing, if the worker does not want the companion to do so; or
- use his or her powers…. 'in a way that prevents the employer from explaining his case or prevents any other person at the hearing from making his contribution to it'.

Furthermore, the amendments to the ERA 1999 sought to close an important loophole whereby the right did not apply where workplaces did not have, or did not apply, disciplinary or grievance procedures. The introduction of statutory procedures under the Employment Act 2002 should have solved this problem. The Employment Act 2002 (Dispute Resolution) Regulations set out for the first time minimum disciplinary and grievance procedures that all workplaces (irrespective of size) must use in dealing with disciplinary and grievance issues. They came into force on 1 October 2004, during the conduct of fieldwork for WERS 2004 which took place between February 2004 and April 2005. Nonetheless it is important to understand the main elements of the regulations.

If an employer is considering dismissing an employee or taking disciplinary action short of dismissal (except oral and written warnings and suspension on full pay) they must use the following procedure as a minimum:

- Write to the employee setting out the grounds for contemplating dismissal or disciplinary action
- Invite the employee to a meeting to discuss the matter (at which employees have the right to be accompanied) after which the employer should inform the employee of the decision
- Provide the employee with a right to appeal against the decision

If an employer dismisses an employee without meeting the above requirements, the dismissal will be automatically unfair. In addition if either the employer or employee fail to follow the minimum procedure, compensation in

the event of a finding of unfair dismissal can be increased or reduced by between ten and fifty per cent.

If an employee wishes to raise a grievance against their employer then a minimum procedure must be followed by both parties. The procedure again has three steps:

- The employee must first put their complaint in writing to their employer
- The employer must invite the employee to a formal meeting to discuss the grievance (the right to accompaniment applies here) and notify the employee of the decision in writing.
- The employee must be given the right to an appeal meeting if they feel the grievance has not been properly resolved.

Crucially, under the Dispute Resolution Regulations, an employee must wait 28 days after having submitted their grievance in writing before making any application to an Employment Tribunal. Effectively this means that if an employee does not fulfill step one of the statutory procedure they cannot make a tribunal claim. Moreover, if either the employer or the employee fail to follow the procedure, the tribunal may increase or reduce any subsequent compensation by between ten and fifty per cent.

The introduction of statutory procedures is interesting given the wide procedural coverage that already existed in British workplaces. It is also important to note that the legislation does not compel workplaces to have a written procedure. It simply sets out mandatory steps that must be followed by employer and employee. The regulations were clearly aimed at reducing the number of Employment Tribunal claims by forcing employers and, most importantly, employees to exhaust internal procedures before resorting to an Employment Tribunal claim (Department of Trade and Industry, 2001).

Many hailed the reduction in Employment Tribunal claims from approximately 115,000 in 2003/4 to 86,181 in 2004/5 as evidence of the success of the new regulations. However whether this was due to more effective workplace dispute resolution, or simply the increasing difficulty of making a claim, is still open to question (Suff et al., 2006). Hepple and Morris (2002) have suggested that the impact of the procedural changes introduced under the Employment Act 2002 was to downgrade rather than enhance procedural fairness.

The rationale for statutory accompaniment at grievance and disciplinary hearings is that it will promote both equity and efficiency. Individuals will receive much-needed support and advice at a difficult time, workplaces will be deterred from making excessively harsh decisions and the involvement of a third party will encourage the resolution of workplace disputes. However, to date, there is little evidence as to whether the right to accompaniment is helping to achieve these laudable goals. This report attempts to fill this gap.

3

Research design

The Workplace Employment Relations Survey 2004

The focus of our research was practice and outcomes in relation to disciplinary procedures in the workplace. To investigate these issues data were drawn from the Workplace Employment Relations Survey (WERS) 2004. WERS 2004 is a nationally representative survey of British workplaces employing five or more employees and covering all sectors of the economy except agriculture, fishing, mining and quarrying[1]. While the focus of the survey was employee relations in British workplaces, it included data about grievance and disciplinary processes together with characteristics of the workforce. Small workplaces employing between five and nine employees were included for the first time in WERS 2004. The data were weighted to take account of the complex sample design.

Two elements of the survey were used in this research. The first was the cross-section survey of managers in which data were collected using face-to-face interviews with the 'senior manager dealing with personnel, staff or employment relations' at each establishment. Interviews were conducted at 2,229 workplaces, representing a response rate of 64 per cent. Interview data were supplemented with workforce data collected using a self-completion questionnaire sent to managers in advance of the interview.

The second element used was the survey of employee representatives. The selection criteria for employee representatives were widened in WERS 2004 to include both union and non-union representatives where both were present. Previous WERS data only included non-union representatives at establishments where unions were not recognised for the purpose of negotiating pay and conditions. The presence of employee representatives was associated with workplace size and only around ten per cent of establishments with between five and nine employees had eligible representatives (Chaplin et. al, 2005). Face-to-face interviews were conducted with 985 employee representatives representing a response rate of 82 per cent. All analyses within this report were based on the cross-section survey of managers except where indicated otherwise.

Methods

Data from the survey of managers and employee representatives were used to model the determinants of three aspects of the grievance and disciplinary process – the rate of disciplinary sanctions per hundred employees, the rate of dismissals per hundred employees and the rate of application to an Employment Tribunal per hundred employees. WERS 2004 asked how many employees have had disciplinary sanctions short of dismissal applied; How many have been dismissed for reasons other than redundancy and the number of applications to an Employment Tribunal in the twelve months previous to the

[1] For a detailed technical description of the survey see Chaplin et. al. (2005).

survey. The rate per hundred employees was based on the number of employees at the beginning of the twelve-month period.

Appendix A provides descriptive statistics for all three dependent variables together with definitions and descriptive statistics for all variables used. Each of the dependent variables was highly skewed with a large number of zeros. To overcome this all three were transformed taking the natural log of each value, with a constant added to deal with the large number of zeros before entering them in a series of ordinary least squares regression models.

The unit of analysis was the workplace. This allowed us to examine the characteristics of those workplaces at most risk of Employment Tribunal applications, disciplinary sanctions or dismissals. In taking this approach the analysis largely focused on managers' perceptions of the disciplinary process. A limitation of WERS 2004 is that data were collected for the overall numbers of sanctions, dismissals and claims at each workplace and not for separate categories of employee. Independent variables were included to measure establishment-level characteristics of the workforce but it was not possible to calculate, for example, rates of dismissal by gender or ethnicity either within an establishment or the sample as a whole. Furthermore, while WERS 2004 yielded data in relation to the provision of the right to accompaniment, it neither measured the extent to which accompaniment was taken up by employees nor its effectiveness.

Table 1 shows mean rates for each of the dependent variables.

Table 1. Mean scores for rates of sanctions dismissals and applications to an Employment Tribunal per 100 employees

	Mean	Standard deviation
Rate of dismissals	1.65	5.13
Rate of disciplinary sanctions	5.71	10.97
Rate of ET applications	0.29	2.08

Source: WERS 2004. Base: all workplaces; Figures are weighted and based on responses from 2,295 managers.

4

Procedure, formality and accompaniment

Procedures in grievance and discipline

A central theme that underpins recent legislation has been the importance of formalised procedures in avoiding and resolving workplace disputes and grievances. The provision of written statements of terms and conditions was seen to help clarify the employment relationship and to codify employer and employee expectations. Similarly grievance procedures provided a mechanism for employees to raise concerns about their employment while disciplinary procedures did likewise for employers. Formal procedures with stages and time limits ensured that employees knew what was expected of them and provided opportunities for conflict to be resolved thus avoiding the escalation of disputes (DTI, 2004).

At one level successive governments maintained a voluntary approach to disciplinary and grievance procedures. However, the introduction of Industrial Tribunals and the development of unfair dismissal legislation from 1971 onwards provided strong, if indirect pressure on workplaces to formalise their approach to discipline, dismissals and the handling of individual grievances.

This formalisation of discipline increased significantly through the 1980s (Kessler, 1993) as individual employment protection was strengthened through legislation relating to unfair dismissal and discrimination. Using data from the 1990 Workplace Industrial Relations Survey, Millward et al. (1992) found that more than 90 per cent of employees were employed in organizations with formal disciplinary and grievance procedures. Coverage was universal in the public sector and stood at around 80 per cent in the private sector, while small owner-managed workplaces and particularly those that did not recognize trade unions were much less likely to have disciplinary and grievance procedures. Nonetheless, even in establishments with 25-99 employees, 85 per cent reported having formal disciplinary procedures and 79 per cent had formal grievance procedures [2]

Given the lack of legal compulsion prior to 1996, this coverage of discipline and grievance procedures was exceptionally high even amongst smaller workplaces. In fact, it has been suggested that most small workplaces (70 per cent of those with fifty or fewer employees) had formal procedures in place six years before it became a legal obligation (Cully et. al., 1999; Dickens et. al., 2002). Furthermore they were relatively widely accepted by management (Evans, 1985).

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[2] WIRS 1990 did not include small workplaces employing fewer than ten employees.

More recent findings from WERS 2004 suggested that there has been little change in the use of grievance and disciplinary procedures compared to 1998 (Kersley et al., 2005). Table 2 shows the percentage of workplaces that used formal grievance and disciplinary procedures. It suggests that formality was widespread with 83 and 85 per cent of managers reporting the existence of formal grievance and disciplinary procedures respectively. Employee representatives reported a slightly higher incidence of formal procedures, although this may have reflected the increased likelihood of formality within workplaces where employee representatives were present. In addition it should be noted that this data straddled the introduction of statutory disciplinary and grievance procedures (in October 2004 under the Employment Act 2002). Therefore one might expect that coverage has increased further since this time.

Table 2. Percentage of workplaces with a formal procedure for dealing with individual grievances/discipline and dismissals

	Grievance		Discipline	
	Managers	Employee representatives*	Managers	Employee representatives*
Yes	83%	88%	85%	95%
No	17%	12%	15%	5%

Source: WERS 2004. Base: All workplaces; Figures are weighted and based on responses from 2,295 managers.
* Uses data from the Employee Representatives Survey.

Edwards et al. (2004) suggested that the trigger for the introduction of formal grievance and disciplinary procedures within many small workplaces was the fact that they were more likely than larger organisations to come face-to-face with the reality of legal regulation through litigation (Evans et. al., 1995). In a similar vein, Goodman et al. (1998) suggested that fear and/or experience of unfair dismissal claims may be a spur to the adoption of disciplinary procedures (see also DTI, 2004). Therefore the prime function of formal procedures may be legal protection as opposed to effective dispute resolution.

Procedure and formality

However the existence of a procedure does not necessarily correlate with formality in practice. Indeed, research has shown that one in four Employment Tribunal cases involved workplaces, which failed to use the procedures they had in place (Earnshaw et al., 2001). WERS 2004 allowed us to explore how grievance and disciplinary processes have operated in much greater detail by asking managers how they dealt with such issues measured against the statutory minima.

Indeed, while most workplaces already had formal written grievance and disciplinary procedures, their implementation fell well short of the minimum demanded by legislation. Table 3 outlines the percentage of workplaces that implemented the statutory requirements for grievance and disciplinary procedures. Only 40 per cent of establishments surveyed required the complainant to set out their grievance in writing as is now required by statute. Similarly, in more than a quarter of workplaces, aggrieved employees did not always get an opportunity to discuss their complaint with a manager in a formal meeting.

Table 3. Percentage of workplaces implementing statutory requirements for grievance and disciplinary procedures

	Employee required to set out grievance in writing	Employee asked to attend formal meeting to discuss grievance	Employer required to set out reasons for disciplinary action in writing	Employee asked to attend formal meeting to discuss disciplinary action
Yes	40%	63%	76%	81%
Sometimes	28%	24%	13%	12%
No	32%	13%	11%	7%
Total	100%	100%	100%	100%

Source: WERS 2004. Base: All workplaces where formal grievance or disciplinary hearings take place. Figures are weighted and based on responses from 2,156 managers.

There appeared to be a greater degree of formality in dealing with disciplinary issues than employee grievances. In almost three-quarters of workplaces, individuals facing disciplinary action were provided with some sort of written statement outlining the reasons for disciplinary action, in line with the new statutory disciplinary procedure under the Employment Act 2002. In more than 80 per cent of cases some form of disciplinary meeting was always held. This higher degree of formality in dealing with disciplinary matters, perhaps reflected the greater possibility of facing tribunal proceedings in reaction to dismissal.

Interestingly these data seemed to show a deficit between implementation and the awareness of managers of legislation regarding discipline and grievance. Casebourne et. al. (2006) found that four in five of employees claimed to be aware that workplaces must follow set disciplinary and grievance procedures. However, a smaller proportion (although still a majority) claimed to know the detail of these measures. Similarly a very high proportion of respondents claimed to be aware of the requirement to put a complaint in writing to their employer before making an application to the Employment Tribunal.

While previous studies have examined the impact of the *existence* of written procedures, WERS 2004 measured the degree of formality in the grievance and disciplinary processes used by workplaces. For this report, in order to estimate the overall degree of formality in handling grievance and disciplinary issues, nine indicators pertaining to statutory requirements were used to calculate indices of formality in grievance and disciplinary procedures. Potential scores ranged from 0 to 16. Table 4 shows mean scores for each index. A description of the indicators can be found in Appendix B.

Table 4. Mean scores on formality indices

	Mean	Standard deviation
Grievance procedures	10.86	4.06
Disciplinary procedures	11.74	3.77

Source: WERS 2004. Base: all workplaces; Figures are weighted and based on responses from 2,295 managers.

Despite relatively high mean scores on both indices WERS 2004 suggested that a significant proportion of workplaces dealt with disciplinary and especially grievance issues in a way that frequently fell short of current legal requirements.

Accompaniment in the grievance and disciplinary process

The introduction of a defined statutory right to accompaniment in grievance and disciplinary meetings was designed to ensure consistency in existing practice, afford individual employees increased protection and, most importantly, facilitate the resolution of workplace disputes. In short, it was believed that if employees were accompanied the likelihood of extreme sanctions such as dismissal and resultant claims to Employment Tribunals would be reduced.

The Employment Relations Act 1999 clearly states that an employee may be accompanied by either a work colleague or a trade union representative. In WERS 2004, at workplaces where grievance and disciplinary hearings were held, managers were asked who they permitted to accompany an employee. The results are summarised in Table 5.

As respondents were allowed to provide more than one response, it was difficult to gauge from this measure whether or not workplaces conformed to minimum requirements. Around a third of managers mentioned that 'anyone' could accompany an employee. Strictly speaking this fell within statutory requirements, as 'anyone' could include a work colleague or trade union representative. On the other hand it may have indicated a lack of interest in, or knowledge of, statutory regulations regarding accompaniment.

Table 5. Accompaniment at grievance and disciplinary hearings

	Grievance hearing	Disciplinary hearing
Full-time Union Officer	22.7%	19.9%
Union representative	35.1&	30.3%
Friend	24.2%	19.9%
Employee representative	31.0%	24.3%
Colleague	61.5%	50.8%
Manager	19.5%	18.8%
Lawyer	10.0%	8.4%
Someone else	5.2%	5.2%
No accompaniment allowed	n.a.	2.1%
Anyone	34.9%	33.5%

Source: WERS 2004; NB: Percentages add to more than 100 because of multiple responses. Base: All workplaces where grievance or disciplinary hearings take place. Figures are weighted and based on responses from 2,156 managers.

Overall the data suggested that there was at best an uneven application of the legislation in relation to who may accompany an employee at a grievance or disciplinary hearing. What was clear was the diversity of practices used in British workplaces.

This 'diversity' is reflected in employees' awareness of their rights to accompaniment. Casebourne et al. (2006) found that 93 per cent of respondents in their study of employees believed that they had a right to be accompanied to a disciplinary or grievance hearing. However, significant proportions believed that they had a right to be accompanied by a solicitor (68 per cent) or a friend/relative with whom they didn't work (37 per cent) in addition to a trade union official and/or a work colleague. Overall only 18 per cent of respondents in Casebourne's study knew the basic detail of the provision.

In an attempt to clarify this issue a 'legality' variable was constructed to indicate workplaces where accompaniment by either a work colleague, a trade union representative or 'anyone' was allowed. Effectively this meets the minimum legal criteria, however the measure should be treated with some caution because of the ambiguity of the term 'anyone'. Among the full sample 42 per cent of workplaces failed to meet the minimum criteria. Table 6 shows that even when one examined only those workplaces that held a formal grievance meeting, nearly one third did not provide employees with the statutory right to be accompanied.

Table 6. Percentage of workplaces offering employees the statutory right to accompaniment at grievance hearings

Does establishment fulfill legal requirements re: accompaniment?	Are employees asked to attend a formal meeting with a manager to discuss the nature of their grievance?	
	Yes, always	Depends on issue
No	33.3	37.5
Yes	66.7	62.5
Total	100 %	100 %

Source: WERS 2004. Base: All workplaces where grievance hearings are held.
Figures are weighted and based on responses from 1,182 managers.

A similar picture emerged at those workplaces where a formal grievance procedure was in operation. Table 7 shows that in more than a third of these workplaces an employee's basic right to accompaniment was not met.

Table 7. Percentage of workplaces with formal grievance procedures offering employees the statutory right to accompaniment

Does establishment fulfill legal requirements re: accompaniment	Is there a formal procedure for dealing with individual grievances raised by any employee at this workplace?	
	Yes	No
No	36.1	76.5
Yes	63.9	23.5
Total	100 %	100 %

Source: WERS 2004. Base: All workplaces where grievance hearings are held.
Figures are weighted and based on responses from 1,182 managers.

When the exercise was repeated in respect of disciplinary meetings similar results were obtained. 39 per cent of all workplaces failed to meet the basic legal requirements for accompaniment. Tables 8 and 9 show that among those workplaces where employees were always given the opportunity of a formal disciplinary hearing and those with formal disciplinary procedures, 35 per cent failed to offer employees the statutory right to accompaniment.

Table 8. Percentage of workplaces offering employees the statutory right to accompaniment at disciplinary hearings

Does establishment fulfill legal requirements re: accompaniment?	Are employees asked to attend a formal meeting with a manager to discuss the reason for taking disciplinary action?	
	Yes, always	Depends on issue
No	35.0	33.3
Yes	65.0	66.7
Total	100 %	100 %

Source: WERS 2004. Base: All workplaces where disciplinary hearings are held. Figures are weighted and based on responses from 2,228 managers.

Table 9. Percentage of workplaces with formal disciplinary procedures offering employees the statutory right to accompaniment

Does establishment fulfill legal requirements re: accompaniment?	Is there a formal procedure for dealing with discipline and dismissals?	
	Yes	No
No	35.3 %	64.3
Yes	64.7 %	35.7
Total	100 %	100 %

Source: WERS 2004. Base: All workplaces where disciplinary hearings are held. Figures are weighted and based on responses from 2,228 managers.

WERS 2004 provided data on the extent to which other aspects of the statutory right to accompaniment in grievance and disciplinary procedures were being observed in British workplaces. These included the right of an employee to confer with their companion, the right of the companion to ask and answer questions on behalf of the employee and the right of the employee to appeal against any decisions.

Table 10 suggests that application of the law in respect of individual grievance hearings was patchy. Among those workplaces that held individual grievance hearings some 89 per cent allowed employees the right to appeal against decisions and 83 per cent allowed employees to confer privately with their colleague. However just under one in five workplaces did not allow companions to ask questions on behalf of the employee, something they were clearly allowed to do under the Employment Relations Act 1999. Almost half of those workplaces where grievance hearings were held allowed companions to answer questions on behalf of the employee, a practice which the employer is not required to permit under the legislation.

Table 10. Percentage of workplaces observing statutory accompaniment practices at grievance hearings

Statutory practices	% of workplaces
Can confer privately with companion	83
Right to appeal	89
Companion can ask questions on behalf of employee	81
Companion can answer questions on behalf of employee	47

Source: WERS 2004. Base: All workplaces where grievance hearings are held. Figures are weighted and based on responses from 1,182 managers.

In terms of accompaniment at disciplinary hearings we found a similar degree of ambiguity. Table 11 shows that among workplaces where formal disciplinary hearings were held 20 per cent did not allow companions to ask questions on behalf of the employee while more than half allowed companions to answer questions.

Table 11. Percentage of workplaces observing statutory accompaniment practices at disciplinary hearings

Statutory practices:	% of workplaces
Can confer privately with companion	85
Right to appeal	90
Companion can ask questions on behalf of employee	80
Companion can answer questions on behalf of employee	53

Source: WERS 2004. Base: All workplaces where disciplinary hearings are held. Figures are weighted and based on responses from 2,228 managers.

Overall, WERS 2004 suggested a degree of confusion among managers about statutory rights to accompaniment, while previous research (Casebourne et. al., 2006) has highlighted an equal misunderstanding on the part of the employee. Given the uncertainty on both sides of the employment relationship, it is perhaps not surprising that application of the statutory right to accompaniment was patchy. Despite this WERS 2004 provided little evidence to suggest discontent in the workplace about grievance and disciplinary procedures, possibly because in practice they were rarely used and knowledge may be only gained on a need-to-know basis.

Summary

Our findings suggest that the vast majority of British workplaces now have formal written grievance and disciplinary procedures. However, this masks a lack of consistency in content and implementation. On the whole workplaces adopted a more formal approach to disciplinary issues than they did in dealing with employee grievances. Even with the former, there was evidence of a significant gap between actual practice and the current statutory minima. In respect of grievance handling, the majority of workplaces failed to meet minimum standards. However, the Dispute Resolution Regulations were introduced as these data were being collected. Our analysis may, therefore, exaggerate the extent of the problem.

No such caveat applies to the right to accompaniment. Implementation of the right appeared at best patchy. In over one-third of workplaces, employees involved in grievance or disciplinary hearings were not being offered proper accompaniment. Even when they were, there appeared to be confusion over exactly what accompaniment meant.

The key question for this report is, 'does accompaniment moderate disciplinary outcomes and facilitate effective dispute resolution'? Clearly the impact of accompaniment may be affected by the extent to which workplaces fail to meet existing minimum standards.

5

Representation, management and employee relations

Employee representation in grievance and discipline

Previous research has pointed to the importance of union presence in determining rates of dismissal and sanction. Millward et al. (1992) found dismissal rates two and a half times higher in establishments in which unions were not recognised compared with those that recognised trade unions. Knight and Latreille (2000) also found that union density significantly moderated disciplinary outcomes suggesting that this illustrated the key role played by unions in achieving order in the workplace.

In a similar vein Edwards (1995) has suggested that union involvement tends to make dismissal and the use of disciplinary sanctions less likely. Unions may impact upon the disciplinary process in a number of ways. Firstly they could offer employees with protection from unfair treatment, and secondly, they may provide a means through which rules and procedures can be agreed, minimising the use of sanctions. Edwards concluded that unions appeared to be acting as a restraining force on managerial prerogative and providing a means of avoiding 'punitive modes of discipline' (ibid: 218). However, he worried that the erosion of union density and influence may reduce union voice and lead to management being forced to use more punitive systems of discipline.

Certainly, it could be argued that the decline in collective organisation and regulation has led increasing numbers of employees to pursue grievances through individual rather than collective channels. One might expect, therefore, that the introduction of a statutory right to be accompanied by a trade union representative at discipline and grievance hearings would reduce the likelihood of disciplinary sanctions and Employment Tribunal applications.

This report used two measures of unionisation in the workplace to investigate these issues. The first was a simple measure of union or staff association presence. WERS 2004 asked managers how many employees at their establishment were members of a trade union or independent staff association regardless of whether or not the union was recognised. Workplaces where at least one employee was a member of a trade union or staff association were classified as having a union/staff association presence. The second indicator was a conventional measure of union density. The majority of establishments (71 per cent) had no union or staff association members.

Table 12 shows the percentage of 'unionised' workplaces that fulfilled the legal requirement for accompaniment at grievance and disciplinary hearings.

Table 12. Percentage of workplaces fulfilling legal requirement for accompaniment in grievance/disciplinary hearings by presence of union/staff association

	Grievance hearings		Disciplinary hearings	
	Employees members of a trade union/staff association			
	Yes	No	Yes	No
Fulfills legal requirement	82%	45%	82%	50%
Does not fulfill legal requirement	18%	55%	18%	50%
Total	100%	100%	100%	100%

Source: WERS 2004 . Base: All workplaces where formal grievance or disciplinary hearings are held. Figures are weighted and based on responses from 1,994 managers.

As one might expect, the likelihood that legal requirements will be fulfilled was significantly higher among establishments with union or staff association members. Table 13 suggests that this was matched by higher levels of formality in workplaces where union or staff association members were present.

Table 13. Mean scores on formality indices by presence of union/staff association

	Employees members of a trade union/staff association	
	Yes	No
Grievance	12.09	10.04
Disciplinary	13.22	11.12

Source: WERS 2004. Base: All workplaces where formal grievance or disciplinary hearings are held. Figures are weighted and based on responses from 1,994 managers

It would be reasonable to assume that the influence and degree of union involvement in the grievance and disciplinary process would be positively associated with union density. Table 14 sets out mean union density according to whether workplaces were covered by formal grievance and disciplinary procedures.

Table 14. Mean union density by presence of formal grievance and disciplinary procedures

	Workplace has formal procedures for dealing with individual grievances	Workplace has formal procedures for dealing with disciplinary matters
Yes	17.2	16.3
No	1.2	4.27

Source: WERS 2004. Base: All workplaces where formal grievance or disciplinary hearings are held. Figures are weighted and based on responses from 2,160 managers.

Mean union density was indeed considerably higher among workplaces covered by formal grievance and disciplinary procedures. The association between formality and union density was again evident when one examined trade union density within those workplaces that complied with statutory requirements regarding accompaniment at grievance and disciplinary hearings (Table 15).

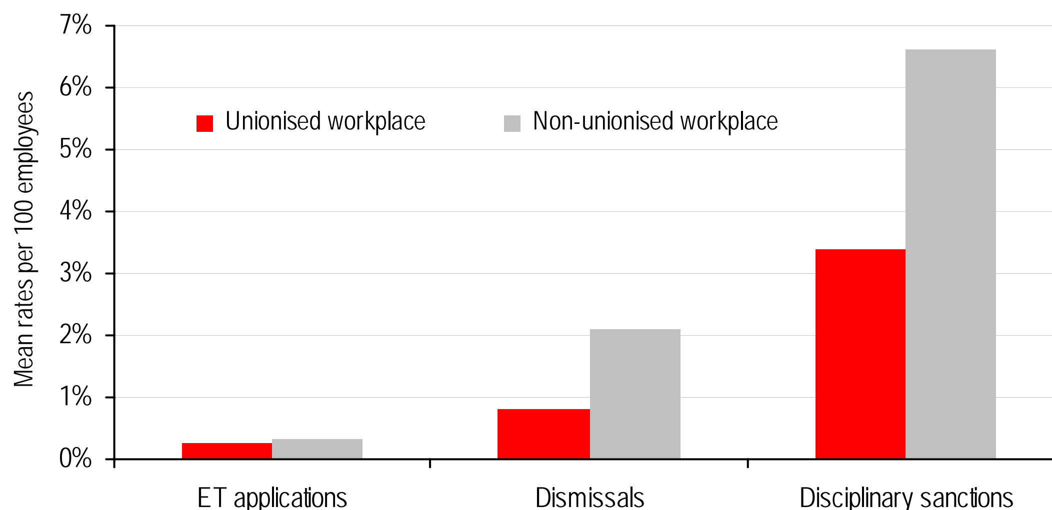
Table 15. Mean union density by compliance with statutory requirement to accompaniment at grievance hearings

Fulfills statutory requirement to accompaniment	Grievance hearings	Disciplinary hearings
Yes	21.8	20.66
No	4.9	5.43

Source: WERS 2004 ; Base: All workplaces where formal grievance or disciplinary hearings are held. Figures are weighted and based on responses from 2,160 managers.

Turning to rates of sanction, dismissal and Employment Tribunal application, data from WERS 2004 offered some support for the argument that union presence may moderate disciplinary outcomes. Figure 1 and Table 16 shows mean rates per hundred employees of the respective rates by union presence. Rates of disciplinary sanctions and dismissals in non-union workplaces were twice that of unionised workplaces, suggesting that the presence of trade unions and their possible involvement in the grievance and disciplinary process may constrain more extreme employer action and aid the resolution of individual disputes.

Figure 1. Union presence and rates of sanction, dismissal and Employment Tribunal applications



Source: WERS 2004. Base: All workplaces where formal grievance or disciplinary hearings are held. Figures are weighted and based on responses from 2,295 managers.

Table 16. Mean scores for rates of sanction, dismissal and Employment Tribunal applications per 100 employees by trade union presence

Are any employees members of a trade union?	ET applications	Disciplinary sanctions	Dismissals
Yes	0.26	3.4	0.82
No	0.31	6.6	2.10

Source: WERS 2004. Base: All workplaces where formal grievance or disciplinary hearings are held. Figures are weighted and based on responses from 2,295 managers.

Of course dismissal is an unusual occurrence in most workplaces and it is also important to note that disciplinary sanctions (excluding dismissal) may represent a positive tool for managing conflict and resolving disputes. Among the full sample of managers, only 19 per cent reported having dismissed an

employee in the past 12 months, 35 per cent had given an employee a formal verbal warning and 27 per cent a formal written warning.

Data from the Employee Representatives survey suggested that overall trade union and employee representatives were satisfied with the working of disciplinary procedures with only eight per cent claiming to be either dissatisfied or very dissatisfied and 76 per cent either satisfied or very satisfied.

The use of formal procedures to raise matters of individual grievance was equally limited. Only 18 per cent of managers reported that individual grievance matters had been formally raised in the previous 12 months. Among those workplaces where no formal grievance procedures were reported as having taken place almost half (49 per cent) believed that this was due to good management-employee relations. However, in those workplaces with trade union members only 22 per cent normally negotiated with unions over grievance procedures, a further 35 per cent normally consulted them and 27 per cent did not inform unions of individual grievance procedures at all. The picture was slightly different among workplaces with non-union employee representatives. Here negotiation over disciplinary procedures was less likely (5 per cent of workplaces) but only 11 per cent of workplaces did not inform employee representatives at all and a similar 37 per cent of managers normally consulted with employee representatives over grievance procedures.

Management of HR/Personnel

Previous research using data from WERS98 and WIRS found little association between HRM practices and disciplinary outcome (Edwards, 1995; Knight and Latreille, 2000). However, while Knight and Latreille (2000) found that high commitment work practices seemed to have no discernible effect, the presence of a personnel manager appeared to reduce the rate of disciplinary sanctions and dismissals. Furthermore, recent research has suggested that employee awareness of legislation regarding discipline and grievance was heightened by the presence of a specialist HR department (Casebourne et. al., 2006).

Indeed, it can be postulated that workplaces with specialist HR/Personnel staff may not only be more conversant with statutory duties in relation to grievance, discipline and unfair dismissal but also with perceived best practice. One would certainly expect to see a relatively high level of procedural formality.

WERS 2004 asked managers for their job title. Options included ‘personnel manager/officer’ and ‘human resource officer/manager’. Following Knight and Latreille (2000) this report used this as a measure of the presence of a human resource manager in the workplace.

Table 17. Mean scores on formality indices for establishments with and without an HR manager

	HR manager	No HR manager
Grievance procedures	12.37 (4.21)	10.49(2.97)
Disciplinary procedures	12.85 (3.9)	11.46(2.90)

Source: WERS 2004. Base: All workplaces where formal grievance or disciplinary hearings are held. Figures are weighted and based on responses from 2,295 managers. Figures in parentheses are standard deviations.

Using our indices of formality, Table 17 shows higher levels of formality on both measures at workplaces where an HR manager is present. However, the difference between those workplaces with a specialist HR function and those without was not as great as one might imagine, particularly in relation to disciplinary issues.

Having a specialist HR Manager also appeared to improve the likelihood of employees being offered proper accompaniment at grievance and disciplinary meetings (Table 18). However, even in workplaces with a designated HR manager 35 per cent and 32 per cent fell short of the statutory minima for grievance and disciplinary meetings respectively.

Table 18. Percentage of workplaces fulfilling legal requirement for accompaniment in grievance/disciplinary hearings by presence of an HR manager

	Grievance meeting		Disciplinary meeting	
	HR manager	No HR manager	HR manager	No HR manager
Fulfills legal requirement	65%	55%	68%	58%
Does not fulfill legal requirement	35%	45%	32%	42%
Total	100%	100%	100%	100%

Source: WERS 2004. Base: All workplaces. Figures are weighted and based on responses from 2,295 managers.

However, when one examined disciplinary outcomes in terms of the presence of an HR specialist (Table 19), the results were not straightforward. Although rates of disciplinary sanctions and dismissals were slightly higher in those establishments without a personnel specialist, rates of Employment Tribunal application were three times higher where there is a dedicated HR/Personnel manager.

Table 19. Mean scores for rates of sanction, dismissal and Employment Tribunal application per 100 employees by presence of an HR manager

Does workplace have specialist HR Manager?	ET applications	Disciplinary sanctions	Dismissals
Yes	0.63	5.33	1.62
No	0.21	5.80	1.66

Source: WERS 2004; Base: All workplaces where formal grievance or disciplinary hearings are held. Figures are weighted and based on responses from 2,295 managers.

These findings question the moderating influence of a specialist HR Manager. However, a number of factors need to be considered. Firstly, it was difficult to separate out the impact of an HR manager from other workplace and workforce characteristics. For example, HR managers were less likely to be found in small single site establishments. Secondly, more moderate disciplinary outcomes may not be a preferred objective in some establishments. The role of the HR manager may be focused on control and compliance rather than effective dispute resolution. Finally, a higher rate of Employment Tribunal applications may be due to workplaces with HR backup having more confidence in their disciplinary decision-making.

Employee relations and trust

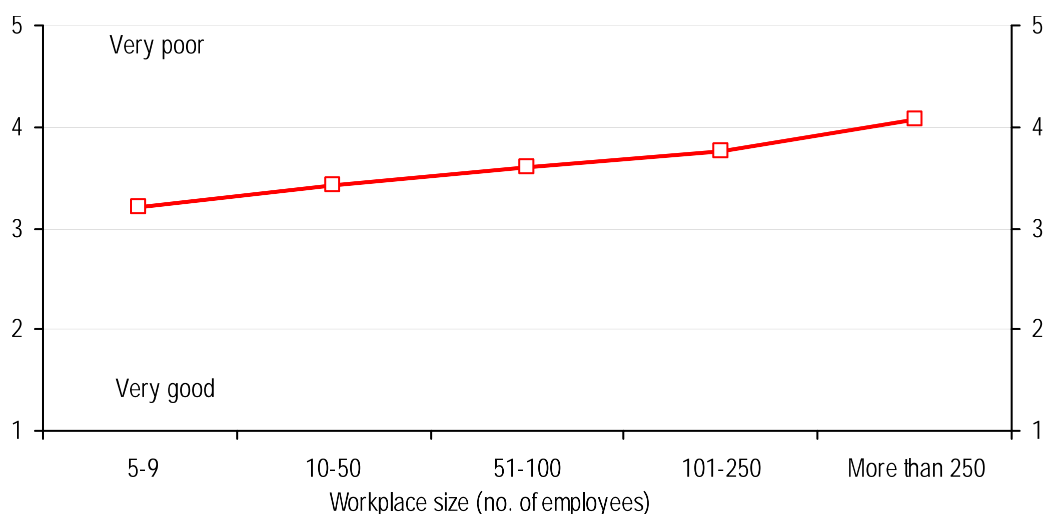
Edwards (2000) has suggested that ‘constructive relations’ between workplaces and trade unions or other employee representatives may be an important factor

in shaping both formal notions of disciplinary procedures and also the development of self-discipline. At a basic level it might be expected that workplaces with good employee relations would be well placed to resolve disputes without recourse to formal disciplinary sanctions. Moreover where high trust relations exist between management and employee representatives, the latter should be able to play a more effective role within the processes of grievance and discipline.

WERS 2004 contained a number of variables designed to assess the quality of relationships between managers, employees and employee representatives. Firstly, managers and employee representatives were asked to indicate how they rate the relationship between managers and employees at their workplace using a five point scale ranging from 1 = very good to 5 = very poor. For the purposes of this report a simple index of overall employee relations was constructed by combining the scores of managers and employee representatives on these two variables (see Appendix D). Overall scores ranged from 2, which would be equivalent to very good to 10 which would be equivalent to very poor. The data yielded 895 cases with valid data recorded for both dimensions.

Figure 2 and Table 20 shows mean scores on the overall employee relations index by size of workplace, as reported by managers and employee representatives. In general employee relations were rated between good and very good. However, they clearly show that reps in small workplaces reported the most favourable employee relations, and they became less healthy as the workplace size increased. Likewise, Forth et al (2006) found that both employees and workplace managers reported better management-employee relations in SMEs.

Figure 2. Overall employee relations, as reported by managers and employee representatives



Source: WERS 2004. Figures in parentheses are standard deviations. Base: Workplaces where an employee representative is present. Figures are weighted and based on responses from 889 establishments. Note: Range is 1 = very good to 5 = very poor

Table 20. Overall employee relations as reported by managers and employee representatives, by size of workplace

	No of employees				
	5-9	**10-50**	**51-100**	**101-250**	**More than 250**
Mean 'employee relations' score	3.21	3.43	3.60	3.76	4.08
	(0.94)	(1.38)	(1.8)	(1.9)	(4.05)

Source: WERS 2004. Figures in parentheses are standard deviations. Base: Workplaces where an employee representative is present. Figures are weighted and based on responses from 889 establishments. Note: Range is 1 = very good to 5 = very poor

In addition, the management and employee representative questionnaires both contained a battery of three questions inviting each party to rate the other on whether or not they could be relied on to live up to commitments they made, whether they are sincere in making attempts to understand the other's point of view, and whether they can be trusted to act with honesty and integrity. All three of these questions could be seen as directly relevant to the resolution of grievance and disciplinary issues.

Responses were recorded using a five-point scale where a score of 1 indicated strong agreement and 5 strong disagreement. To assess the level of trust between managers and employee representatives in the workplace two simple indices were constructed, 'manager's mistrust of trade unions' and 'trade union's mistrust of management' adding together the manager and employee representative scores at a single establishment. Where data had been collected from both union and non-union employee representatives at an establishment the responses of the trade union representative were used. This resulted in 810 cases with data recorded for both an employee representative and manager. Potential scores on each index ranged from 3 indicating a high level of trust across all three indicators, to 15 indicating very low levels of trust. In effect this was an index of 'mistrust' as an increasing score represented decreasing levels of trust.

Table 21 shows managers' perceptions of employee representatives. As above, the level of 'mistrust' increased steadily with workplace size. Nonetheless, managers' views of employee representatives were relatively positive. Table 22 suggests that employee representatives were less positive.

Table 21. Mean scores of managers' mistrust of unions index by size of workplace.

	Number of employees				
	5-9	**10-50**	**51-100**	**101-250**	**More than 250**
Mean score management/union	5.8 *	5.8	6.3	6.4	6.7
Mistrust Index	(1.6)	(2.5)	(3.6)	(4.0)	(14.1)

Source: WERS 2004. Figures in parentheses are standard deviations. Base: Workplaces where an employee representative and trade unions are present. Figures are weighted and based on responses from 810 managers.

Table 22. Mean scores of employee representative's mistrust of management by size of workplace*.

	Number of employees				
	5-9	10-50	51-100	101-250	More than 250
Mean score employee rep/management Mistrust index	6.27 (2.82)	6.33 (2.87)	6.60 (3.83)	7.4 (4.0)	7.9 (9.9)

Source: WERS 2004. * uses data from the Employee Representatives Survey. Figures in parentheses are standard deviations. Base: Workplaces where an employee representative is present. Figures are weighted and based on responses from 889 employee representatives.

From these results it could be suggested that effective dispute resolution within larger establishments might be hampered by a relative lack of trust between management and employee representatives.

Summary

While previous research has questioned whether HRM and high commitment work practices have any impact in moderating disciplinary outcomes, our findings certainly suggest that the traditional industrial relations actors play an important role. Workplaces in which trade unions were present and that had a specialist HR/Personnel function were much more likely to have thorough procedures and implement them effectively. Not surprisingly, unionised establishments appeared to be more likely to offer proper accompaniment. It would seem that establishments with a union and a specialist HR presence were also able to resolve disputes more effectively. It could be argued that the more moderate disciplinary outcomes in unionised workplaces are due to the reluctance of managers to incur the wrath of trade unions and potential damage to industrial relations. At the same time, the involvement of trade unions within the grievance and disciplinary process may force all parties to seek resolutions as opposed to sanctions.

However, for a more consensual approach to individual conflict to be effective managers and trade unions must have a degree of trust in each other. While the findings above showed positive indications in terms of overall employee relations and workplace trust, it was noteworthy that this became less evident as workplace size increased. Indeed, it was difficult to separate out the effects of both unionisation and HR expertise from key workplace characteristics.

6

Workplace characteristics

Workplace size

The relationship between firm size and legal compliance is one that appears time and again in the employment relations literature. There are a number of arguments as to why small firms are disproportionately affected by employment legislation. These include the absence of personnel specialists to provide advice and expertise on issues such as discipline and dismissal and the psyche of owner managers who prize independence and regard regulation as unwelcome interference (Curran and Blackburn, 2000). Furthermore as Edwards et al. (2004) have pointed out, close personal or, in contrast, authoritarian management styles in small workplaces may also lead to a lack of legal compliance.

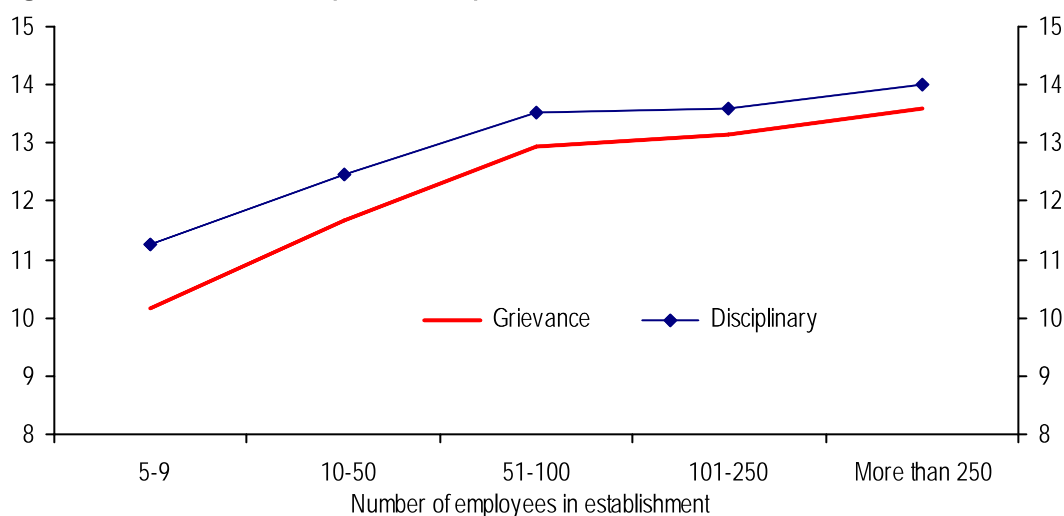
A wide range of studies has examined the impact of competitive conditions in constraining the actions of small employers both in general and in response to specific regulatory measures (i.e. Gilman et. al., 2002; Holliday, 1995; Ram, 1991; Ram, 1,994). In particular, they have highlighted the crucial and complex role played by familial and informal workplace relationships within small firms. It has been argued that while informality is relevant in both small and large organizations, greater procedural informality may be required in smaller enterprises (Edwards et. al., 2003). A degree of informality is central to dealing with the uncertainty inherent within workplaces adjusting to significant change, but the nature of informality is shaped by the external context and the internal characteristics of the firm and its employees (Ram et al., 2001).

Nonetheless, it is normally assumed that small workplaces face the brunt of employment legislation. This is certainly the mantra that emanates from employers' organisations as well as many politicians. However, this is possibly a reflection of the negative perception that small employers have of government intervention and regulation in general as opposed to the actual impact of employment legislation. Edwards et al. (2004) have argued that the impact of employment legislation (either negative or positive) on small workplaces has been exaggerated. This was supported by Blackburn and Hart's (2002; 2003) study of workplaces employing between one and fifty employees. They found that the impact of legislation was perhaps less than that often imagined within media and policy circles. Furthermore they found clear differences between different sizes of small workplaces. For example, those employing 20-49 persons were found to be three times more likely to have had an industrial dispute over new individual employment rights than those employing less than ten persons.

The inclusion of establishments employing between five and nine employees in WERS 2004 provided a unique opportunity to develop a more nuanced understanding of the relationship between firm size, workplace procedures and disciplinary outcomes.

Figure 3 and Table 23 show initial analysis using mean formality scores by workplace size. As workplace size increases the level of formality in grievance and disciplinary procedures grew, although it should be noted that larger establishments tended to be more formalised in general. Lower formality in employment relations practices was also found in smaller firms (Forth et al, 2006).

Figure 3. Mean formality scores by establishment size



Source: WERS 2004. Base: All workplaces. Figures are weighted and based on responses from 2,295 managers.

Table 23. Mean formality scores by establishment size

	Number of employees				
	5-9	10-50	51-100	101-250	More than 250
Grievance	10.17	11.67	12.95	13.14	13.59
Disciplinary	11.25	12.47	13.54	13.60	14.02

Source: WERS 2004. Base: All workplaces. Figures are weighted and based on responses from 2,295 managers.

Informality within workplaces was reflected in their behaviour regarding accompaniment at grievance and disciplinary hearings. Table 24 shows that small workplaces were most likely to fail to meet the basic legal requirements relating to accompaniment at grievance and disciplinary meetings/hearings. Almost half of workplaces with between five and nine employees failed to comply. This suggested a significant deficit in the scope of legal compliance.

Table 24. Percentage of workplaces that do not fulfill legal requirements regarding accompaniment at grievance and disciplinary meetings by workplace size.

	Number of employees				
	5-9	10-50	51-100	101-250	More than 250
Grievance	48%	43%	33%	33%	0%
Disciplinary	42%	40%	33%	33%	0%

Source: WERS 2004. Base: All workplaces. Figures are weighted and based on responses from 2,295 managers.

While the relationship between firm size and procedural formality might be expected, the evidence in relation to disciplinary outcomes is less clear. For example, Edwards (1995) found that contrary to expectations, discipline rates declined with plant size while dismissal rates remained stable. He argued that this could suggest that small workplaces were more subtle and varied in the way that disciplinary sanctions were made.

Analysis of WERS 2004 suggested that the link between disciplinary outcomes and firm size is a complex one. Table 25 shows the mean rates of dismissal, disciplinary sanction and Employment Tribunal applications per 100 employees by workplace size.

Table 25. Mean rates of disciplinary sanctions, dismissals and applications to Employment Tribunals per 100 employees by workplace size

Number of employees	ET applications	Disciplinary sanctions	Dismissals
5-9	0.39	5.30	1.20
10-50	0.20	6.10	2.09
51-100	0.28	6.20	1.80
101-250	0.22	4.69	1.16
>250	0.21	5.55	1.20

Source: WERS 2004. Base: All workplaces. Figures are weighted and based on responses from 2,184 managers

The mean rates of dismissal and disciplinary sanctions in very small workplaces employing between five and nine people were low when compared with medium sized workplaces employing 101-250 employees. The disciplinary sanctions rate was also marginally lower than that for large workplaces with more than 250 employees. One might infer from this that handling issues in a relatively informal manner can reduce the need for formal sanctions. However, the lowest rates were found in medium sized workplaces employing between 101 and 250 employees and in which more robust procedures would normally be found. Notably, very small workplaces had the highest mean rate of applications to Employment Tribunals. This could be linked to a lack of procedural rigor making small firms more vulnerable to legal challenge. In contrast, the personal nature of employment relations in small firms may deter individuals from making a claim against their employer.

Establishment type

As well as size, the *type* of establishment has also been found to be important in explaining the incidence of Employment Tribunal applications. Tremlett and Banerji (1994) found that over 60 per cent of claims involve establishments with less than 50 employees, and that 37 per cent of claims were made against single site workplaces.

WERS 2004 asked managers to state if their establishment was 'one of a number of different workplaces in Great Britain belonging to the same organisation' a 'single independent establishment' or 'the sole establishment in Great Britain of a foreign organisation'. Only two per cent were described as 'the sole establishment in Great Britain of a foreign organisation'. Given the unusual nature and small number of establishments in this category they were excluded from the analyses involving establishment type which instead concentrated on single site establishments and those with multiple sites within Great Britain. This resulted in 2248 valid cases, 65 per cent of which were multi-site establishments and 35 per cent single site.

Table 26. Mean formality scores by establishment type

	Multi-site	Single site
Grievance	12.76	8.89
Disciplinary	13.43	10.20

Source: WERS 2004. Base: Workplaces that are single independent workplaces or part of a multi-site organisation. Figures are weighted and based on responses from 2,248 managers.

Using the formality indices of grievance and disciplinary procedures Tables 26 and 27 suggest that the degree of formality was lower on both measures in single site establishments compared to multi-site organisations. Legal requirements regarding accompaniment were also more likely to be met in multi-site workplaces, although here the difference was small.

Table 27. Percentage of workplaces fulfilling legal requirement for accompaniment in grievance/disciplinary hearings by type of establishment

	Grievance hearings		Disciplinary hearings	
	Multi site establishment	Single independent establishment	Multi site establishment	Single independent establishment
Fulfills legal requirement	64%	54%	64%	53%
Does not fulfill legal requirement	36%	46%	36%	47%
Total	100%	100%	100%	100%

Source: WERS 2004. Base: Workplaces that are single independent workplaces or part of a multi-site organisation and hold formal grievance/disciplinary hearings. Figures are weighted and based on responses from 1,636 managers.

In terms of overall rates of sanctions, dismissals and Employment Tribunal applications, Table 28 shows that rates of tribunal applications were lower at single site establishments. This supported earlier research (DTI, 2004) suggesting that Employment Tribunal applications were more likely in multi-site than single site establishments. Despite a higher degree of procedural formality multi-site establishments had higher rates of dismissal and disciplinary sanctions than single independent workplaces.

Table 28. Mean rates of disciplinary sanctions, dismissals and applications to Employment Tribunals per 100 employees by establishment type

Establishment type	ET applications	Disciplinary sanctions	Dismissals
Multi-site	0.35	5.9	1.8
Single site	0.24	5.4	1.4

Source: WERS 2004. Base: Workplaces that are single independent workplaces or part of a multi-site organisation. Figures are weighted and based on responses from 2,248 managers.

The relationships between multi-site establishments and the disciplinary process were similar to those found among large workplaces, yet some 50 per cent of multi-site establishments had between five and nine employees. This suggests that larger organisations whether single or multi-site tended to have fairly developed procedures for dealing with discipline and grievance whereas smaller, independent workplaces tended to deal with disciplinary matters and employees complaints in a much more informal manner.

Firm ownership

The low rate of tribunal applications among single site establishments presented a complex picture. Forty-eight per cent of single site establishments had between five and nine employees, a characteristic associated with increased rates of tribunal applications (see Table 20). A possible explanation may lie in ownership of the organisation. Edwards et. al. (2004) have argued that the impact of legislation can be affected by the social relations within the firm. Where workplaces were owned by an individual or family it was likely that relations with employees were less formal. As noted above, family-owned or owner-managed workplaces may be more resistant to perceived 'interference' and rely on a personal and informal management style that sees formal procedures as rigid and unnecessary.

This characterisation was certainly supported by the findings outlined in this Report. WERS 2004 asked managers if a single individual or family owned at least 50 per cent of their organisation. Table 29 shows that individual or family owned workplaces exhibited a lower degree of procedural formality in dealing with grievance and discipline than those in which ownership was more widely spread.

Table 29. Formality and company ownership

Does individual or family own 50% +	Formality index	Mean	Std deviation
Yes	Discipline	10.588	4.389
	Grievance	9.564	4.660
No	Discipline	12.780	2.237
	Grievance	12.018	2.662

Source: WERS 2004. Base: All workplaces. Figures are weighted and based on responses from 2,184 managers.

This was reflected in the degree to which individual or family-owned establishments offered employees proper accompaniment within grievance and disciplinary proceedings. Table 30 shows that in both disciplinary and grievance meetings a majority of these establishments did not meet minimum requirements regarding accompaniment.

Table 30. Percentage of workplaces fulfilling legal requirement for accompaniment at grievance/disciplinary hearings by ownership

	Grievance meetings		Disciplinary meetings	
	50% owned by family/individual	Other	50% owned by family/individual	Other
Fulfills legal requirement	44.4%	65.6%	47.2%	68.8%
Does not fulfill legal requirement	55.6%	34.4%	52.8%	31.2%

Source: WERS 2004. Base: All workplaces. Figures are weighted and based on responses from 2,184 managers.

However, unlike the association between small establishments and informality this relative informality in family/individually owned workplaces was not accompanied by higher rates of sanctions, dismissals and tribunal applications. Table 31 shows that where a single individual or family owned at least 50 per cent of the workplace, rates of dismissals, disciplinary sanctions and Employment Tribunal applications were all lower than where this was not the

case. Most notably, the rate of tribunal applications was extremely low, comparing favourably to the rate for very small workplaces.

Table 31. Mean scores for rates of disciplinary sanctions, dismissals and applications to Employment Tribunals per 100 employees by company ownership.

Does individual or family own 50%?	ET applications	Disciplinary sanctions	Dismissals
Yes	0.1561	5.7966	1.678
No	0.5758	6.7965	2.0192

Source: WERS 2004. Base: All workplaces. Figures are weighted and based on responses from 2,184 managers.

This may reflect the way in which informal and familial processes can deal effectively with conflict and perhaps leads us to question whether the introduction of statutory procedures make it more difficult for small family owned workplaces to manage employee relations.

Public vs private sector

Previous research (Millward et. al., 1992) has suggested that public sector workplaces were characterised by higher levels of formality. This may be explained by the preponderance of large, unionised establishments within the public sector as well as the role played by public sector workplaces as flag-bearers of government policy and perceived 'best practice'. Table 32 shows a sharp distinction between the degrees of procedural formality within public and private sector workplaces.

Table 32. Mean formality scores by sector

	Public sector	Private sector
Grievance procedures	13.14 (2.04)	10.41 (4.17)
Disciplinary procedures	13.5 (1.98)	11.47 (3.89)

Source: WERS 2004. Base: all workplaces. Figures are weighted and based on responses from 2,295 managers. Figures in parentheses are standard deviations.

Public sector employees were much more likely to be offered accompaniment at disciplinary meetings in line with statutory requirements. Table 33 shows that 85 per cent of public sector workplaces offered accompaniment by either a work colleague or a trade union representative as opposed to just over half of all private sector workplaces. Figures for accompaniment at grievance procedures were almost identical.

Table 33. Percentage of workplaces fulfilling the legal requirements for accompaniment at disciplinary hearings by sector

	Public sector	Private sector
Fulfills legal requirement	85%	53%
Does not fulfill legal requirement	15%	47%

Source: WERS 2004. Base: all workplaces. Figures are weighted and based on responses from 2,295 managers.

In common with Millward et al. (1992), this research found that rates of disciplinary sanction and dismissal among private sector establishments were much higher than those in the public sector. Table 34 suggests that rates of application to a tribunal were also higher, although the gap here was less

apparent. This may reflect higher rates of unionisation amongst public sector employees and consequently a higher likelihood of trade union support in legal proceedings.

Table 34. Mean scores for rates of disciplinary sanctions, dismissals and applications to Employment Tribunals per 100 employees by sector.

Public or private sector	ET applications	Disciplinary sanctions	Dismissals
Public	0.1599	1.9220	0.3245
Private	0.2904	5.9783	1.8755

Source: WERS 2004. Base: All workplaces. Figures are weighted and based on responses from 2,295 managers.

Summary

Not surprisingly procedural formality and legal compliance appeared to be closely linked to workplace characteristics. In short, large multi-site establishments dealt with grievance and disciplinary issues in a highly formalised manner. There are a number of likely reasons for this. As plant size increases a procedural approach is vital if issues are to be handled consistently and effectively. Larger workplaces are also more likely to be unionised and have a relatively high degree of expertise in the shape of a specialist HR/Personnel function.

Smaller, family owned, independent workplaces tended to handle matters in a more informal and personalised way. In many cases, the way in which they dealt with employee grievances and disciplinary issues did not meet minimum statutory requirements. Such workplaces are less likely to be highly unionised or to have a high level of HR knowledge or management expertise.

Therefore workplace size is associated with a multiplicity of characteristics that shape employment relations. How each these different variables impact upon rates of disciplinary sanctions, dismissals and Employment Tribunal applications is analysed in detail below (see Chapter 8).

7

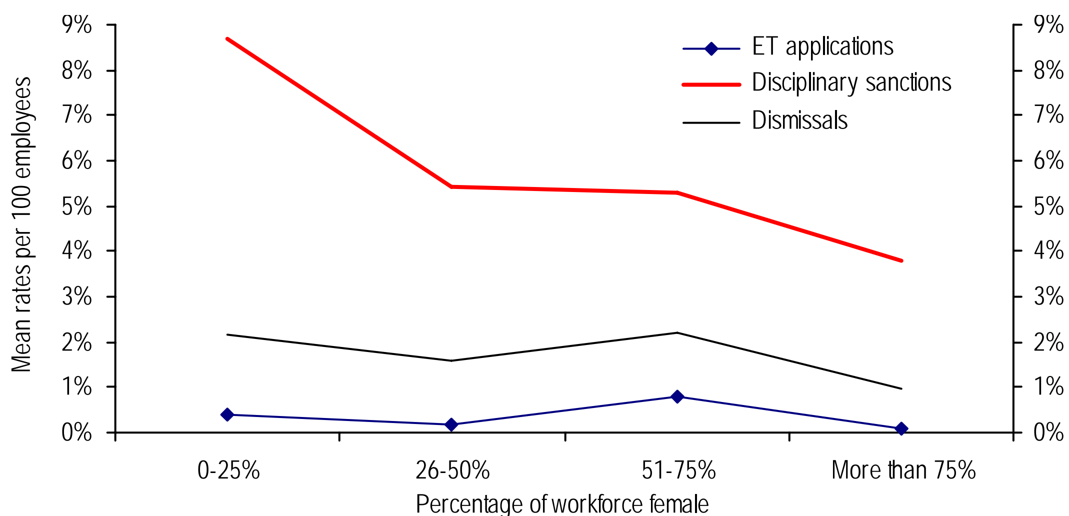
Workforce characteristics

Gender

Previous studies have suggested that gender is a crucial determinant of disciplinary outcomes within the workplace. Knight and Latreille (2000) found that the proportion of females in the workforce had a significant negative impact on rates of disciplinary sanctions and dismissals. Blackburn and Hart (2001) found that higher rates of individual conflict in workplaces employing between 20 and 49 employees when compared to very small workplaces employing less than ten employees could be explained by the fact that the latter were likely to have no female employees. In addition they noted that where females formed the majority of the workforce the likelihood of legal disputes and Employment Tribunal cases falls sharply. The DTI's (2004) recent survey of Employment Tribunal applications also found that the majority (59 per cent) of tribunal applicants were men.

WERS 2004 asked managers how many employees at their establishment were female. This data was used to investigate rates of disciplinary sanctions, dismissals and tribunal applications in relation to the percentage of females in the workplace.

Figure 4. Rates of disciplinary sanctions, dismissals and Employment Tribunal applications by percentage of the workforce who are female



Source: WERS 2004. Base: All workplaces. Figures are weighted and based on responses from 2,295 managers.

Figure 4 (and Table 35 below) suggests that, in general, a higher percentage of female employees were associated with lower levels of disciplinary sanctions. Workplaces where more than three-quarters of employees were women

recorded the lowest rates of Employment Tribunal applications, dismissals and disciplinary sanctions.

Table 35. Mean scores for rates of disciplinary sanctions, dismissals and applications to Employment Tribunals per 100 employees by percentage of the workforce who are female

% of workforce female	ET applications	Disciplinary sanctions	Dismissals
0-25%	0.388	8.67	2.15
26-50%	0.176	5.43	1.58
51-75%	0.778	5.31	2.22
More than 75%	0.097	3.78	0.97

Source: WERS 2004. Base: All workplaces. Figures are weighted and based on responses from 2,295 managers.

A possible explanation for this may lie in the gender balance in such workplaces. Where men and women are represented equally in the workforce women may be more likely to compare their situation with that of their male colleagues and hence more likely to take action if they consider themselves to have been treated unfairly.

Ethnicity

Previous research (Edwards, 1995) has suggested that the proportion of employees from minority ethnic groups may be positively related to rates of dismissal (although not significant in respect of discipline). Employees from minority ethnic groups have also been found to have a lower level of awareness of employment rights when compared with their white counterparts (Casebourne et al., 2006)

WERS 2004 asked managers how many of their employees were non-white. This has been used in this research as a measure of ethnicity. Table 36 shows how levels of formality in dealing with discipline and grievance varied with the ethnic make-up of the workforce. Where the workforce was ethnically diverse, levels of formality were relatively high. This could be due to the fact that these workplaces tended to be relatively large or that the very presence of a diverse workforce may lead to greater awareness of the need for procedural clarity. It is also interesting to note that formality in dealing with disciplinary issues dropped sharply in those workforces that were primarily non-white. This may reflect the informality in ethnic minority businesses in which familial relationships play an important role in shaping employment relations (Ram, 1991).

Table 36. Mean formality scores by percentage of the workforce non-white

	% of workforce non-white			
	0-25%	**26-50%**	**51-75%**	**>75%**
Grievance	10.67	13.10	12.13	9.36
Disciplinary	11.62	13.61	13.10	11.45

Source: WERS 2004. Base: All workplaces. Figures are weighted and based on responses from 2,295 managers.

Using WERS98, Knight and Latreille (2000) found a positive relationship between the proportion of non-white employees and the use of disciplinary sanctions, rates of dismissal and tribunal applications. As can be seen from Table 37, data from WERS 2004 suggests that the rate of Employment Tribunal

applications was higher in workplaces with a greater concentration of non-white employees. In relation to dismissals and disciplinary sanctions the picture was more complex. Notably rates of dismissals and disciplinary sanctions were lower when either the proportion of non-white employees is low (0-25 per cent) or very high (more than 75 per cent). This may reflect the moderating influences of informality and familial relationships in ethnic minority businesses.

Table 37. Mean scores for rates of disciplinary sanctions, dismissals and applications to Employment Tribunals per 100 employees by percentage of the workforce non-white

% of workforce non-white	ET Applications	Disciplinary Sanctions	Dismissals
0-25%	0.29	5.43	1.47
26-50%	0.30	8.32	5.18
51-75%	0.39	8.95	2.78
More than 75%	0.73	6.41	0.49

Source: WERS 2004. Base: All workplaces. Figures are weighted and based on responses from 2,295 managers.

Source: WERS 2004. Base: All workplaces. Figures are weighted and based on responses from 2,295 managers.

Age

Using WERS98, Knight and Latreille (2000) found a positive association between the proportion of young employees and rates of disciplinary sanctions and dismissals. The opposite was found to be true of workplaces with a high proportion of employees over the age of 51. The authors argued that this reflected the lower costs associated with dismissing younger employees.

The analysis herein, used the percentage of employees under the age of 21 as a measure of a 'young' workforce. Table 38 shows that, in general, there was a positive association between all our dependent variables and the percentage of young employees. An exception was the rate of tribunal applications in workplaces where half to three quarters of the workforce were young. The reason for this is unclear. It could be argued that those who are more mobile and perhaps have less to lose from dismissal are least likely to apply (DTI, 2004). Another factor might be that younger employees appear to have a relatively low awareness of their employment rights (Casebourne et al., 2006)

Table 38. Mean scores for rates of disciplinary sanctions, dismissals and applications to Employment Tribunals per 100 employees by percentage of the workforce under 21

% of workforce under 21	ET Applications	Disciplinary Sanctions	Dismissals
0-25%	0.18	5.05	1.37
26-50%	0.60	8.44	2.27
51-75%	0.073	11.84	4.22
More than 75%	4.96	14.56	4.12

Source: WERS 2004. Base: All workplaces. Figures are weighted and based on responses from 2,295 managers.

Source: WERS 2004. Base: All workplaces. Figures are weighted and based on responses from 2,295 managers.

As a measure of an 'older' workforce the percentage of employees over the age of 50 was used. Table 39 shows the mean rates of dismissal, sanction and tribunal application by the percentage of 'older' employees.

Table 39. Mean scores for rates of disciplinary sanctions, dismissals and applications to Employment Tribunals per 100 employees by percentage of the workforce over 50

% of workforce over 50	ET Applications	Disciplinary Sanctions	Dismissals
0-25%	0.29	6.79	2.09
26-50%	0.33	4.37	0.99
51-75%	0.07	1.13	0.13
More than 75%	0.008	1.06	0.04

Source: WERS 2004. Base: All workplaces. Figures are weighted and based on responses from 2,295 managers.

Source: WERS 2004. Base: All workplaces. Figures are weighted and based on responses from 2,295 managers.

As the proportion of the workforce grew there was a clear reduction in the rate of disciplinary sanctions and dismissals. This would be consistent with the suggestion that older employees would tend to be more compliant with organisational norms and rules. The rate of Employment Tribunal applications also fell once a majority of the workforce was over fifty years of age.

Occupational group

Perhaps one explanation for the fact that very small workplaces tended to have low rates of disciplinary sanctions and dismissals is the fact that they are more likely to have a high proportion of skilled and white collar employees. Blackburn and Hart (2001) found that those workplaces employing less than 10 employees were more likely to have managers as the major occupational group while larger small workplaces with 20-49 employees were more likely to have operatives.

Previous analyses of WIRS and WERS data have shown a clear link between occupation and disciplinary outcome. Edwards (1995) found that the proportion of skilled employees was negatively related to dismissal and discipline rates, a point echoed by Deaton (1984). Looking at the association from the other side Knight and Latreille (2000) found that the proportion of unskilled employees was positively associated with rates of disciplinary sanction and dismissal. A key factor here could be that those in professional occupations and management grades had a relatively high awareness of legislation in relation to discipline and grievance (Casebourne et al., 2006), while awareness among unskilled employees was lower.

Table 40. Mean scores for rates of disciplinary sanctions, dismissals and applications to Employment Tribunals per 100 employees by percentage of the workforce in unskilled occupations

% of workforce unskilled	ET Applications	Disciplinary Sanctions	Dismissals
0-25%	0.33	5.21	1.47
26-50%	0.06	5.77	2.54
51-75%	0.03	8.24	3.05
More than 75%	0.15	11.42	2.66

Source: WERS 2004. Base: All workplaces. Figures are weighted and based on responses from 2,295 managers.

Source: WERS 2004. Base: All workplaces. Figures are weighted and based on responses from 2,295 managers.

Table 40 suggests that as the proportion of the workforce in unskilled occupations increased it was more likely that employees would be disciplined. The relationship was less clear in relation to dismissals and tribunal

applications. There is some support for the suggestion that the skills mix of the workforce impacted upon disciplinary outcomes with higher rates of tribunal applications apparent when unskilled employees formed either a majority or minority of the workforce.

Summary

Existing evidence points to the importance of workforce characteristics in explaining rates of disciplinary sanctions and dismissals (they are somewhat less important in relation to Employment Tribunal applications). The findings outlined above also suggested that workplaces with significant proportions of women or older employees were likely to have lower rates of disciplinary sanctions and dismissals. In contrast, as the proportion of younger employees and unskilled employees increased, rates of disciplinary sanctions and dismissals tended to be higher. Higher rates of disciplinary sanctions were also found in workplaces which were more ethnically diverse.

8 Results

The independent variables described above (and detailed in Appendix B) were incorporated in three separate ordinary least squares regression models in respect of rates of disciplinary sanctions, dismissals and Employment Tribunal applications[3]. These are presented in table 41 which can be found in Appendix A.

The right to accompaniment at disciplinary hearings was positively related to each of the dependent variables. However none of these relationships were statistically significant at the 10 per cent level. WERS 2004 data does not allow analysis of the extent or quality of representation. Nonetheless, these findings may point to the limitations of accompaniment in affecting disciplinary outcomes. It could be argued that in many cases, by the time an employee attends a disciplinary hearing and takes up an offer of accompaniment, some form of disciplinary sanction is inevitable. Of course, a disciplinary sanction may also represent a positive way of resolving conflict without recourse to dismissal.

In contrast, there was a statistically significant relationship between the provision of the right to accompaniment at grievance hearings and lower rates of Employment Tribunal claims. In addition, the former was also negatively related to rates of disciplinary sanctions although this was not statistically significant. This apparent contradiction may highlight the importance of accompaniment at an early stage of individual workplace conflict. Grievances can result in Employment Tribunal applications in a number of ways. Unresolved complaints can lead to claims of unfair constructive dismissal and discrimination. However individual employee grievances can also be the spark for formal disciplinary action that can result in dismissal. An individual grievance can be the first symptom of a workplace dispute. Therefore by providing effective representation at that point, the potential for conflict to escalate may be tempered.

There was little evidence that procedural rigor and formality was linked to dispute resolution and the avoidance of formal sanctions.[4] Instead, in workplaces with more formal approaches to disciplinary issues, sanctions were more likely to be imposed, although this effect was only significant at the 10 per

[3] The model designed to explain the rate of Employment Tribunal applications had less explanatory power than those for rates of dismissal and sanction (r squared = 0.130). This might be explained by the importance of factors outside the workplace (see Burgess et al., 2001).

[4] The different components that make up the formality index were also entered as separate independent variables in a set of alternative models in respect of rates of sanction, dismissal and ET applications. However, this did not alter the results, and specifically the impact of the right to accompaniment, to any significant extent.

cent level. There was also a positive but non significant relationship between the formality of disciplinary procedures and rates of dismissal. Interestingly, formality within grievance handling exerted a negative effect on Employment Tribunal applications, although this was not statistically significant.

This could suggest that the more formal the disciplinary procedure the more likely it is that workplace misdemeanours are going to be converted into formal sanctions. The very existence of a procedure arguably locks an employer into dealing with disciplinary issues in a formal manner. For example, employers who may prefer to give an employee a 'good talking to' may be compelled to issue a formal warning in order to comply with a disciplinary procedure and ensure legal compliance. Alternatively, it could be argued that the relationship between higher rates of disciplinary sanctions and procedural formality stems from workplaces that are prone to disciplinary problems adopting more formal procedures in response.

Although unionisation tends to be associated with greater formality, union density had a statistically significant and negative association with both rates of disciplinary sanctions and dismissals. One way to interpret this could be that high concentrations of union members may make management more cautious about their use of discipline. However, it could also be a function of the role played by trade unions in representing employees within the disciplinary process as a whole. In this context effective representation may reduce the likelihood of sanctions and promote resolution of issues that would otherwise lead to formal disciplinary action.

Interestingly there was also a statistically significant negative association between the presence of an HR manager and rates of disciplinary sanctions and dismissals. This suggests that where there was a reasonable degree of knowledge and expertise in the form of HR professionals and/or trade union representatives, formal disciplinary sanctions were more likely to be avoided. This is consistent with the notion that the presence of such workplace actors provides for the early and informal resolution of workplace conflict. Effective resolution may be dependent on the relationship between trade unions or employee representatives and management. Indeed, the results showed a statistically significant positive association between employee representative's mistrust of management and disciplinary sanction rates.

Workforce characteristics were also found to be important. In particular, the proportion of female employees had a strong negative effect on rates of disciplinary sanctions, dismissals, and Employment Tribunal applications, although the latter was not statistically significant. Workplaces with higher proportions of workers under 21 and non-white workers were more likely to have higher rates of dismissal. As Knight and Latreille (2000) suggest, the latter result may be related to the lower cost of dismissal and potential tribunal action attached to young employees. It may also reflect the fact that both ethnic minority and younger employees have been found to have a relatively low awareness of their employment rights (Casebourne et al., 2006) arguably reducing barriers to dismissal. In line with previous analysis of WERS data (Knight and Latreille, 2000), the proportion of workers engaged in routine unskilled tasks was strongly related to higher rates of disciplinary sanctions. The age of the workforce was also important with higher proportions of 'old employees' associated with increased likelihood of tribunal applications. One

way to interpret this may be that older employees have a relatively high awareness of their employment rights (Casebourne et al., 2006) and may be driven to enforce those rights by the potential long-term implications of dismissal. While young employees are relatively mobile, older employees may find it difficult to find alternative work.

Table 41 also shows a significant association between workplace size and rates of dismissal. However, the nature of the relationship was not straightforward with both large and small workplaces associated with an increased likelihood of dismissals. Previous analysis (Knight and Latreille, 2000) suggested a positive association between workplace size and dismissal rates. The inclusion of very small workplaces in WERS 2004 allowed this relationship to be explored in more depth and points to the complex set of relationships that exist within small workplaces. Interestingly, the model suggests that very small firms of between 5 and 9 employees were much more likely to experience high rates of dismissal but less likely to have to answer claims at Employment Tribunals. This apparent contradiction may be explained by the informal and personal nature of employment relations in small firms that may act as a deterrent against individuals bringing claims. Furthermore, employees in small firms are less likely to be union members and thus have the legal, financial and moral support of a trade union. Finally, as would be expected, there was a strong negative association between a workplace being within the public sector and the rate of disciplinary sanctions with negative non-significant associations in respect of the other two dependent variables.

In light of these findings and particularly the apparent failure of procedural formality including accompaniment to have a moderating impact on the rate of disciplinary sanctions and dismissals, it was decided to amend the model to include two new independent variables. Firstly, it was argued above that formal disciplinary procedures may not have a significant role in resolving workplace disputes at an early stage.

However organisations may use other processes to detect and resolve issues that may ultimately lead to disciplinary sanctions. Perhaps the most obvious example is the use of performance appraisal systems. It might be expected that those workplaces within which such systems operate would have lower rates of disciplinary sanctions, dismissals and Employment Tribunal applications. WERS 2004 measures the percentage of non-managerial employees at an establishment who have their performance formally appraised. For the purposes of this paper, this has been recoded as a dummy variable where 1 is assigned to workplaces at which 80 per cent or more non-managerial employees have formal performance appraisals. This produced a mean of 0.89 and standard deviation of 0.31.

Secondly, it might be suggested that formal procedures (including accompaniment) may be used primarily as a source of legal protection as opposed to dispute resolution. Accordingly formal procedures may be more likely in workplaces where disciplinary action is a regular occurrence. This may provide an alternative explanation for the apparent absence of a relationship between procedural formality and lower rates of disciplinary sanctions and dismissals.

Accordingly, in an attempt to increase the sensitivity of the model to this possibility, we included a measure of staff turnover. It could be argued that high levels of turnover may be a symptom of organisational dysfunction and thus act as a proxy for 'high discipline' workplaces. WERS 2004 asked respondents to provide the total number of workers who resigned, were made redundant, dismissed or left for other reasons, in the last 12 months. We calculated a turnover rate using the total number of workers who left in the previous 12 months as a percentage of the number of present employees. This produced a mean turnover rate of 21.66 per cent but with a standard deviation of 29.41. Of course this measure may be affected by some workplaces experiencing redundancies and by the inclusion of dismissed workers. Consequently, any conclusions drawn in relation to this variable must be treated with due caution.

The results of the revised models including turnover and performance appraisal are presented in table 42 (see Appendix A). It is noticeable that the explanatory power of all three models is increased. Rate of turnover was significantly associated with rates of disciplinary sanctions and dismissals but not with the rate of Employment Tribunal applications. This latter result is perhaps not surprising. Workplaces with high turnover may be more likely to have employees without 12 months continuous service required to qualify to claim unfair dismissal. Furthermore, by definition, they have a relatively transient workforce who may be less inclined to invest in the time, effort and money required to bring a legal action against a former employer. Performance appraisal was not significant in any of the three models. This is consistent with Knight and Latreille (2000) who found that high involvement HR practices had little impact on disciplinary outcomes.

In most respects the revised model reinforced the importance of union density, the presence of an HR manager and the proportion of female employees as key determinants of lower rates of disciplinary sanctions and dismissals. Interestingly the impact of other workforce characteristics was strengthened. There was a positive and statistically significant association between the percentage of the workforce who are non-white and rates of disciplinary sanctions. The relationship between employee representative mistrust and rates of disciplinary sanctions was strengthened as were the relationships between very small workplaces and rates of dismissal and Employment Tribunal applications. Notably, the only procedural variable that was significant in the revised model was the right to accompaniment in grievance procedures which has a stronger negative relationship to Employment Tribunal applications than in the original model.

9 Conclusion

Employee representation has become an important focus for government policy in attempting to find new ways of combating individual conflict in the workplace and its consequent impact upon the Employment Tribunal system. This was crystallised in the Employment Relations Act 1999 and the introduction, for the first time, of a statutory right to accompaniment for employees at grievance and disciplinary hearings. Perhaps the most notable feature of this right was that employees could ask to be accompanied by a trade union representative irrespective of whether that union was recognised by the employer.

It could be suggested that this measure may impact upon the grievance and disciplinary process in a number of ways. Firstly, it could ensure that vulnerable employees get the support and advice that they need. From this perspective, workplaces may be constrained from making unduly harsh decisions. Secondly, by providing employee representatives with a statutory procedural role, channels of communication are opened that may help parties to resolve issues without recourse to disciplinary sanctions and dismissals. Thirdly, by compelling workplaces to allow accompaniment at grievance and disciplinary hearings the government hope to close one of the main legal 'trap-doors' through which workplaces have traditionally fallen giving rise to costly Employment Tribunal proceedings.

If accompaniment is to have a positive effect on workplace relations and disciplinary outcomes, it is essential that the right is applied consistently. Unfortunately, the findings of this report suggest that this is far from the case with more than a third of workplaces (accounting for between 28 per cent and 30 per cent of all employees) failing to meet the minimum criteria of offering accompaniment to either a work colleague or a trade union representative. This was even the case in workplaces that had formal written grievance and disciplinary procedures. There was also some confusion amongst managers as to exactly what the statutory right to accompaniment entailed. Of course, our findings may provide an unduly pessimistic account of the current situation. In the two to three years since these data were collected, the legislation has had more time to 'bed in' but our findings do not cohere with the conclusions of the government's review into the operation of the right that claimed that compliance appeared 'high' and that the right was operating 'smoothly' (DTI, 2003:73). Furthermore the patchy application of the right threatens to dilute any impact it may have on disciplinary outcomes.

Nonetheless, while the right to accompaniment may be crucial in underpinning broad structures of employee representation, access to accompaniment at disciplinary hearings, in itself, does not appear to moderate disciplinary outcomes. This is not to say that representation within the disciplinary process in not important. Furthermore, disciplinary sanctions may reflect the fact that

warnings are being used as an effective way of moderating employee behaviour and avoiding dismissal. However, it could also be argued that by the time the right comes into play, when the employee is invited to a disciplinary hearing, the chances of avoiding any disciplinary sanction are slim. While there may be significant scope for resolving disputes at earlier, informal stages of the disciplinary process, the disciplinary hearing itself may not be a conducive environment for dispute resolution. In short any companion can at best support an employee and hope to argue for a lesser sanction.

Interestingly those workplaces that offered ‘proper’ accompaniment at grievance hearings were likely to have lower rates of Employment Tribunal applications. It could be argued that the grievance process is much more focused upon attempting to seek a resolution acceptable to the relevant parties as opposed to the often quasi-judicial procedures used to determine disciplinary action. Moreover, an employee grievance is, in some cases, the first concrete indication of individual workplace conflict. As such it could be argued that a companion within a grievance hearing has much more scope to have a demonstrable impact upon the outcome, avoiding the breakdown of relationships that are often a precursor to Employment Tribunal applications.

Procedural formality undoubtedly provides legal protection for employers. Therefore, those workplaces that have experienced more acute disciplinary problems may adopt a more rigorous approach to dealing with discipline and grievance. However, WERS 2004 provides little evidence that formal procedure reduces the likelihood of disciplinary sanctions, dismissals or Employment Tribunal applications. This is perhaps illustrative of tensions between the tradition of informality and the perceived need to formalise issues such as discipline so increasing the divide between management and worker (Earnshaw et. al., 2001). To put this more simply, managers may be tied in to dealing with issues in a formal manner that could be more effectively dealt with informally. Once employees are ‘in procedure’, it may be very difficult for them to escape. In this way, it could be argued that procedures drive disciplinary decisions while providing workplaces with legal protection. This is consistent with Goodman et al.’s (1998) qualitative findings that suggested that in many instances the initiation of disciplinary action was a precursor to dismissal whereby workplaces used procedure to prompt resignation and to provide 'cover' in the event of a claim to an Employment Tribunal.

In contrast, there does appear to be strong evidence that points to the vital importance of broader patterns of employee representation. In regression models for both rates of dismissal and disciplinary sanctions union density had a consistently strong and statistically significant negative association with both variables. In short where union density was higher, workers were less likely to be disciplined or dismissed.

A cynical interpretation of this result would be that it simply reflects workplace power relations. Managers in unionised establishments may be deterred from taking disciplinary action against workplaces by the threat of worsening employee relations, retaliation or legal challenges. But the analysis was not consistent with this suggestion. There was no significant relationship between the level of union density and the rate of Employment Tribunal applications. Furthermore, while trade union presence was suggestive of greater procedural

formality, it has been already pointed out that workplaces that implemented robust procedures were no less likely to discipline and dismiss their employees.

We are therefore left with an alternative explanation that strong and effective trade unions can facilitate the day-to-day resolution of disputes without the need for disciplinary action. WERS 2004 does not allow us to draw conclusions as to the differential effect of whether an employee is accompanied or not or by whom. However, it could be suggested that by the time an issue reaches a disciplinary hearing it is difficult for any companion, even an experienced trade union representative, to make a significant impact. Accordingly, it could be argued that broader workplace representation as opposed to accompaniment at a hearing is the key to dispute resolution. In this way issues that may lead to individual conflict, dispute and ultimately discipline can be resolved at an early stage.

Furthermore, one cannot divorce the role of trade unions and employee representatives from that played by management. The findings produced here provide evidence that specialist HR/personnel managers have also had a significant impact on moderating disciplinary outcomes. This was also enhanced in workplaces in which employee representatives trusted the intentions and actions of managers. Therefore the combined presence of trade union representation and effective HR/personnel management could be expected to have significant benefits.

Of course, the factors above are just one part of a very complex range of forces that shape discipline at work and the rate at which disgruntled employees make complaints to Employment Tribunals. The models set out in this report showed consistently that compositional factors such as gender, ethnicity, age and occupation were all significant in determining rates of sanctions and dismissals. Workplace size was also clearly an important explanatory factor in determining rates of dismissals.

The changing demographics of the workforce and the shape and size of our workplaces provides management and employee representatives with new challenges. However, the findings reported here suggest that strengthening workplace systems of representation may be more important than simply imposing detailed procedural requirements on workplaces, employees and their representatives. In this sense the right to accompaniment is very necessary. While, in itself it may have limited impact on outcomes it provides employee representatives with a legitimacy within organisations on which broader patterns of representation can be built.

While this analysis points to the broad significance of trade union density and procedural formality in shaping disciplinary outcomes more detailed qualitative analysis is needed to explore the process and patterns of workplace representation which constitute the reality of employment practice within the workplace (Dickens et al., 2005). In particular research is needed in two areas. Firstly, the role that workplace representatives play within grievance and disciplinary processes needs to be examined in further detail. In particular there is a need to investigate the impact of companions at hearings as well as the role that unions and other employee representatives play in earlier and more informal stages. Secondly, further research is needed to establish whether

procedural formality facilitates or hampers the ability of workplaces, employees and their representatives to resolve workplace disputes.

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Appendix A

Regression mode

Table 41 Weighted ordinary least squares regressions of disciplinary sanction rate, dismissal rate and Employment Tribunal application rate on workforce and workplace characteristics

	Disciplinary Sanctions			Dismissals			Employment Tribunal Applications		
	B	Beta	Sig.	B	Beta	Sig.	B	Beta	Sig.
Constant	-0.710		0.445	0.184		0.736	0.190		0.721
Proportion of the workforce female	-1.221	-0.364***	0.000	-0.717	-0.301***	0.000	-0.090	-0.100	0.056
Proportion of workforce non-white	0.925	0.093	0.011	0.799	0.116***	0.000	0.125	0.049	0.258
Proportion of workforce under 21	0.166	0.021	0.598	0.518	0.091*	0.009	-0.110	-0.052	0.260
Proportion of workforce over 50	-0.350	-0.048	0.204	-0.137	-0.026	0.435	0.300	0.153***	0.001
Proportion of workforce in routine unskilled occupations	0.607	0.127***	0.001	0.131	0.040	0.245	-0.016	-0.013	0.772
Individual/family owns 50% of shares	-0.165	-0.036	0.390	0.183	0.056	0.125	-0.114	-0.094	0.052
Multiple site establishment	-0.136	-0.030	0.863	-0.238	-0.076	0.599	-0.175	-0.149	0.436
Single Establishment	0.469	0.106	0.545	0.037	0.12	0.933	-0.167	-0.145	0.448
Presence of HR manager	-0.257	-0.103*	0.007	-0.361	-0.207***	0.000	0.049	0.075	0.098
5-9 employees	0.045	0.014	0.756	1.069	0.457***	0.000	-0.120	-0.137*	0.009
51-100 employees	-0.038	-0.013	0.743	-0.077	-0.038	0.285	-0.015	-0.020	0.674
101-250 employees	0.072	0.024	0.559	0.161	0.076	0.036	0.063	0.079*	0.095
Over 250 employees	-0.145	-0.038	0.340	0.246	0.099*	0.007	-0.017	-0.018	0.708
Union density	-0.010	-0.241***	0.000	-0.011	-0.378***	0.000	0.000	-0.028	0.551
Managers' mistrust of unions	0.011	0.020	0.610	0.015	0.039	0.262	0.000	0.002	0.970
Employee reps mistrust of management index	0.043	0.106*	0.009	-0.005	-0.018	0.610	0.012	0.106	0.026
Grievance procedural formality index	0.063	0.102	0.072	0.019	0.042	0.398	-0.012	-0.070	0.289
Discipline procedural formality index	0.106	0.146*	0.009	0.053	0.101	0.038	0.015	0.078	0.225
Fulfills legal requirement for accompaniment at grievance meetings	-0.141	-0.040	0.461	0.089	0.038	0.438	-0.018	-0.196**	0.002
Fulfills legal requirement for accompaniment at disciplinary meetings	0.501	0.139	0.011	0.072	0.029	0.551	0.0124	0.133	0.039
Public sector dummy	-0.648	-0.294***	0.000	-0.063	-0.041	0.328	-0.050	-0.087	0.116
R squared		*0.466*			*0.502*			*0.130*	

Source WERS 2004. Base: all workplaces with non-missing data
*, **, *** denotes significance at 10%, 5% and 1% respectively

Table 42. Weighted ordinary least squares regressions of disciplinary sanction rate, dismissal rate and Employment Tribunal application rate on workforce and workplace characteristics (incl. turnover and appraisals)

	Disciplinary Sanctions			Dismissals			Employment Tribunal Applications		
	B	Beta	Sig.	B	Beta	Sig.	B	Beta	Sig.
Constant	-0291		0.755	0.327		0.569	0.196		0.484
Proportion of the workforce female	-1.402	-0.395***	0.000	-0.829	-0.316***	0.000	-0.133	-0.140*	0.009
Proportion of workforce non-white	1.113	0.117***	0.002	0.745	0.108***	0.001	0.057	0.023	0.613
Proportion of workforce under 21	-0.257	-0.034	0.402	0.518	0.091***	0.009	-0.143	-0.071	0.149
Proportion of workforce over 50	-0.671	-2.237	0.026	-0.210	-0.037	0.299	0.407	0.198***	0.000
Proportion of workforce in routine unskilled occupations	0.336	0.051	0.170	0.034	0.007	0.835	-0.009	0.005	0.904
Individual/family owns 50% of shares	0.685	0.095	0.012	0.414	0.081	0.017	-0.130	-0.071	0.125
Multiple site establishment	0.086	0.014	0.915	-0.060	-0.015	0.900	-0.183	-0.123	0.437
Single Establishment	0.849	0.147	0.280	0.016	0.004	0.973	-0.131	-0.091	0.565
Presence of HR manager	-0.442	-0.175***	0.000	-0.393	-0.215***	0.000	0.093	0.142**	0.004
5-9 employees	-0.016	-0.005	0.913	1.053	0.462***	0.000	-0.187	-0.227***	0.000
51-100 employees	-0.255	-0.089	0.035	-0.171	-0.081	0.035	-0.066	-0.087	0.093
101-250 employees	-0.015	-0.005	0.910	0.033	0.015	0.697	0.008	0.010	0.848
Over 250 employees	-0.255	-0.068	0.101	0.122	0.048	0.215	-0.082	-0.089	0.090
Union density	-0.008	-0.199***	0.000	-0.010	-0.329***	0.000	0.000	0.011	0.821
Managers' mistrust of unions	0.035	0.063	0.116	0.019	0.048	0.186	-0.003	-0.022	0.648
Employee reps mistrust of management index	0.064	0.145***	0.000	0.004	0.012	0.735	0.015	0.131*	0.007
Grievance procedural formality index	0.039	0.050	0.298	0.013	0.022	0.606	-0.013	-0.061	0.294
Discipline procedural formality index	0.071	0.086	0.076	0.051	0.083	0.057	0.010	0.046	0.441
Fulfills legal requirement for accompaniment at grievance meetings	-0.009	-0.023	0.686	0.023	0.087	0.091	-0.022	-0.230***	0.001
Fulfills legal requirement for accompaniment at disciplinary meetings	0.036	0.093	0.106	0.000	-0.001	0.992	0.013	0.136	0.056
Public sector dummy	-0.373	-0.168***	0.001	0.073	0.045	0.320	-0.068	-0.116	0.058
Turnover	0.015	0.177***	0.000	0.009	0.153***	0.000	0.001	0.028	0.567
Over 80% of non-managerial employees have formal appraisals	-0.044	-0.015	0.693	-0.061	-0.027	0.418	0.008	0.011	0.816
R squared		*0.531*			*0.545*			*0.173*	

Source: WERS 2004 Base : all workplaces with non-missing data
*, **, *** denotes significance at 10%, 5% and 1% respectively

Appendix B

Definition of variables and descriptive statistics

Dependent variables:

		Mean	SD
Dismissal rate	Number of dismissals other than redundancies per 100 employees in previous 12 months	1.65	5.13
Sanctions rate	Number of employees who have had sanctions short of dismissal applied in previous 12 months per 100 employees	5.71	10.97
Tribunal rate	Number of applications to an Employment Tribunal in the previous 12 months per 100 employees	0.29	2.08

Independent variables:

Workforce characteristics

		Mean	SD
Female	Proportion of the workforce female	0.54	0.16
Ethnicity	Proportion of the workforce non-white	0.06	0.15
Age < 21	Proportion of the workforce aged less than 21	0.12	0.19
Age > 50	Proportion over the workforce aged over 50	0.21	0.19
Unskilled	Proportion of the workforce in routine unskilled occupations	0.12	0.25

Workplace characteristics

		Mean	SD
Formality Index grievances (see Appendix B)	Degree of formality in dealing with employee grievances	10.85	4.06
Formality Index discipline (see Appendix B)	Degree of formality in dealing with disciplinary matters	11.74	3.76
Legal accompaniment grievance	Fulfills legal requirements for accompaniment at grievance hearing - dummy	0.57	0.49
Legal accompaniment discipline	Fulfills legal requirement for accompaniment at disciplinary hearings – dummy	0.56	0.49
5-9 employees	Workplace size dummy	0.44	0.49
10-50 employees	Workplace size dummy	0.45	0.5
51-100 employees	Workplace size dummy	0.06	0.24
101-250 employees	Workplace size dummy	0.32	0.18
> 250 employees	Workplace size dummy	0.02	0.13
Multi-site	Workplace is one of a number of different workplaces in Britain belonging to the same organisation – dummy	0.34	0.48
Single -site	Workplace is a single independent establishment – dummy	0.63	0.48
Union density	Proportion of the workforce union members	0.14	0.28
Family	A single individual or family owns at least 50% of the organisation – dummy	0.36	0.48
Manager's mistrust of unions index	Level of manager's trust of unions in the workplace	6.2	2.2
Employee representative's mistrust of management	Level of Employee Representative's trust of management	6.6	2.7
Public sector	Public Sector dummy	0.13	0.34
HR Manager	Workplace has a dedicated HR or Personnel Manager	0.19	0.40

Staff Turnover	Total number of workers who resigned, were made redundant, dismissed or left for other reasons, as a percentage of the number of present employees who have left in the last 12 months as a percentage	21.66	29.41
Performance Appraisals	Workplaces at which 80% or more non-managerial employees have formal performance appraisals - dummy	0.89	0.31

Appendix C

Indicators of Formality and Accompaniment

Formality in grievance procedures		Score
Presence of formal procedure for dealing with grievances		4
Employees made aware of the formal grievance procedure Either by letter, in their written contract of employment, in an introductory programme or through a staff handbook.		2
Employees are required to se out their grievance in writing:		
	Always	2
	Sometimes	1
Employees are invited to attend a formal grievance meeting		
	Always	2
	Sometimes	1
Employee is allowed to be accompanied by either a trade union representative or shop steward, a full-time union official, an employee representative, a work colleague, a manager or a lawyer		2
Companion is allowed to ask questions on behalf of employee		1
Companion is allowed to answer questions on behalf of employee		1
Companion is allowed to confer privately with employee		1
Employee has the right to appeal against outcome of grievance procedure		1
	TOTAL	15

Formality in disciplinary procedures		Score
Presence of formal procedure for dealing with discipline and dismissals		4
Employees made aware of the formal procedure by either letter, in their written contract of employment, in an introductory programme or through a staff handbook.		2
Workplaces are required to set out in writing their reason for taking disciplinary action		
	Always	2
	Sometimes	1
Employees are invited to attend a formal meeting with the manager to discuss the reason for taking disciplinary action		
	Always	2
	Sometimes	1
Employee is allowed to be accompanied at the meeting by either a trade union representative or shop steward, a full-time union official, an employee representative, a work colleague, a manager or a lawyer		2
Companion is allowed to ask questions on behalf of employee		1
Companion is allowed to answer questions on behalf of employee		1
Companion is allowed to confer privately with employee		1
Employee has the right to appeal against outcome of the disciplinary procedure		1
	TOTAL	15

Appendix D

Indicators to measure compliance with legal requirement to accompaniment

Grievance procedures:

Employee is allowed to be accompanied at an individual grievance hearing by:

A full-time trade union official or a work colleague

A trade union representative or a work colleague

or

Anyone they choose

Disciplinary procedures:

Employee is allowed to be accompanied at a disciplinary hearing by at least one of the following:

A full-time trade union official or a work colleague

A trade union representative or a work colleague

or

Anyone they choose

Appendix E

Indices of employee relations and mistrust

Index of employee relations

As a measure of employee relations in the workplace we combine data from the Managers and Employee Representatives Surveys. Where data have been collected for two employee representatives at the same workplace we use data from the trade union representative. This results in 895 cases where data is present for both a manager and employee representative at the same workplace.

WERS 2004 asks managers to rate the 'relationship between managers and employees in general at this workplace'. Responses are recorded on a five point scale with 1 indicating very good relations and 5 very poor.

The Employee Representative Survey asks respondents to rate the relationship between employee representatives and management at their workplace, using the same five point scale.

We add together the two scores to produce a simple index of employee relations in the workplace with scores ranging from 2 where both managers and employee representatives rate their relationship as very good, to 10 where both parties rate relationships as poor. Valid data is available for 889 cases.

Manager's mistrust of trade unions

Indicators of Managers Mistrust:

Union representatives here can be relied on to live up to the commitment they have made to management.

Union representatives here are sincere in their attempts to understand management's point of view

Union representatives here can be relied on to act with honesty and integrity in their dealings with management.

Managers are asked to rate each element on a five point scale ranging from 1, strongly agree, to 5 strongly disagree. Scores are added together to produce an overall index of trust ranging from 3 indicating strong agreement on all three indicators to 15 where there is strong disagreement across all dimensions.

Valid data is available for 810 cases.

Employee representative's mistrust of managers

Indicators of Employee Representative's Trust:

On balance management here can be relied on to live up to commitments they have made to unions here.

On balance management here are sincere in their attempts to understand employee representative's point of view.

On balance management here can be relied on to act with honesty and integrity in their dealings with employee representatives.

Employee representatives are asked to rate each element on a five point scale ranging from 1, strongly agree, to 5 strongly disagree. Scores are added together to produce an overall index of trust ranging from 3 indicating strong agreement on all three indicators to 15 where there is strong disagreement across all dimensions.

Data from the Employee Representative's survey is used. Where two employee representatives are present in the same workplace data from the trade union representative is used. This results in 890 valid cases, 831 of which are union representatives.

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