

Impact case study (REF3b)

Institution: Swansea University
Unit of Assessment: 19 - Business and Management Studies
Title of case study: Improving conflict resolution and mediation in UK workplaces
1. Summary of the impact

Research undertaken since 1999 by Professor Paul Latreille at Swansea University has examined workplace conflict and its resolution. Much of this research has been externally funded by the ESRC, government and other bodies, and published as reports and papers in internationally recognised academic journals. The research has delivered a range of impacts, including **shaping policymaker and practitioner debate** and **providing confirmation of, and challenges to, policy and practice**. Impact is evidenced, *inter alia*, by references to the research in government consultation documents and responses to such documents, Parliamentary debate and practitioner materials.

2. Underpinning research

Policy-relevant research has emanated from the evaluation of the judicial mediation pilot that took place in Employment Tribunals (ETs) in three regions of England in 2006-7. A key finding from this research was that the approach was not cost-effective, which is at variance with, and hence challenged, the subsequent decision to roll out the programme nationally. Further, a mixed-methods approach was adopted to examine the role of lay members on tripartite ETs [R6]. This research involved designing four questionnaires, with common/overlapping questions, which were administered to samples of judges and lay members. The main conclusions from the research were that the legitimacy of tribunals has been undermined both by changes to the method of appointing lay members and the fact that judges alone can now decide certain cases.

With regard to workplace mediation [R1], survey data from a range of organisations were analysed to establish how the attitudes of employers towards mediation varied with the outcome of the most recent case. Employer attitudes towards mediation tended to be positive if the most recent case was fully or partially resolved, whilst attitudes were far less positive where cases had not been resolved. From a policy perspective, the findings suggested that it is important for organisations to evaluate their mediation provision and to publicise their results.

Alternative Disputes Resolutions (ADRs) have been increasingly used because of the strain that has been imposed on the ET system from a rising number of applications. The effectiveness of ADRs was examined in a quantitative evaluation of a pilot study of judicial mediation in the UK ET system [R4]. In terms of the research methods and findings, propensity score matching was applied to the data but no statistically significant difference in the outcomes from matched mediated and unmediated cases was found.

Outputs from this programme of research have appeared as government and other public body reports such as for the Department for Business, Innovation and Skills (BIS), Ministry of Justice (MoJ) and the Advisory, Conciliation and Arbitration Service (Acas) and as papers in high quality, academic journals during the relevant period (*British Journal of Industrial Relations*, 2013 and 2000 [ABS 4*; Association of Business Schools journal quality listing score (numbers are matched to REF ratings)], *International Journal of Human Resource Management*, 2011 (x2) [ABS 3*], *Human Resource Management Journal*, 2011 [ABS 3*], *Industrial Law Journal* (2012 and 2005 [ABS 3*]), *Industrial Relations Journal*, 2012 and 2007 [ABS 2*], and *Industrial and Labor Relations Review*, 2001 [ABS 3*]). Latreille has also presented findings at various events - both national and international, and to audiences that have included a wide range of stakeholders (see below).

Much of the underpinning research has resulted from externally funded-projects. These include projects in the relevant period for BIS (on settlement of ET claims, 2004; and rejected ET claims, [G2], 2007-8); Acas (on workplace mediation via ESRC Placement Fellowship Scheme, [G3], 2008-9); and representation in ET claims (with Peter Urwin and Franz Buscha from the Westminster Business School); and for the MoJ (as part of a team led by Peter Urwin, 2006-8). An

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ESRC-funded project during 2010-11, undertaken with Susan Corby from the University of Greenwich, focused on lay members in ETs [G4]. This coincided with the government's *Resolving Workplace Disputes* (RWD) consultation which questioned lay members' continuing role, and the research has subsequently had a significant influence on debate, including in Parliament.

In the case of joint projects, **Professor Latreille** (at Swansea 1991-2012), has contributed substantively to all work, including the conception, design and drafting of funding bids, networking with potential partners, data collection, analysis and interpretation, writing up and dissemination/publication. Precise contributions vary by project and the teams involved.

3. References to the research

- R1** **Latreille, P.L.** "Mediating at Work: Of Success, Failure and Fragility", 2010, *Advisory, Conciliation and Arbitration Service Research Papers*, No. 06/10 – reviewed by Acas research staff.
- R2** **Latreille, P.L.** "Mediation: A Thematic Review of the Acas/CIPD Evidence", *Advisory, Conciliation and Arbitration Service Research Papers*, No. 13/11, 2011 – reviewed by Acas research staff.
- R3** **Latreille, P.L.**, Buscha, F. and Conte, A. "Are You Experienced? SME Use of and Attitudes Towards Workplace Mediation", *International Journal of Human Resource Management*, Vol. 23(3, Special issue), February 2012, pp. 590-606. **[ABS 3*]** (earlier version cited in consultation materials appeared as *Advisory, Conciliation and Arbitration Service Research Papers*, No. 05/10, 2010).
- R4** Urwin, P., **Latreille, P.L.** and Karuk, V. "Quantitative Evidence in the Evaluation of ADR: The Case of Judicial Mediation in Employment Tribunals", *International Journal of Human Resource Management*, Vol. 23(3, Special issue), February 2012, pp. 567-589. **[ABS 3*]** (draws on and adapts selected material from report published as Urwin, P., Karuk, V., Michielsens, E., Page, L., Siara, B. and Speckesser, S., with Boon, A. and Chevalier, P-A. "Evaluating the Use of Judicial Mediation in Employment Tribunals", *Ministry of Justice Research Series*, 7/10, 2010)
- R5** Corby, S. and **Latreille, P.L.** "Employment and the Civil Courts: Isomorphism Exemplified", accepted in principle, subject to minor revisions at *Industrial Law Journal*, Vol. 41(4), December 2012, pp. 387-406. **[ABS 3*]**
- R6** Corby, S. and **Latreille, P.L.** "Tripartite Adjudication – An Endangered Species", *Industrial Relations Journal*, Vol. 43(2), March 2012, pp. 94-109. **[ABS 2*]** (draws on data in Corby, S. and **Latreille, P.** *The Role of Lay Members in Employment Rights Cases – Survey Evidence*, 2011, ESRC Lay Members as Judges in Employment Rights Cases project report).

Swansea University academics in bold. Relevant grants awarded in the period include:

- G1** Dept for Business, Enterprise and Regulatory Reform (now BIS), *Survey of Employment Tribunal Application 2008*, (PI **Latreille**; 2008-10, £10,500)
- G2** Dept for Business, Enterprise and Regulatory Reform (now BIS), *Report on Rejected Claims*, (PI **Latreille**; 2008, £4,000)
- G3** ESRC, *A Place for Mediation in Workplace Conflict Management*, (PI **Latreille**; 2008-10, £61,733)
- G4** ESRC, *Lay Members as Judges in Employment Rights Cases*, (PI **Latreille**; 2011-12, £16,927)

4. Details of the impact

The nature of the impact concerns both policy and practice, and reach has been extensive across the range of areas covered by the underpinning research. Since much of this takes place *within* organisations, particularly in relation to workplace mediation, it is not however always easy to identify let alone quantify. This section highlights two key areas for impact: lay members in employment tribunals, and workplace mediation. This impact is diverse in nature, ranging from shaping policy and practitioner debates to providing evidence that has either confirmed or challenged policy and practice.

The 'lay members' project has been extremely influential in shaping/informing public and political debate following the publication in January 2011 of the Coalition government's Resolving Workplace Disputes consultation. At his request, the Head of Employment Policy in the Tribunals Service was sent emerging survey findings (05/11) and pre-publication copies of the final survey and stakeholder interview reports (11/11), which were shared with colleagues in BIS, and the research was acknowledged in the government's response to the consultation [C2]. The proposed changes were nonetheless pursued on the basis of costs and contrary to the research findings, but with the proviso that "*We will use the research to evaluate the findings of the first year of operation, once judges have begun to sit alone in more cases, to see whether a reversal or extension of the policy is necessary*" (BIS, 2011:31). The research was subsequently discussed in Parliament (Hansard, 13/03/12 [C6]).

The findings have also been picked up and widely disseminated through various professional/trade newsletters, including a summary in the Employment Lawyers' Association (ELA) newsletter – a body with nearly 6,000 members drawn from all branches of the legal profession. The highly influential and well regarded Incomes Data Services carries the full survey report on its website, and a recent editorial in its bi-monthly magazine, taken by employers, trade unions, government departments, lawyers and the judiciary, described the findings from the surveys in some detail. (The number of subscribers is confidential, but likely to be thousands, including human resources departments, trade unions, judges and lay members in both ETs and the Employment Appeal Tribunal.) The work has been reported in online legal and other newsletters for various audiences and has further prompted debate among stakeholders on LinkedIn. The researchers themselves contributed an invited article to *Tribunals*, the magazine of the Judicial College (Winter 2011).

A positive impact is evident in relation to workplace mediation, where published work (and also on ETs) was cited in both the BIS RWD Consultation *Impact Assessment*, and extensively in the Acas response (among others). Work undertaken with colleagues at Westminster Business School for the Trades Union Congress (TUC) has provided evidence foregrounded in their response to both this consultation and a subsequent MoJ consultation on the introduction of tribunal application fees, while a small-scale survey of mediation providers undertaken by Latreille with the Civil Mediation Council, was also used extensively in their response to the former.

Latreille was asked to respond to this consultation in his own right and subsequently invited to provide expert evidence on mediation's effectiveness at a BIS RWD consultation discussion with key stakeholders (04/11), drawing *inter alia* on the thematic review produced during his Acas Placement Fellowship [R2]. He later attended an invited Ministerial mediation meeting to discuss increasing the use of mediation (07/11), at which the then Minister (Ed Davey) highlighted a proposal for mediation networks among small and medium-sized enterprises (SMEs). This idea was first identified publicly in a report written during Latreille's Acas Placement Fellowship (now published in an academic journal [R3]), subsequently included in his response to the RWD consultation and discussed with policy officials. It is now being implemented as a pilot in two regions [C2].

In relation to practitioners, Latreille's research on SMEs has been referred to and carried on the website of a major mediation provider (CMP Resolutions), and in the promotional materials of another (TCM), while the thematic review of case studies published in the Acas series was described by Andrew Wareing, Acas' Director of Delivery, as "*an important contribution to the*

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evidence base and a valuable resource for promoting better understanding of mediation" (foreword to [R2]). Latreille has also presented on this topic, by invitation, to policymakers and practitioners at high profile events, e.g., an Acas seminar at the British Library (03/11) to around 60 attendees, including senior and HR managers from large public and private sector organisations, policymakers from the MoJ, BIS, TUC and trade unions, lawyers, etc. and several major mediation providers. The presentation from this event, which is available online, has been viewed in excess of 500 times. Latreille has also presented on mediation to Acas staff (including its Chairman) at a workshop and at CPD (PGCert) training events for Acas conciliators and to CIPD Scotland members at a seminar in Edinburgh.

5. Sources to corroborate the impact

- C1 BIS, *Resolving Workplace Disputes: Final Impact Assessment*, November 2011
- C2 BIS/HMCTS, *Resolving Workplace Disputes: Government Response to the Consultation*, November 2011 (see esp. §9, p.8 and §29, p.14 on SME networks; §27, p. 14 on mediation reputation and experience; §92, bullet pt 4, pp.28-9 on lay members (research mentioned specifically)).
- C3 Acas response to RWD consultation, March 2012 (contains 15 references to work carried out by researcher either individually or as part of team, see esp. p.22 referring to lay members; nn. 5, 8, 11-13, 16, 21 for thematic review of mediation; nn. 15, 20 for mediation and SMEs; n. 26 for mediation fragility; n. 31 for representation at ETs).
- C4 TUC, *Resolving Workplace Disputes: TUC Response to Government Consultation*, April 2011 (notes TUC commissioned research "conducted by Paul Latreille, Franz Buscha and Peter Urwin who are three leading experts on dispute resolution and the Employment Tribunals. Findings from this research have been integrated into this response" (pp. 5-6)).
- C5 TUC, *Priced Out: The Impact of Employment Tribunal Fees on Access to Justice: TUC Response to Ministry of Justice Consultation*, March 2012 (notes "The TUC commissioned independent analysis of the likely impact of the government's proposed remissions policy from leading academics Peter Urwin and Franz Buscha at the University of Westminster and Paul Latreille at Swansea University" (p. 4), which forms the basis of the data discussion in the response).
- C6 Hansard, Commons Debates, General Committee Debates, Session 2012-12: Draft Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order 2012, 13 March 2012 (several references to lay member research project at cols. 33, 35, 36 and 39).
- C7 Incomes Data Services, "The importance – or not – of lay members", Foreword to *Employment Law Brief*, No 938, December 2011 (almost entirely devoted to discussion of lay member project findings).
- C8 'Study notes' (i.e. CPD section on CIPD website - access requires membership, which discusses the lay member research for reference, see §106 and n. 17)
- C9 CIPD, *Employment Tribunals*, Factsheet, revised April 2012 (factsheet provided to inform HR practitioners, includes judicial mediation report in Further Reading).