



Cornell University
ILR School

Cornell University ILR School
DigitalCommons@ILR

Working Papers

ILR Collection

January 2007

A Bridge over Troubled Water: The Role of the British Advisory, Conciliation and Arbitration Service (ACAS) in Facilitating Labour-Management Consultation in Public Sector Transformation

Mark Stuart
University of Leeds, UK

Miguel Martínez Lucio
University of Bradford, UK

Follow this and additional works at: <http://digitalcommons.ilr.cornell.edu/workingpapers>
Thank you for downloading an article from DigitalCommons@ILR.
[Support this valuable resource today!](#)

This Article is brought to you for free and open access by the ILR Collection at DigitalCommons@ILR. It has been accepted for inclusion in Working Papers by an authorized administrator of DigitalCommons@ILR. For more information, please contact hlmdigital@cornell.edu.

A Bridge over Troubled Water: The Role of the British Advisory, Conciliation and Arbitration Service (ACAS) in Facilitating Labour-Management Consultation in Public Sector Transformation

Abstract

The aim of this paper is to examine the changing role of the state in a more market-driven system of industrial relations, specifically in terms of the new roles that are being developed with regard to mediation, advisory and arbitration services. It focuses empirically on the role played by the British Advisory, Conciliation and Arbitration Service (ACAS) in facilitating the modernisation of public sector employment relations. We show how ACAS has played a 'benchmarking' role that assists the development of more strategic forms of decision-making and co-operation in employment relations change, and identify the challenges of developing such an approach in the context of the shift towards a more decentralised and market-oriented system of public service delivery. In conclusion we assert that there is a new 'advisory and benchmarking' state evolving based on a soft-market view of industrial relations, and that this mitigates (but is also in tension with) the harder market view within the state concerned with transforming the public sector.

Keywords

state, industrial relations, mediation, advisory service, arbitration service, ACAS, employment relations, market, public service, public sector, ILR, Cornell University, labor

Comments

Suggested Citation

Stuart, M., & Lucio, M. M. (2007) *A bridge over troubled water: The role of the British Advisory, Conciliation and Arbitration Service (ACAS) in facilitating labour-management consultation in public sector transformation.*

Retrieved [insert date], from Cornell University, ILR School site:

<http://digitalcommons.ilr.cornell.edu/workingpapers/4/>

**A Bridge over Troubled Water: The Role of the British Advisory, Conciliation
and Arbitration Service (ACAS) in Facilitating Labour-Management
Consultation in Public Sector Transformation¹**

Mark Stuart (University of Leeds, UK)

and

Miguel Martínez Lucio (University of Bradford, UK)

¹ **Contact:**

Professor Mark Stuart: Leeds University Business School, Maurice Keyworth Building, University of Leeds, Leeds, LS2 9JT, UK. E-mail: ms@lubs.leeds.ac.uk. Tel: 0044 113 343 6851. Visiting Fellow at ILR Nov 2006 through January 2007.

**A Bridge over Troubled Water: The Role of the British Advisory, Conciliation
and Arbitration Service (ACAS) in Facilitating Labour-Management
Consultation in Public Sector Transformation**

Abstract

The aim of this paper is to examine the changing role of the state in a more market-driven system of industrial relations, specifically in terms of the new roles that are being developed with regard to mediation, advisory and arbitration services. It focuses empirically on the role played by the British Advisory, Conciliation and Arbitration Service (ACAS) in facilitating the modernisation of public sector employment relations. We show how ACAS has played a 'benchmarking' role that assists the development of more strategic forms of decision-making and co-operation in employment relations change, and identify the challenges of developing such an approach in the context of the shift towards a more decentralised and market-oriented system of public service delivery. In conclusion we assert that there is a new 'advisory and benchmarking' state evolving based on a soft-market view of industrial relations, and that this mitigates (but is also in tension with) the harder market view within the state concerned with transforming the public sector.

**A Bridge over Troubled Water: The Role of the British Advisory, Conciliation
and Arbitration Service (ACAS) in Facilitating Labour-Management
Consultation in Public Sector Transformation**

1. Introduction

The state plays an important role in shaping the character and context of national systems of industrial relations, be it as a political player, legislator, and/or employer. During the last twenty years, the specific contribution of the state has been much debated, particularly in terms of the role of the welfare state and the integration of organised labour into the political apparatus of state decision-making (see for example Berger and Compston, 2002). Such concerns have been accompanied by broader debates around the political imperatives shaping state reform in terms of the shift from demand to supply-side economics and the concomitant deregulation of labour markets that has taken place (Regini, 2000; Esping-Anderson, 2000). The debate is exhaustive and whilst it is agreed that the state has moved towards a more market-oriented approach with a weaker commitment to organised labour and collective worker rights, conclusions are by no means clear. The transition away from traditional state roles is mediated in various ways, and with variable outcomes (Koch, 2005; Kochan, 2006; Jessop, 2002a).

Yet, from an industrial relations perspective, there has been little consideration in much of this debate of the changing role of the state's mediation and arbitration services in the processes of management-labour relations. Many developed state systems have arbitration services that play a role in pacifying and stabilising industrial

relations processes (Brown, 2004). In many cases, these services are being transformed in response to the changing systems and processes of employment relations that are the result of increased forces of international competition and globalisation (Seeber and Lipsky, 2006). In Britain, such services are provided by the Advisory, Conciliation and Arbitration Service (ACAS). As Dix and Oxenbridge (2004) explain, ACAS is steadily assuming a more proactive role in terms of advising not just on how to resolve disputes and workplace grievances but in terms of how to establish a more partnership driven-approach to employment-related issues based around consensus forms of decision-making (see also Fonstad et al, 2004).

Against this backdrop, the aim of this paper is to explore the new roles being developed in terms of advisory and arbitration work within the context of the changing role of the state within a more market-driven system of industrial relations. The analysis is concerned with two questions. First, how does the changing role of the state in terms of its shift to a more advisory, indirect role impact on its mediation, arbitration and advisory services? That is to say – is there evidence of a new advisory and benchmarking driven state? Secondly, what does this shift mean, and how does it relate to, the overall marketisation of the state and its move to a more neo-liberal approach. The paper addresses these concerns through an empirical examination of recent ACAS workplace projects concerned with the modernisation of the British National Health Service (NHS). It concludes that there is a new ‘advisory and benchmarking’ state evolving based on a soft-market view of industrial relations. This advisory capacity is concerned with mitigating the harder market imperatives of the state concerned with the re-organisation of the public sector, through the promotion and facilitation of ‘good’ employment relations. Yet this role is itself challenged by

the very forces it seeks to respond to, as the restructuring of the state can undermine the resources and activities of any new advisory and benchmarking role.

2. Background: Towards the Advisory and Benchmarking State

The role of the state in the economy and industrial relations

The state is a significant feature of economic regulation. It has played an important 'caretaker' role and been a central focus of the post-war social democratic project (Hall, 1988). However, the emergence of a neo-liberal discourse from the 1970s, and an increased emphasis on the agendas of privatisation and market liberalisation have eroded the popular and political basis of state intervention. This does not mean that the state has disappeared, or that its changing role has gone uncontested but the centrality of market relations have emerged as core regulatory mechanisms, which the state has sought to realign itself too (Jessop, 2002a). The emergence of globalisation, contested as a concept though it may be (see Herod, 2002), has also eroded the state's responsive capacity and has acted as an ideology that can disarm it with regards to a defence of its role.

In historic terms, the state played a central role in assisting the development of a consensual and negotiated post-war social democratic settlement. Firstly, the state's social and welfare-based intervention, through the indirect wage – a process Esping-Anderson (1990) refers to as de-commodification - eased the pressure on the direct wage in terms of collective bargaining processes. This was essential for national political bargaining at the level of the state, as well as collective bargaining at the

level of the sector and firm. The second dimension of the state relates to the role of political exchange or neo-corporatist processes. Whilst levels of neo-corporatist intermediation have varied, they have remained a salient feature of contemporary industrial relations systems (Berger and Compston, 2000). There may have been a move in the European context from harder forms of government regulation through negotiation to softer forms of governance based on the diffusion of good practice (see below for a discussion; Leisink and Hyman, 2005); but the role of the state remains important in terms of its scale, the manner of its interventions and its central leadership role. Thirdly, the state's role as a legislator developed systematically during the 20th Century, evident in the framework of rights and obligations that exist within the sphere of employment relations of most economically advanced systems. Its role as a legislator of employment rights and obligations remains important, despite the current emphasis on individual employee rights. Finally, and of central significance for this article, the state is also an employer.

The changing role of the state

All these state roles have changed to some extent or another. It is the subject of greater public and political scrutiny, although the extent to which it has been modified varies with certain states still sustaining a robust welfare commitment (Esping-Anderson, 2000). The role of neo-corporatist practices are less salient in terms of transparency but relations between organised labour and the state remain a feature of the European Union's western nations (Berger and Compston, 2000; Koch, 2005), even if this increasingly focuses on the supply and training side of the economy. Thirdly, as noted above, the emphasis on collective rights has been less pronounced,

with the state focusing increasingly on individual rights in terms of its armoury of legislation (Seeber and Lipsky, 2006). This is not to deny that important forms of indirect regulation (Martinez Lucio and Weston, 2000) have emerged, such as European Works Councils and EU consultation processes, but these have not really altered the tapestry of collective industrial relations. In addition, the state as an employer has seen a greater commitment to marketisation, restructuring and the adoption of 'private' sector organisational practices (Bach, 2002). All these developments have been the subject of exhaustive debate, as to whether these are systematic forms of modernisation or just 'muddling through' a crisis of welfare (Bach, 2002): but these trends are apparent and they pose questions for transformation within the apparatus of the state. These changes in the character and function of the state can be seen as a direct response to the imperatives of increased competition and broader questions around the viability and role of the state within an increasingly global (and in the case of capital, mobile) economy. This has had a direct impact on the strategic direction of employment relations that the state has sought to pursue through its prime role as employer. Thus, within the British context, there have been extensive programmes of reform in the public sector, which have sought to 'import' the logics of private sector strategies and practices. In the case of the National Health Service, for example, the contracting out of peripheral services such as catering and cleaning was an early initiative, but this has subsequently been extended to specialist health care services such as elderly care and large sections of IT work. There has also been increased interest in more decentralised systems of industrial relations bargaining. The emergence of new forms of grading and payment structures, as discussed below, are seen as forming the basis for a greater re-organisation of reward and promotion systems. In addition, the emergence of private-public partnerships

around infrastructure projects has started to erode the boundaries between state and emergent private sector interests. Finally, there is increasing use being made of contracts and market mechanisms in the allocation of service delivery.

It is common to characterise these restructuring processes in terms of a ‘rolling back’ of state responsibility and regulation, yet at the same time as the state retreats from one sphere (for example, around public ownership or national regulation of employment relations), it enters or re-regulates other spheres (as in the case of public-private partnerships or the setting of targets for performance delivery or new approaches to employment relations). In this context, it is possible to talk of a new indirect form of state intervention (see Martínez Lucio and MacKenzie, 2004 & MacKenzie and Martínez Lucio, 2005). The state provides support for actors to assimilate some of its roles and to work in partnership with it in a new strategic manner (Kooimans, 2003). Opinions vary as to the efficacy and consistency of such developments, but they are nevertheless a focus of discussion within industrial relations, particularly, as Van der Meer et al (2005) explain, in terms of a new type of policy and state approach: ‘steering’. The state does not so much lead now or direct but ‘steer’. It does this not just in terms of the use of procedure; it also does this in terms of steering by objectives (adaptive governance) and by comparison (open coordination). These developments focus on the macro aspects of the state. This has emerged in a context of a diminishing capacity for state intervention and macro-corporatist co-ordination (van de Meer et al, 2005: 354-5). There is in effect a new form of governance emerging that *prompts*, establishes *criteria* and *compares* in relation to what it sees as good practice in areas such as learning or co-operation strategies. The state therefore renews its position within a more market driven

economy (Visser, 1998) by adopting new roles that aim to allow its intervention to be shared, to allow knowledge to be imparted through references to good practice, and to involve stakeholders in novel ways. In the remainder of the article, we explore this with specific reference to the changing role of state arbitration.

The changing role of state arbitration: from arbitration and dispute resolution towards the advisory and benchmarking state

Whilst there is a limited literature on mediation and arbitration (typically in cases where this is highly regulated such as Australia – see, for example, Brown, 2004; and more broadly, Dix and Oxenbridge, 2004; Seeber and Lipsky, 2006; Towers and Brown, 2000; Van Gramberg, 2006), this has rarely been considered in terms of the changing role of the state. Yet, this is an area where widespread change is apparent. In the British case, the Advisory, Conciliation and Arbitration Service (ACAS) was formally established (as a free service) in the mid 1970s (see Hawes, 2000, for a detailed history), having emerged from the social democratic policies of the 1960s and 1970s (Crouch, 2003; Davies and Freeland, 1993). Its remit right from the start included the promotion of good employment relations, and innovatory projects were conducted in support of this (Hawes, 2000). However, its public role was largely concerned with the mediation and conciliation of collective disputes and a statutory objective to extend and promote free collective bargaining. The neo-liberal Conservative governments of the 1980s-1990s were less than supportive of ACAS, but apart from rescinding its objective to promote free collective bargaining never fundamentally changed its role.

This was to change in the early 1990s. Faced with declining numbers of collective disputes and a declining trade union role in workplace bargaining, the organisation of ACAS was restructured and it started to place more of an emphasis on individual conciliation and, of specific interest for this paper, advisory work (Dix and Oxenbridge, 2004; Purcell, 2000). As Brown (2004) notes, this trend is observable on an international scale. A shift from more judicial to voluntary systems of dispute resolution has led to a growth in forms of ‘alternative dispute resolution’ and, for mediation and conciliation services in numerous countries an increased ‘advisory’ role in the support of ‘interest-based’ forms of workplace negotiation (Fonstad et al, 2004). A key concern of advisory work is the pre-emption of ‘future disputes by encouraging good procedures and employment practices’, based on the principle that ‘prevention is better than treatment’ (Brown, 2004: 453). In practical terms, during 2005-06 ACAS completed 319 workplace advisory projects, addressing issues such as communications and consultation, the management of change and improving relationships and problem solving. In addition, its advisers conducted some 2002 workplace advisory visits and delivered 2, 964 training sessions, an increasing proportion of which are delivered on the basis of ‘charged workplace training’ (see ACAS Annual Report, 2006).

The propagation of good employment practice has been underpinned by the promotion of partnership-based working and relations between management, employees and their representatives (Brown, 2004; Kochan and Osterman, 1994). ACAS has been in the forefront of debates in partnership in Britain, having developed a set of practical tools around the notion of ‘working together’. This has been disseminated through conferences and through individual adviser’s assisting

organisations in the development of conciliation and consultation methods (see Stuart and Martinez Lucio, 2005a). Most recently the knowledge ACAS has accumulated in this area has been brought together as a guide book entitled the 'model workplace', which 'provides a benchmark for employers who want to assess their employment relations performance and take advantage of the benefits this offers their organisation' (ACAS, 2006: 30). ACAS's advisory activity has covered a wide variety of organisations and sectors, but increasingly the organisation is being invited to assist and facilitate with major change programmes in the public sector, most pertinently the National Health Service.

ACAS in the context of public sector change and restructuring

The role of ACAS in the public sector has been to specifically assist in the development of consultation processes during a period of ongoing and extensive restructuring and change management and an overall re-regulation of employment relations. Much of this has been situated within the promotion of partnership-based approaches to public sector reorganisation (Stuart and Martinez Lucio, 2000). Indeed, the Labour government has developed a raft of partnership initiatives and models designed to shape the conduct of public sector industrial relations. This is particularly pertinent in the National Health Service (NHS) (Bach, 2004), where new policies around human resource management, employee involvement and participation and working conditions have been (or are being) implemented since the late 1990s. This change programme has been bureaucratic and centrally driven, and has been accompanied by transparent sets of performance indicators and ambitious timelines for implementation. Against this backdrop, ACAS has played an important role in

facilitating a new co-operative dialogue. As we argue throughout the paper, this represents a new role where the state **teaches, signposts and facilitates** developments in industrial relations through benchmarking and institutional mentoring (Martinez Lucio and Stuart, 2002).

In the remainder of the article, we explore more systematically how this advisory and benchmarking role has contributed to the facilitation of change in the NHS. At the time of the research the NHS was one of the largest employers in Europe with over 1.3 million employees. It had just embarked, from December 2004, on the national roll out of new pay equality and reform package entitled 'Agenda for Change'. The programme covers all directly employed NHS staff, except senior managers and Doctors and Dentists. It was negotiated jointly in partnership with the NHS unions and enshrined in a collective agreement in November 2004. The reform package included the harmonisation of various terms and conditions of employment, pay assimilation around nine new pay bands and a new job evaluation scheme. As Bach (2004:3) notes, '[A]t the core of these (Agenda for Change) proposals is an emphasis on partnership working with trade unions to ensure that union representatives have adequate time and support to participate in the implementation of the Agenda for Change proposals at Trust level'. Indeed, evidence from early 'implementer' sites had shown that considerable benefits accrued from partnership working given the complexity of the implementation process. Yet, equally, as Bach's (2004) research indicates, there were also widespread participation deficits and problems within NHS Trusts. The imperatives of the 'Agenda for Change' programme only heightened the need to address such challenges and establish more productive structures of consultation. The prospect of Agenda for Change, along with the reconfiguration of

many Trusts due to merger processes, had led to an unprecedented level of requests for ACAS assistance from NHS employers. The following analysis focuses on the role played by ACAS in facilitating these NHS processes of change. We assert that the new softer, managerial *advisory and benchmarking state* comes in to assist as a direct response of (and is up against) the restructuring imperatives of the harder marketised state – an ironic twist that indicates a degree of schizophrenia within the new industrial relations, as the state is both an object and subject of change (Jessop, 2002b).

3. Data collection

Five cases of ACAS workplace advisory projects in NHS Trusts were chosen for study. The cases were selected by the ACAS Research and Evaluation Section in consultation with ACAS advisers involved in workplace projects during the period 2002-2004. For the purpose of our presentation the Trusts are anonymised, and include: Northern Trust, London Primary Care Trust, London Ambulance Service Trust, Eastern Trust, and Midlands Trust. The researchers were provided with the contact details of the key stakeholders involved in the workplace project in each case. This typically involved the ACAS adviser responsible for leading the intervention and the lead management and trade union representatives. The researchers were also supplied with basic background material on each case. The empirical approach was qualitative, based on a research protocol for data collection that involved a standardised interview schedule, tailored to take account of whether the informant was an adviser, management representative or union representative. Management interviewees included Trust Human Resources managers and Chief Executive

Officers, while trade union interviewees included staff-side chairs (lead union representatives) and full-time officers (FTOs) of the Royal College of Nursing (RCN), Unison and Amicus. Each interview lasted between 60 and 75 minutes, and all interviews were tape-recorded and subsequently transcribed. In total, 16 interviews were conducted across the five Trusts between July and September 2004. Interviews were also conducted with an ACAS deputy regional director and two head office staff, prior to the commencement of the case research, in order to gain insights into the nature of ACAS workplace project interventions.

4. The Advisory and Benchmarking State

a) The demand for new roles and the renewing of consultation

In all the Trusts, the request for assistance from ACAS was precipitated by the imperatives for change that had been experienced in the NHS in recent years. The NHS had experienced a period of substantial transformation, not only in terms of Human Resource (HR) strategy and its attendant emphasis on partnership working, but also in terms of the organisational structure of health care (see Stuart and Martinez Lucio, 2000).

The main mechanisms for dealing with these processes of organisational change were Joint Negotiation Committees and/or Joint Consultation Committees. Such committees had been established, in one form or another, in all of the case study organisations, but were not considered by both management and trade union representatives to be operating as effectively as they should have been. Prior to the

ACAS intervention, many of the Trusts' consultative structures had almost ground to a halt and were unable to move forward on strategic priorities. It was not uncommon for issues to be brought into discussion at standing consultative forums without prior notice, and it was rare for meetings to cover all agenda items. In a number of cases, senior management had stopped attending meetings in response to what they perceived to be an emphasis on 'trivial' topics, rather than 'meaty' issues. In some situations, these process problems were underpinned and compounded by a recent history of poor or adversarial employment relations.

The ineffectiveness of the extant consultation machinery was recognised and accepted by both management and trade union representatives in all cases. When articulating how the joint consultation machinery should develop it was common for respondents to espouse the rhetoric of 'partnership working'. In most cases, this was identified as the ultimate goal for good and effective employment relations and broader 'cultural change' within the organisations. In the case of the London Primary Care Trust, an ACAS-facilitated training workshop on partnership working had been held in the past, resulting in a series of partnership principles being added to the Trust's union recognition agreement (at ACAS's recommendation).

The most advanced case with regard to working in partnership, however, was Midlands Trust. Following the Trust's formation, an effective system of negotiation and consultation had been consolidated with the development of a partnership agreement. The agreement had been formulated and established with the support of Department for Trade and Industry Partnership Fund monies, and the advisory support of ACAS, and had attracted national interest as an example of good practice. When,

on a number of occasions, management sought to introduce change without informing or consulting the Trust's unions, union representatives expressed concerns about management commitment to the partnership process. Accordingly, the unions decided to suspend their involvement in the partnership process until the broader question of management commitment was settled – and it was at this point that ACAS was invited in. As noted previously, all this activity took place against the impending implementation of the new NHS pay and (re)grading system, Agenda for Change.

b) The Nature of ACAS Intervention

In each case, the approach to ACAS was discussed and agreed jointly between management and trade union representatives. Respondents' knowledge of ACAS varied however, as did the extent to which organisations had previous experience of using ACAS. Typically, either a senior trade union representative or management representative had been exposed to ACAS workplace project interventions in the past, and acted as the catalyst for the approach to ACAS. In all cases, there had been extensive turnover of personnel at senior level (most typically among management staff) and, because of this, in none of the cases did both management and union interviewees have previous experience of using ACAS. Nonetheless, advisers had developed a working relationship with key players in the organisations and an in-depth knowledge of employment relations at each Trust. At both Midland and London Primary Care Trust, the lead HR representatives had a record of commissioning ACAS workplace advisory projects at previous organisations.

In general, trade union representatives – and particularly full-time officers - exhibited a high degree of knowledge and experience of ACAS, but they were more likely to associate ACAS with arbitration and mediation services rather than workplace projects – the traditional *bread and butter* of ACAS work. All the trade union respondents regarded ACAS as impartial, objective and independent. It was specifically these qualities, and the fact that commissioning ACAS was unlikely to be perceived by staff as being management-driven, that convinced many of the management respondents of the virtues of ACAS: it was this perceived objectivity, and lack of a ‘bias dilemma’ (Van Gramberg, 2006) that was seen as one of the main reasons for, and benefits of, commissioning ACAS as opposed to alternative third party organisations.

c) The role of facilitation and use of knowledge assets

The role played by ACAS advisers in the case study organisations provides further support for the findings of Dix and Oxenbridge (2004:523-524). They describe the advisers’ role as ‘centred on acting as a facilitator to establish facts, clarify problems, and help(ing) to identify solutions in order to promote joint agreements. Advisers do not act as an arbiter, or decide on the merit of competing positions.’ In cases, use of this approach was evident from the Trusts’ initial contact with ACAS through to the specific project intervention itself. After being approached, advisers sought to clarify the potential problem with management and union representatives, and once all parties had agreed to this, a joint working project was suggested and planned. This initial process often involved advisers observing Joint Staff Forums and then feeding their views back to participants on what they saw as problematic. The interventions

themselves ranged from a single workshop to a more sustained series of joint workshops and joint working groups. The research also confirmed the findings of Dix and Oxenbridge (2004) that clients valued syndicate group exercises, where management and union representatives work together in mixed groups to solve problems and agree solutions. The role of the ACAS advisers as a link into broader networks of specialists dealing with organisational change, and in terms of the evidence base and specific case experiences they could offer, meant that the service was seen as contextualising the work of change within the NHS. This benchmarking role was explicit and key.

An important contribution of ACAS advisers in workshops was the way in which they instilled certain behavioural expectations and standards amongst participants and set clear ground rules for engagement during workshop sessions (to ensure, as one adviser joked, ‘no spitting, no gouging’!). Advisers also played an important role in drawing back from discussion of specific problems and issues. To alleviate concerns, advisers’ referenced previous cases of change they had been involved, which acted as specific benchmarks. They also focused on underlying principles around, for example, the nature of consultation and negotiation, different approaches to employee involvement and the principles of partnership working. The ACAS adviser managed to use such principles and practices – both from ACAS generated guidelines and those of others – to provide a set of voluntary ground rules and principles, which facilitated the regulation of such consultation mechanisms.

The advisers’ knowledge assets were based not only on awareness of external developments but also of internal, organisation specific ones. In many of the Trusts,

respondents had little knowledge of key employment relations events in the organisation's past. This was due to a lack of record keeping by past managers, and high turnover among key managers, particularly HR managers. Management turnover created 'memory gaps' in many organisations, and this created opportunities and challenges for ACAS advisers. Where advisers had worked with Trusts over time, they played a prominent role in recording events and organisational developments. This allowed advisers to counsel participants – including 'new' managers and employee representatives - not just about sectoral developments and good practice, but also about the history, challenges and successes of their own employing organisation. Advisers were therefore able to place emerging issues or problems within an historical organisational context. This provided an important explanatory tool for all participants. However, turnover among HR staff also meant that advisers were often not able to deal with consistent points of reference within organisations, a point we return to below.

d) The context and limits of the benchmarking state

In this section, we consider some of the challenges identified during the research with regard to ACAS workplace advisory projects. We then locate these challenges to the new state role in the light of the changing strategies of the state as a public sector employer, noting that there are fundamental contradictions within the state project of marketisation and modernisation.

The implementation of action plans agreed at ACAS facilitated workshops required the ongoing support of middle and line management. Yet, getting middle and line

managers to attend some of the workshops was identified as an issue. This was more of a problem where the ACAS intervention involved ongoing workshops and project work. It was reported that the key issues were achieved during the first workshop, and there was less certainty over the value of subsequent sessions. This was identified as an issue, to some extent, in the Northern and Eastern cases. The role of the Chief Executive in such workshops also seems to be an issue. Where there is positive support and attendance by the Chief Executive at such events this seems to resonate and demonstrates commitment to the wider management constituency of the perceived importance of the work. However, the pressures on management resources, the problems of management and trade union capacities (Bach, 2004), and increasing decentralisation of decision-making impacted on the long-term development of partnership and on the effectiveness of ACAS facilitation of new participation structures. Underpinning this challenge was the ongoing restructuring of the public sector.

Whilst it was clear that in some of the cases joint problem solving projects were disseminated to the wider body of staff (for example, the Eastern case), this did not always take place. Indeed, it was common for both management and trade union representatives to report that this is something that could have been done more systematically. In this context, ACAS needed to provide advice on the roll out of action plans. However, the evolution of more direct forms of communication and new managerial forms of involvement did not always sit well with these ACAS based interventions, as management lower down the line of command looked to alternative forms of communication.

Furthermore, for many of our respondents recalling key developments and improvements in employment relations that emerged from ACAS intervention was not straightforward. Two obvious problems were apparent. First, few of the management and/or union representatives interviewed had kept a systematic set of records of the nature of the ACAS intervention or the outcomes of this work. It was common for respondents to be prompted about what the advisory work focused on during the interviews. In some cases, this was simply because ACAS had worked with the organisation closely over a number of years on a number of different projects. However, the development of good practice necessitated a more resourced industrial relations system and reflective actors – the stress of organisational developments did not allow for this and much rested increasingly on key individuals. Secondly, and more common, was the tendency for key actors in management (and the human resources department particularly) to have left the organisation or moved to alternative position. The departure of such individuals created ‘memory gaps’ in the organisation (Martínez Lucio and Stuart, 2007), and it was not surprising that their replacements often had difficulty recalling developments around ACAS work or the precise features of joint working activities and outcomes.

The issue of staff turnover raises a number of opportunities and challenges for ACAS. The high turnover of persona and, a shift in the culture of stable public sector employment meant that, ironically, ACAS advisers could play a prominent role in recording events and organisational developments, allowing them to advise organisations not just about sectoral developments and good practice but also specific organisational histories, challenges and successes. However, as we noted above, staff turnover within personnel departments meant that ACAS advisers were not able to

find and deal with consistent points of reference within organisations, and had to (re)legitimate their role in some cases. This brought to the fore the importance of ACAS advisory roles within broader practitioner communities, networks and forums. This external factor was very important for maintaining contact within regional personnel management and trade union networks. Personnel managers often developed relationships with ACAS advisers as they moved between posts (exemplified by the London Primary Care Trust case) but this could only continue if the mobility was within the local region. Hence, ACAS had to act as the co-ordinator of public sector HRM networks in the face of increasing disruption and change. It was as if one part of the state had to try to help public bodies overcome disruption brought by harder features of state policy on restructuring and reorganisation through its broader links.

Finally, there was the challenge of evaluation. Whilst most management and union respondents were sanguine that the facilitated workshops had impacted beyond the immediate improvements in how the consultative machinery functioned, they were unable to marshal specific examples or data to illustrate this. In some cases, it was recognised that trying to link, causally, the impact of the ACAS work on broader organisational outcomes, for employee satisfaction, was complex and problematic. For example, the HR director at Eastern explained that whilst staff satisfaction surveys were conducted on an annual basis at the Trust they were not directly comparable. More generally, the limited reporting within organisations of the advisory work and the high turnover of personnel staff hampered any systematic evaluation. The only evaluations conducted were those of the ACAS adviser. Whilst this is an expectation of such interventions, this tends to be relatively informal

(although all have to write a formal report on the project for ACAS records). Evaluation with the organisation typically took the form of a phone call a month or so after the facilitated workshops and again six months later. In a couple of cases, the projects had ‘written in’ an ACAS review of the Joint Consultative Committee six months after the work (for example, at Northern and Midlands Trusts) and the organisations appeared to be very keen on this. Again, this observation was to be relatively informal and not based on an evaluation around specific criteria. To some extent, this degree of informality seemed to be celebrated as a sign of good relations between ACAS and the organisations and in a number of cases ongoing work with the organisations meant that the advisers could monitor progress on an ongoing process. However, any on going monitoring is focused on the nature of staff-management relations than more quantitative employment relations outcomes. Therefore, this approach to evaluating impact was caught between the tensions emerging from a soft people centred-approach and a harder outcomes and efficiency centred approach. Measuring progress in industrial relations in the new public sector environment is a challenge.

5. Conclusion

In empirical terms, our study reveals the contribution of ACAS intervention to evolving programmes of organisational change in the British NHS, through a process of facilitating engagement and co-operation (i.e. partnership) between management and trade union representatives. This facilitative process was found to play an important role in ‘legitimizing’ attempts by management and unions to work together in partnership. In historical terms, each organisation had experienced a period of poor

and/or adversarial employment relations and was looking to establish a new climate of co-operation to foster cultural and organisational change. This was particularly pressing within the NHS given the imperatives of the Agenda for Change reforms that were being rolled out. The establishment of consultative structures to oversee the smooth implementation of this change programme was a necessity. ACAS interventions were found to be successful in establishing (or reviving) effective forums for management-union consultation. However, the broader impact of ACAS was not limited to the facilitation of structures to assist corporate change and performance. Such interventions were also found to promote, for example, a wider recognition of the legitimate different interests and role of unions and management (Stuart and Martinez Lucio, 2005b).

How do we situate our analysis in terms of the broader impact of globalisation on employment relations? Our central contention, unlike those who see an increasingly limited role for the nation state, is that the role of the state in industrial relations remains important. Yet that role is, by definition, subject to change, as the ability of the state to pursue, and more significantly police, hard regulation in the area of industrial relations is challenged, and as public sector employment relations are opened up and restructured in the face of privatisation and marketisation tendencies. One consequence of this is a new role for third party intervention that is focused less on traditional dispute resolution and legality, but more on advisory interventions as organisational actors look to pursue more voluntary and preventative forms of settlement. As Brown (2004: 454) eloquently explains:

The opening up of the world economy and of public services to wider competition is changing the nature of third party intervention. There is

diminishing scope for employers and trade unions to battle out their differences in the sheltered arena of a national market or monopoly service...unions are being forced to shift their manner of operation away from confrontation, towards a greater reliance on cooperation with employers...The implications for third party intervention agencies...is less call for them to resolve collective disputes...to some legal code...contesting parties increasingly need to be guided to a settlement that reflects the very practical and evident demands of [the] market pressures...

In the British context, then, we see a dual dynamic. At one level, the state is subject to change that necessitates new forms of preventative dispute resolution and advisory capacities. At another level, it actually facilitates, through the state agency of ACAS, steers and benchmarks change through a new proactive role. This role consists of facilitating change through direct advice, the mobilisation of knowledge assets, and the propagation of new co-operative views of industrial relations. Whether such a role should be performed by a state agency, or a privatised body, is a matter of debate. But we would share Brown's (2004) assertion that more privatised bodies are less likely to be perceived as independent and unbiased – a point supported by empirical research in the US (Seeber and Lipsky, 2006).

The roles of learning, advice, and benchmarking are fad terms in management sciences but they are also new roles within organisations. Whether effective or purely rhetorical is not a subject for this paper although the authors would err towards the latter interpretation. What is of relevance is that such developments are actually *visible* in terms of the way state operates. The way the state operates is evolving towards a 'consultative' orientation in Britain. A cynical position would state that this is a less resource intensive way of regulating industrial relations. Whatever the logic behind it, it is apparent in terms of the delivery of models and practices. At the heart of much of this is ACAS. It is, therefore, attractive to think in terms of an emerging

advisory and benchmarking state. The emergence of toolkits, management and union seminars and focused advice is now a new role – a new bridge over not solely the troubled waters of industrial relations but the marshy waters of de-regulation and decentralisation. Key questions for future research remain over the extent to which this is a new form of fire fighting and desire to avoid evolving forms of conflict at the heart of the new welfare state. The decision by the British government to reduce the resources of ACAS during 2005 indicated that the drive to efficiency is a feature, and irony, of all public sector organisations even those trying to construct cultures and processes aimed at creating partnerships for improving efficiency. Underpinning the new models of the state intervention are tensions between the informational and knowledge based approaches on the one hand and the market and restructuring logics of change on the other. The former are about responding to the latter: but they also constrained by them.

References

- ACAS (2006) ACAS Annual Report and Accounts 2005/6. London: The Stationary Office. HC 1239
- Bach, S. (2002) 'Public sector employment relations under Labour: Muddling through on modernisation?' *British Journal of Industrial Relations*, 40(2) 319-339.
- Bach, S. (2004) 'Employee participation and union voice in the National Health Service', *Human Resource Management Journal*, 14(2): 3-19.

Berger, S. and Compston, H. (eds) (2002) *Policy Concertation and Social Partnership in Western Europe*. New York/Oxford: Berghahn Books:

Brown, W. (2004) 'Third party intervention reconsidered: An international perspective', *Journal of Industrial Relations*, 46(4): 448-458

Crouch, C. (2003) 'The state: economic management and incomes policy', in Edwards, P. (ed) *Industrial Relations: Theory and Practice*. Oxford: Blackwell. Second edition.

Davies, P. and Freedland, M. (1993) *Labour Legislation and Public Policy*. Oxford: Clarendon Press.

Dix, G. and Oxenbridge, S. (2004) 'Coming to the table with Acas: from conflict to cooperation', *Employee Relations*, 26(5): 510-530.

Esping-Andersen, G. (1990) *The Three Worlds of Welfare Capitalism*, Cambridge: Polity Press

Esping-Andersen, G. (2000) 'Who is harmed by labour market regulations? quantitative evidence' in Esping-Anderson, G. and M. Regini (eds.) 2000. *Why Deregulate Labour Markets?* Oxford: Oxford University Press

Fonstad, N.O., McKersie, R.B. and Eaton, S.C. (2004) 'Interest-based negotiations in a transformed labour-management setting', *Negotiation Journal*. 20(1): 5-11

Hall, S. (1988) *The Hard Road to Renewal*. London: Verso

Herod, A. (2001) 'Labour Internationalism and the contradictions of globalisation: Or, why the local is sometimes still important in a global economy' in P. Waterman and J. Wills (eds.), 101-122, *Place, Space and the New Labour Internationalisms* Oxford: Blackwell

Jessop, B. (2002a) 'Liberalism, neo-liberalism, and urban governance: A state-theoretical perspective', *Antipode*, 34(3): 425-472

Jessop, B (2002b) *The Future of the Capitalist State*. Cambridge: Polity

Hawes, W. (2000) 'Setting the pace or running alongside? ACAS and the changing employment relationship', in Towers, B. and Brown, W. (eds), *Employment Relations in Britain: 25 years of the Advisory, Conciliation and Arbitration Service*. London: Blackwell

Koch, M. (2005) 'Wage determination, socio-economic regulation and the state' *European Journal of Industrial Relations*, 11(3): 327-346

Kochan, T.A. (2006) 'Adapting industrial relations to serve knowledge-based economies', *Journal of Industrial Relations*, 48(1): 7-20

Kochan, T. A. and Osterman (1994) *The Mutual Gains Enterprise: Forging a Winning Partnership among Labour, Management and Government*, Boston: Harvard University Press.

Kooiman, J. (2003) *Governing as Governance* London: Sage

Leisink, P. and Hyman, R. (2005) 'Introduction: The dual evolution of Europeanization and varieties of governance' *European Journal of Industrial Relations* 11(3): 277-286.

MacKenzie, R and Martínez Lucio, M. (2005) 'The realities of regulatory change: Beyond the fetish of deregulation' *Sociology* 39(3): 499-517

Martínez Lucio, M. and MacKenzie, R. (2004) 'Unstable boundaries? Evaluating the 'new regulation' within employment relations' *Economy and Society* Vol. 33(1): 77-97

Martínez Lucio, M. and Stuart, M. (2000) 'Assessing partnership: the prospects for and challenges of modernisation', *Employee Relations*, 24(3): 252-261

Martínez Lucio, M, and Stuart, M. (2007 forthcoming) 'Sustaining New Industrial Relations in the Public Sector: The politics of trust and co-operation in the context of organisational dementia and disarticulation' P. Dibben, P. James, I. Roper, and G. Wood (eds.) *Modernising Work in Public Services* London: Macmillan

Martinez Lucio, M. and Weston, S. (2000) 'European Works Councils and 'Flexible Regulation': The Politics of Intervention' *European Journal of Industrial Relations*, 6 203-216

Oxenbridge, S. and Brown, W. (2002) 'The two faces of partnership? An assessment of partnership and cooperative employer/trade union relationships', *Employee Relations*, 24(3): 262-276.

Purcell, J. (2000) 'After collective bargaining: Acas in the age of human resource management', in Towers, B. and Brown, W. (eds), *Employment Relations in Britain: 25 years of the Advisory, Conciliation and Arbitration Service*. London: Blackwell

Regini, M. (2000) 'The dilemmas of labour market regulation' in Esping-Anderson, G. and M. Regini (eds.) 2000. *Why Deregulate Labour Markets?* Oxford: Oxford University Press

Seeber, R.L. and Lipsky, D.B. (2006) 'The ascendancy of employment arbitrators in US employment relations: a new actor in the American system?', *British Journal of Industrial Relations*. 44(4): 719-756

Stuart, M. and Martinez Lucio, M. (2000) 'Renewing the model employer: Changing employment relations and partnership in the health and private sectors', *Journal of Management in Medicine*, 14(5/6): 310-325.

Stuart, M. and Martinez Lucio, M. (2005a) *Partnership and Modernisation in Employment Relations*. Abingdon. Routledge.

Stuart, M. and Martinez Lucio, M. (2005b) Acas in the NHS: Helping improve employment relations in response to Agenda for Change. Research Paper 06/05. London: ACAS

Towers, B. and Brown, W. (eds) (2000) *Employment Relations in Britain: 25 Years of the Advisory, Conciliation and Arbitration Service*. London: Blackwell.

van der Meer, M., Visser, J. and Wilthagen, T. (2005) 'Adaptive and reflexive governance: The limits of organized decentralization' *European Journal of Industrial Relations*, 11(3): 347-365.

Van Gramberg, B. (2006) 'The rhetoric and reality of workplace alternative dispute resolution', *Journal of Industrial Relations*, 48(2): 175-191

Visser, J. (1998) 'Two cheers for corporatism: One for the market' *British Journal of Industrial Relations* 36(2): 269-92