



Third party dispute resolution in the UK workplace – a better way than litigation

Lynette Harris
Nottingham Business School



Alternative dispute resolution (ADR)-

An exploration of whether ADR is better able to address 'felt fairness' in resolving individual work place disputes than legal remedy – a study of 3 cases where ADR was used

Context

- Long standing concerns in UK that Employment Tribunals were not meeting original objectives - **informal, speedy and cost effective** access to justice
- A topical issue in the light of the UK government's Gibbons review, the 2009 Employment Act and the growing use of ADR for disputes in different spheres
- Diminishing role of T. Unions in jointly regulating employment relations
- Concern about growth in litigation evident in nos of ET claims and an adversarial approach to dispute resolution rather than a solution focused approach based on the merits of a case
- Fears of a growing 'compensation culture' – more likely explanation increased employment rights.
- Growing interest in third party mediation and adjudication- more use of ADR across Europe (European Foundation Report, Purcell 2010)
- Danger of mediation becoming just another fashionable fad? What are its advantages and disadvantages



The research

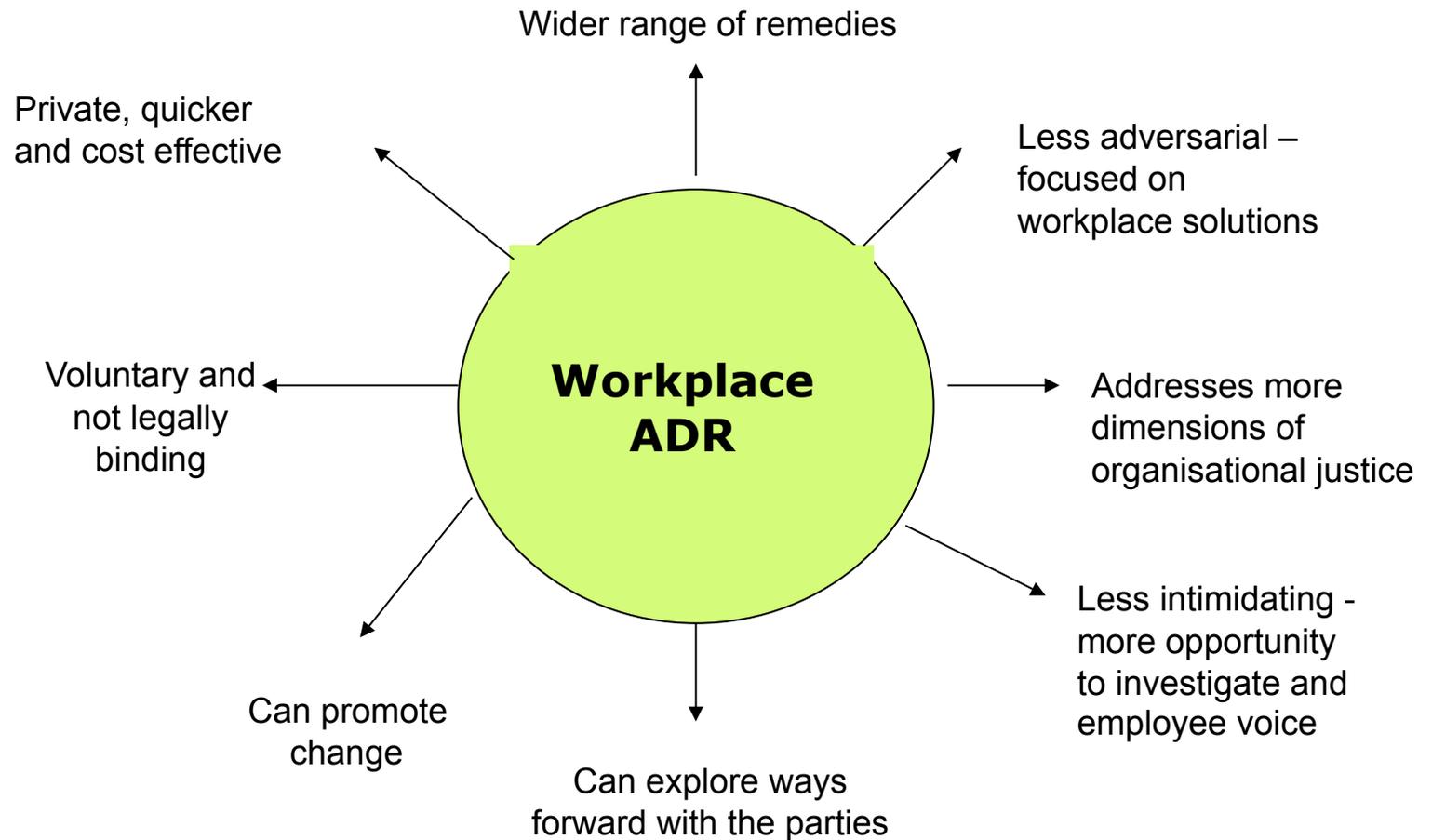
- 3 selected cases experienced as an independent ACAS mediator/arbitrator
- Exploratory case study approach- 'inductive' to develop understandings of dimensions of justice in ADR
- Advantage - richness and depth of data due to critical participative but neutral role and a unique position to observe, record and evaluate
- Disadvantage - evidence obtained without prior categorisation for the purpose of future research
- Examined process and outcomes through three dimensions of organisational justice – procedural, distributive and interactional



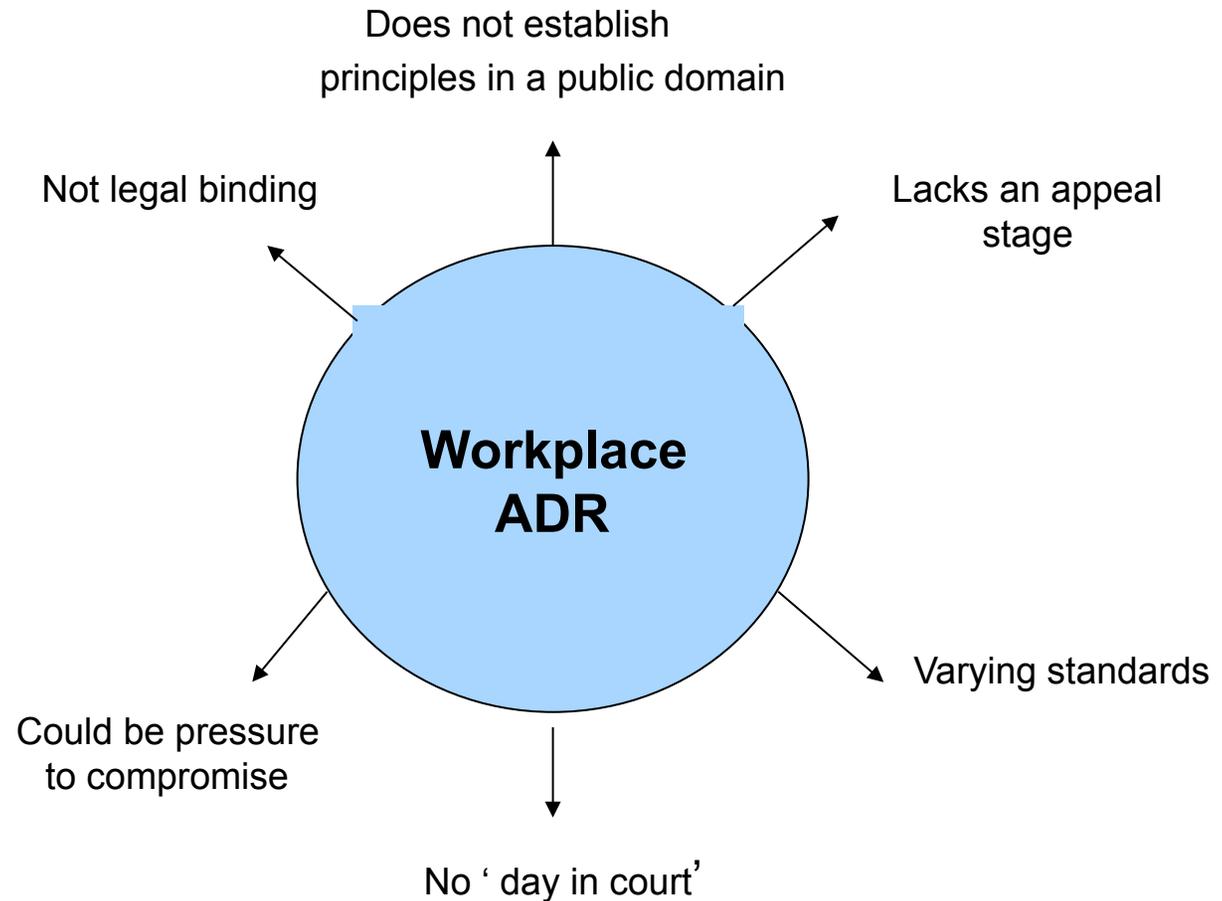
The case studies

- Cases A and B – Public Utilities, both arbitrations concerning multi employee dismissals on the grounds of gross misconduct for breach of company policies leading to loss of trust
- Case C – A Police Authority, mediation involving two employees pursuing a claim of sexual harassment against another member of the force
- In none of the cases were the outcomes legally binding but parties had agreed to abide by the recommendations. In all 3 cases this happened but frustratingly slowly in aspects of the agreement in Case C
- All 3 cases were complex with organisational implications for both policy and working practices
- Employees had initiated the request for ADR in all three cases, in cases A and B it was possible under a collective agreement
- All 3 cases involved union representation

Some advantages of ADR



Some disadvantages of ADR





Conclusions – Dimensions of Organisational Justice (OJ) revealed in the case studies

- Distributive Justice – issues of equity and consistency of treatment a dominant factor in felt fairness for employees in all three cases
- But Procedural Justice dominated employer thinking, an emphasis on compliance reduced a consideration of alternative solutions, for example a simple apology
- Interactional justice had often been overlooked in the pursuit of demonstrating fair process. The gap between formal rules and actual known practices a key source of ‘felt injustice’. Ignoring past service and performance was another
- Often difficult to consider dimensions of OJ independently of each other, they impacted on each other
- The evidence identified that that third party ADR is likely to better equipped to address these than legal remedies
- ADR has been critiqued on the grounds that it is less likely than litigation to change practice, this is not supported by the case study evidence but it cannot establish widely applicable principles as a result of its decisions / recommendations in the way it operates in the UK.



Policy implications

- The business case for a greater use of ADR is largely made on the grounds of costs (Emmott 2009) ; an argument that diminishes if it still leaves a business still vulnerable to litigation.
- To shift the emphasis from compliance to resolution there is a need for a new policy framework for work place justice in the UK which places an equal value on sensitive, flexible work based solutions which take account of circumstances in a particular case (Edwards, 2007)
- Much depends on the quality of third party ADR and it is important that as it grows it is properly regulated and evaluated
- ADR has much to offer in providing more flexible solutions that can address wider aspects of workplace fairness and reducing adversarialism

Whilst it has acknowledged limitations, it is more likely than litigation to encourage employers and employees to achieve fairness through workable compromises especially where there may be conflicting interests at play

- But there is a need for more in depth research to develop our understandings of what ADR offers and when it is more appropriate to seek resolution through a court of law.