Negotiating a different kind of crisis

Paul Marginson

The effects of the financial and economic crisis have presented industrial relations actors and institutions in the UK and elsewhere with formidable challenges. For many countries these are unprecedented in magnitude in the post-war era.

As well as the scale of the reductions in output which followed the onset of the financial crisis in the third quarter of 2008, a second feature has made this a different kind of recession from previous downturns in economic activity in the early 1980s and early 1990s. The impact on levels of employment has been significantly less marked.

In the UK, national output (GDP) declined by 5.5% during 2009, whilst employment fell by just 1.6%. In Germany, there was no reduction in the level of employment in the face of a 5% reduction in GDP. Across the EU, the picture broadly resembled that in the UK. Even though the effects of a downturn on employment tend to lag the decline in output, there was little sign of a collapse in employment (and surge in unemployment) in the first half of 2010. Yet in the United States the picture was markedly different: levels of employment fell by almost 5%, which was greater than the 3.8% decline in national output. In the opening months of 2010, the employment situation has deteriorated still further. In earlier recessions, the picture in the UK and elsewhere in western Europe looked more like that currently experienced in the US, with employment falling steeply as output declined.

What has changed?
The current recession has seen widespread initiatives by employers to sustain employment – or at least to mitigate job reductions – in order to retain skills, both ‘recognised’ in the form of qualifications and ‘tacit’ in the shape of job- or firm-specific knowledge. Arguably, two factors underpin this development.

• First, in the face of growing international competition on costs, companies have been shifting to higher value-added activities, which tend to be more skill-intensive.

• Second, companies were already pretty lean when the downturn hit. There has been widespread outsourcing of ‘non core’ business activities since the recession of the early 1990s. Shedding labour on the scale that characterised earlier downturns would, therefore, have risked losing core competences amongst the workforce, thereby jeopardising future viability.

>> continued on page 3

Also in this issue

IRRU’s 40th anniversary

William Brown, chair of IRRU’s Advisory Committee and former IRRU Director, reviews the origins and impact of industrial relations research at Warwick.

>> See page 2

Alternative dispute resolution

A recent comparative study examines the growing use of alternative dispute resolution mechanisms among EU member states.

>> See page 4

Attendance management

A new report analyses key current trends in the management of attendance at work in the UK and other European countries.

>> See page 6

IRRU’s 40th anniversary

More testimonials from leading industrial relations practitioners and policymakers.

>> See page 8
It was such a different world in 1970. Strikes and trade union power in the private sector were major political issues when the (then) Social Science Research Council established the Industrial Relations Research Unit (IRRU) at Warwick. They dominated headlines and were seen to lie behind Britain’s problems of high inflation, low productivity and export unreliability. When Hugh Clegg and George Bain brought together their team of sociologists, economists, lawyers and historians to address this, the first task was to find out what was going on at the workplace, which the 1968 Royal Commission had identified as the source of the malaise.

The next few years saw most of us out and about on fieldwork. We did not know then how lucky we were. Whether it was the London docks or Black Country foundries, pit lodge meetings or union conferences, people had time to chat. Managers and union activists were happy to discuss the often perverse incentives and odd perceptions with which they worked. This ease of access would not have been possible without the help of so many practitioners, eager for us to shed light on workplace practice. First and foremost was Alan Berry, the leader of the local engineering employers, who opened so many factory gates for us. But, more widely, major employer and trade union figures including Richard O’Brien, Alan Swinden, Pat Lowry and Alan Torrible, and David Basnett and Harry Urwin, respectively, were just some of those whose early guidance and comment were invaluable.

‘Transforming the miraculous into the natural’ was the objective of the anthropologist Malinowski in his studies of primitive societies, and IRRU’s objective in studying the often dysfunctional world of British employment in the 1970s was not very different. We were fascinated by the dominance of ‘custom and practice’, the perversity of uncontrolled incentive pay, the politics of shop steward committees, the side-dealing of foremen, the factions of unions and the practicalities of strikes. What rationality, beliefs and expectations lay behind it all?

But that was not enough. Valuable though the explanation of micro-phenomena may be, it would never get purchase on policy-making without some magnitudes. How typical were these processes? Thus it was that in 1977 we persuaded the SSRC to fund a representative sample survey of British workplaces. It was just of private manufacturing, but that was still seen as the seat of the problem. The results provided the first authoritative data on how the contours of British industrial relations were changing. It led directly on to something much larger. In 1980 a consortium including the (then) Department of Employment, SSRC and ACAS, launched what was to become the periodic Workplace Employment Relations Survey, with a reach far beyond manufacturing. There have been five so far, all with some IRRU input, and another will follow in 2012.

These surveys have been remarkably successful, mapping the rapidly changing world of employment relations, keeping in touch because they have always been refreshed by the insights gained from workplace based case studies. A recent ESRC-funded study – W Brown, A Bryson, J Forth and K Whitfield (eds), The Evolution of the Modern Workplace, Cambridge University Press (2009) – has brought them all together in an analysis of twenty-five years of change, drawing on a wide range of expertise (the Warwick stable included). It has demonstrated, for example, the overwhelming influence of product market competition in transforming British workplace employment relations – forcing managers to manage, defusing the strike weapon, and denying the economic elbow-room for bargaining.

Whatever view one takes of the twists and turns of governmental policy on employment relations over the past forty years, it has been informed by evidence of a quality no other country can match. IRRU’s contribution to this has been colossal. Long may it continue.

William Brown

Professor William Brown is Master of Darwin College, Cambridge and Chair of IRRU’s Advisory Committee. In 1970 he was appointed as one of IRRU’s first research fellows, and was IRRU Director from 1981 to 1985.
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How has this been achieved?
Adjustments, often radical, to working time and pay have played a crucial role. In manufacturing in particular, there has been widespread use of short-time working and/or temporary lay-offs together with a range of other innovative provisions, such as options for career breaks and additional (unpaid) leave.

In many western European countries, the effect on employees’ income of short-time working and/or temporary lay-off is cushioned by statutory schemes – which thereby act as an incentive to the uptake of such arrangements. Since 2008, several central and eastern European countries have also introduced such schemes.

In Britain, however, the widespread implementation of such arrangements has come without there being any offsetting statutory scheme. Instead, short-time working and/or temporary lay-off has been accompanied by reductions in pay. More generally, pay freezes – and even in some cases pay reductions – became the norm during 2009 across large parts of the private sector. Even where this was not the case, other elements to the pay package, such as bonuses, were often frozen.

Developments on both fronts represent change since the recession of the early 1990s, when pay tended to continue to increase. By the late 2000s, the earlier decentralisation of private sector collective bargaining meant that companies’ business circumstances now really do frame negotiating outcomes in a way which they did not twenty years ago. On working time, the effect of the previous recession was to ‘kick start’ negotiations on more flexible working time arrangements in a number of sectors, laying the base for innovative provisions, such as options for career breaks and additional (unpaid) leave.

New forms of cooperation
In larger organisations, and in manufacturing in particular, arrangements involving the introduction of short-time working or temporary lay-offs, accompanied by reduced earnings and/or freezes in wage rates in order to safeguard jobs and skills, have been arrived at through negotiations with trade unions and subsequent agreement. Such crisis-response agreements at company and/or establishment level have been particularly prominent in the engineering, including automotive, sector in manufacturing, and in transport and communications in services. They have been a distinctive feature too in other parts of Europe as well as the UK.

There is, however, a distinct difference between two broad types of agreement.
• One, prevalent amongst manufacturing companies, involves trade-offs: in exchange for shorter-working time and/or pay concessions, there is some form of guarantee over employment.
• The other, which is a feature of agreements in civil aviation across Europe, involves workforce concessions without any explicit guarantees on employment.

The wider implication is that employers need unions to give legitimacy to short-run emergency measures, and to secure the medium-term viability of companies. The challenge for unions is how to insure against short-term memory loss come recovery, and ensure that integrative ‘gain sharing’ processes in bad times become translated into ‘gain sharing’ ones in the good.

New forms of conflict
New forms of conflict have been evident since the onset of the recession as well. Whilst the phenomenon of ‘boss napping’ (in which senior managers, including from the parent company, are taken hostage by the workforce on company premises in disputes surrounding proposed site closures, and which erupted across France over the summer of 2009) has not spread to the UK, there have been some examples of workplace occupations – a tactic rarely used in Britain over the past quarter century. Instances during 2009 included the occupation of two of the three UK sites of automotive components manufacturer Visteon, spun-off from Ford in 2000 and which filed for bankruptcy, and the UK wind-turbine manufacturing facility of Danish-based Vestas.

A common feature of the cases involved, in France, the UK and also Italy – where workforces have engaged in ‘rooftop’ protests against proposed restructurings – would seem to be the remoteness of the corporate managers taking closure decisions. Local management were no longer a relevant interlocutor for the workforce, who through these (new) kinds of action sought to raise the profile of the dispute with the public authorities and public opinion.

Future prospects
Are these developments likely to prove sustainable legacies of the crisis? There has been considerable speculation that one consequence of the extensive reliance on short-time working and temporary lay-offs might be a ‘jobless recovery’, in which under-utilised capacity amongst the existing workforce is taken up as output recovers. It is equally plausible to contend, however, that such arrangements have put companies in a position where they can more rapidly respond to an upturn in orders in the short-term, and because they have retained crucial skills and competences are better placed to thrive in the medium-term.

Whether the cooperation underlying agreements involving reduced working time and/or reductions or freezes in pay in exchange for guarantees on employment endures will probably depend on how far workforces see the prospects of a return to profitability being accompanied by ‘gain sharing’. Companies which are perceived to have behaved opportunistically in securing concessions, because the alternatives were even worse, may face ‘pay back’ in terms of workforce demands for ‘catch up’ on pay, for example.

Finally, in the summer of 2010 the impact of the austerity measures prompted by the public finance consequences of the crisis is only beginning to become apparent. Whether public service employers and trade unions will seek to follow their private sector counterparts in negotiations involving significant employment-related trade-offs is difficult to foresee.

Paul Marginson is chief editor of the European Commission’s 2010 report on Industrial Relations in Europe. The forthcoming report has a particular focus on employer and trade union responses to the crisis.
Alternative dispute resolution across Europe

Individual disputes in the workplace are increasingly likely to lead to legal claims as the scope of statutory protection against dismissal, discrimination, harassment and bullying has been extended. In the light of this, and the costs and time delays involved, attention has focussed on the development of alternative dispute resolution (ADR) processes. The European Industrial Relations Observatory recently commissioned IRRU to coordinate a comparative study of ADR in the EU member states and Norway, published in April 2010. This article highlights the main findings.

There is a patchwork of ADR arrangements in operation across Europe with individual countries choosing methods in line with traditions or emerging patterns of institutional employment relations.

**Extent of ADR use**
As shown in table 1, the use of ADR is reasonably well developed in a group of 11 countries including Austria, Germany, Denmark, Ireland, Italy, Norway, Spain, Sweden and the UK. In the remaining EU countries (excluding France for which no data were made available for the study), its use is low although in many there is evidence of growth and support for the development of ADR by the social partners and, to a lesser extent, governments. Trade union support for ADR is generally widespread as it is seen as being closer to the individual worker in dispute, quicker and cheaper and helps enforce rights at work.

**Types of ADR**
ADR typically involves the use of impartial third parties, prior to judicial proceedings, who engage in conciliation/mediation (the process is much the same except that a mediator tends to suggest a settlement while a pure conciliator does not express an opinion) or arbitration in relation to the dispute in question. In addition, some countries emphasise the role of the social partners in the workplace, or sometimes at sector level, in providing an avenue for a worker to resolve a dispute, e.g. via works councils or similar institutions.

A crucial distinction is between judicial and non-judicial ADR. Judicial ADR takes place once the individual has submitted an application to the relevant legal authority. At that stage a third party conciliator or mediator may seek to resolve the dispute in discussion with the parties or the judge, or a specially trained court official, may seek to find resolution immediately before the hearing. Arbitration may take place at this stage but generally arbitration is the least used process, being seen as rather inflexible, and usually only takes place if conciliation or mediation has failed.

Non-judicial ADR has two distinctive forms. It can mean efforts by unions, managements and governments to encourage the adoption of good standards of employment relations and management practice to reduce the number of incidents in the first place. A good example is the legislative support given to the Acas Code of Practice on Discipline and Grievance. The second form is found in countries like Austria, Germany, Denmark and Sweden where the social partners seek to resolve the problem before it being referred to the court.

**ADR provided by the social partners:**

**Germany**
All employees have the right to have their grievances heard by the works council. It is then possible for a company level arbitration committee to be established. In practice, in most cases where a works council exists, an employee might address the council which would then seek to resolve the matter with management, sometimes using informal mediation. Where there is no works council the union would seek an out-of-court agreement with the employer. In cases of dismissal the works council must be consulted. Only 12% of dismissals resulted in court cases.

Another type of non-judicial ADR is ‘relational mediation’ which is particularly well-suited for dealing with issues of bullying or harassment, whether worker-worker or worker-manager. These disputes usually are dealt with while the individual is still working for the employer. Here the mediator engages in collaborative problem solving with the focus on the future and re-building relationships.

Relational mediation is usually conducted without representatives or lawyers being present and no written decision is issued. There is a growth in privately run mediation centres in many countries often linked to family matters but increasingly moving into the area of employment relations. The UK, Finland and Ireland are at the forefront in providing relational mediation. Usually the employer bears the costs.

**Modified relational mediation: Ireland**
In recent years the Equality Tribunal has adopted relational mediation in place of formal investigations in disputes concerning discrimination or victimisation. The mediation is guided by the principle of self-determination and is voluntary and informal. There are no written submissions and agreements are not published. There is no assumption of a ‘middle ground’ or
compromise position. The parties are given a cooling off period before being asked to sign the agreement. Mediation is three times quicker than a formal investigation.

In some countries conciliation and/or mediation is compulsory in that a third party, usually employed by the state, will help the parties find a solution before it will be heard in court. This is the case in Norway, Italy and the UK.

Compulsory conciliation: Norway
Most cases are brought before a Conciliation Board which helps the parties achieve a simple, swift and cheap resolution. In addition, there is a Dispute Resolution Board which deals with work environment issues such as working time, flexible working and entitlement to absence. Mediation can be offered after conciliation either out-of-court or conducted by the judge or a legally qualified person on the courts’ lists of mediators.

Elsewhere, while conciliation is not compulsory, there is growing pressure to use it but it depends on how far aggrieved employees trust the system. In Poland the use of ADR is very low – a dozen cases a year compared with 180,000 labour law cases. There it appears employees are reluctant to trust methods other than court proceedings. Portugal provides an illustration of recent efforts to establish ADR.

New mediation established by the social partners: Portugal
The Labour Mediation Service was established in 2006 via a tripartite protocol. It deals with all types of individual disputes. The aggrieved worker approaches the service which, after contact with the other party, appoints a mediator from its list. In the mediation phase, time limits for taking a case to the court are suspended. Each party pays a fee of €50. Mediators, paid by the Service, are also paid €120 if the mediation succeeds, €100 if it fails and €25 if it does not take place. Eighteen employers’ associations, 29 companies and 26 unions have so far adopted the procedure.

### Table 1: Extent of ADR use, by country

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<tr>
<th>Countries with medium/high use of ADR</th>
<th>Countries with low use of ADR</th>
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<tr>
<td>Austria</td>
<td>Belgium</td>
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<td>Cyprus</td>
<td>Bulgaria</td>
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<td>Germany</td>
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<td>Denmark</td>
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Source: EIRO comparative study

### Table 2: Success rate of judicial ADR in three countries

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<tr>
<td>Settled at conciliation stage</td>
<td>51</td>
<td>48</td>
<td>43</td>
</tr>
<tr>
<td>Withdrawn from court</td>
<td>31</td>
<td>23</td>
<td>31</td>
</tr>
<tr>
<td>Heard in court</td>
<td>18</td>
<td>29</td>
<td>27</td>
</tr>
</tbody>
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* Excluding Northern Ireland. Source: EIRO comparative study

**Impact of ADR use**
Very few countries collect statistics on judicial ADR and non-judicial schemes are outside the scope of those countries which do. What evidence there is does suggest that ADR is more successful in cases which are multi-faceted with competing sources of evidence such as ‘unfair’ dismissals, discrimination and relational matters. Three countries do have reasonable data on ADR success rates, shown in table 2.

Taking all the evidence together from these countries and from a further six where partial evidence was available, and assuming that some of the withdrawals are the result of ADR leading one party or the other having a more realistic view of success at a court hearing, a tentative conclusion is that judicial ADR leads to around a two-thirds reduction in court/tribunal hearings. It is nearly always quicker and cheaper.

The full text of the comparative study on which this article is based is available to download at: www.eurofound.europa.eu/eiro/studies/tn0910039s/index.htm
Attendance management: employee well-being or cost control?

There are two contrasting currents in the management of attendance at work. On the one hand, workplace health and well-being are attracting increasing attention in the UK, as illustrated by the report on the issue commissioned by the government from Dame Carol Black in 2008. On the other, there is evidence of an emphasis on cost control, and a growing concern with the phenomenon of ‘presenteeism’, the practice of workers attending work when they feel sufficiently ill that they would be entitled to stay at home. The current recession may strengthen the latter tendency. Employers may need to consider the risks of a cost-cutting approach, notably the undermining of efforts to promote health and the hidden costs of presenteeism. Workers and unions will need to consider how to articulate an argument for maintaining the well-being agenda.

Well-being at work
Interest in well-being reflects a wider European concern about the quality of jobs, together with a growing awareness of the hidden costs of ill-health. It is also stimulated by the ageing of the work force. In the UK, the Health and Safety Executive puts the loss of working time due to work-related ill-health and injuries at 1.24 days per worker in 2008–9. This loss is about 60 times the loss attributable to strikes.

In several countries, notably those in Scandinavia, well-being is the focus of clear strategies at national level. Norway, for example, has had a formal agreement between government and the social partners since 2001. These strategies are directed at ‘capabilities’ and finding ways to allow people with illnesses to work. Finland has had a scheme since 2007 that allows a worker absent over 60 days to return to work part-time and claim a partial sickness allowance. In the UK, arrangements are less institutionalised. The Black report, ‘Working for a healthier tomorrow’, has been an important stimulus; many of its suggestions were accepted by the government, including the use of ‘fit notes’ addressing workers’ capacity to work, as opposed to the traditional sick note which simply said that the worker should not work at all.

Company-level initiatives can also be identified. Many of these focus on stress management and the promotion of healthy lifestyles. Some entail partnership programmes agreed with trade unions. Though hard evidence on the effects of these is limited, some researchers conclude that such programmes, and similar efforts to reduce stress, can have beneficial effects. In the UK, several organizations report pro-active programmes of some kind, but specific partnership arrangements are rare.

The picture in the UK is of some companies making significant efforts to address well-being. But sustained programmes linking national and company initiatives and generalising good practice are lacking.

Absence rates, costs and controls
Accurate data on levels of absence are surprisingly sparse. International comparisons are also made difficult through differences of definition and recording practices. Best estimates put typical absence rates in Europe in the range of 3–6%, with the UK being towards the lower end of this range. Few marked trends over time are reported, with some countries showing a slight rise in absence rates and others modest falls. The UK is among the latter group. Previous evidence in the UK suggested that absence rates tend to decline in recessions, though as suggested below this may be balanced by more workers attending work when they feel ill.

The costs of absence also remain remarkably hard to estimate, and the evidence suggests that few organisations have systematic means to measure the costs. In several countries in Europe absence data come from the social security system, so that stated costs are those to the system and not the wider costs to employers in terms of lost production. In the UK, the Chartered Institute of Personnel and Development conducts...
regular surveys of its members. These produce an estimated cost of £659 per worker per year, though this is clearly not based on direct calculations of costs. Conclusions from the past hold true. Absence is clearly costly, but just how costly remains unknown.

A striking finding from across Europe is the prevalence of measures to control costs. In 11 of the 27 countries, specific measures, such as reductions in sick pay coverage, have been instituted. Some of these cuts have been severe, particularly in eastern Europe.

Presenteeism

‘Presenteeism’ is the practice of an employee’s attending work even when he or she feels too ill to be able to work effectively. It may be driven by a sense of loyalty to an employer or fellow workers, or by force, or both. In 12 European countries, there are specific studies of the phenomenon. The proportion of employees reporting that they had engaged in presenteeism over the course of a year is generally in the range of 50–70%. A Danish study reports that the practice is increased where there is perceived job insecurity, a fact that suggests that presenteeism may increase in the near future.

Studies of the effects of presenteeism seem to be rare. One study used the UK’s ‘Whitehall’ studies – a series of detailed analyses based on a large sample of civil servants. It identified a group of male ‘sick presentees’: people who self-reported as unhealthy but who had no absence from work. This group had twice as much coronary disease as people with similar health conditions who had been absent.

A recent UK study by the Work Foundation, commissioned by AXA PPP, found that presenteeism was more common than absence. It also reported that 40% of respondents perceived managerial pressures to attend when ill.

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There are no reliable data on trends in presenteeism. The evidence on pressures to attend work suggests, however, that it may be on the increase. There is also substantial evidence that stress at work has been on the increase in the UK since the early 1990s, and that the factors that promote stress have become more prevalent since 2008.

Conclusions

Interest in well-being is a potentially important development. In the past, attendance management was dominated by the sticks of control systems, with the occasional carrots of attendance bonuses. It did not look at the causes of absence. An approach in terms of well-being tries to address health, with better productivity and lower absence, as well as a more contented work force, being a possible result. Yet such an approach remains rare. And it entails short-term costs which may be hard to justify.

There is also evidence of work stress and pressures to attend work. The recession is likely to increase these pressures. Organisations need to be aware of the potential consequences in terms of worsened health and reduced productivity. Measuring absence rates increasingly appears to be insufficient to address to extent of ill health and its effects in the workplace.

The full text of the EWCO comparative study to which this article refers is available to download at: http://www.eurofound.europa.eu/ewco/studies/trn0911039s/index.htm
IRRU’s 40th anniversary

2010 marks the 40th anniversary of IRRU’s establishment. The previous, Spring 2010 issue of IRRU Briefing carried testimonials to IRRU’s contribution to industrial relations over this period from leading officials at Acas, the EEF and the TUC. Here, four further prominent UK and EU-level practitioners and policymakers add their comments.

"Congratulations to IRRU for reaching this landmark. For forty years it has been at the forefront of academic debates around employment relations, and we look forward to its contribution in the coming years. IRRU’s research has been hugely valuable to the CBI and its members. We have particularly appreciated its work on employee engagement and the development of the modern workplace, an issue we know will continue to merit study in the next decade.”

Katja Hall
Director, Employment Policy
CBI

"Eurofound has enjoyed a lasting cooperation with IRRU, particularly through their involvement in the European Industrial Relations Observatory. Their contribution to our research work has been of great value and much appreciated by our EU and national-level stakeholders. IRRU’s work on the Europeanisation of industrial relations has been very useful to EU policymakers. We have also made extensive use of their research on wage flexibility, employee participation and European Works Councils. I feel confident using results from their research in our own work as I know this is high quality, well researched and documented work."

Stavroula Demetriades
Head of Unit, Industrial Relations and Workplace Developments
European Foundation for the Improvement of Living and Working Conditions

"I wish to congratulate IRRU on its 40th anniversary and to express my appreciation for its competence, imagination and drive in the field of industrial relations research. It has the knack of tackling the right issues at the right time for practitioners – even when we ourselves find it difficult to specify what these are! It keeps its feet on the ground while being able to peer into an uncertain future. It is as well regarded outside the UK as it is at home. I wish it well in the future.”

John Monks
General Secretary
European Trade Union Confederation

"IRRU has played an invaluable role over the last 40 years exploring and interpreting changes in the employment relationship. The depth of talent and experience which the Unit can call on is unparalleled and includes individuals who have made an outstanding contribution to the theory and practice of employee relations. The hallmark of IRRU’s work is its grounding in what actually happens in workplaces, and its relevance to public policy. A major on-going focus has been the evolution of the relationship between employers and unions, which it has consistently addressed in a pragmatic and fair-minded way.”

Mike Emmott
Adviser, Employee Relations
Chartered Institute of Personnel and Development

Further information
Information on our current research programme and projects, and on recent papers and publications, is available from IRRU’s website: www2.warwick.ac.uk/go/irru/

Alternatively, please contact Val Jephcott, IRRU Research Coordinator, Warwick Business School, University of Warwick, Coventry, CV4 7AL; email: irruoffice@wbs.ac.uk; phone: +44 (0)24 7652 4268

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