

INJUSTICE AT WORK: HOW BRITAIN'S LOW-PAID NON-UNIONISED EMPLOYEES EXPERIENCE WORKPLACE PROBLEMS

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ABSTRACT

This article examines the experience of non-unionised, lower-paid workers in Britain who have suffered individual grievances at work. This is contextualised in the decline in collective industrial relations and conflict, the rise in individual workplace grievances, and the tortuous process of legally enforcing employment rights. The first part of the analysis draws on a regionally representative survey, the Unrepresented Worker Survey, conducted in 2004, of 501 low-paid, non-unionised workers with problems at work. The second part uses qualitative research based on 50 in-depth interviews with a further sample of workers who sought help with employment problems from Citizens Advice, the major British charity that helps people with a range of individual, including employment, problems. The article demonstrates that although non-unionised workers are far from passive when faced with problems at work, their attempts to resolve grievances fail for the majority. Britain's predominantly individualised industrial relations do not deliver a fair and effective system of workplace conflict resolution for workers.

BRITAIN'S DE-COLLECTIVISED INDUSTRIAL RELATIONS AND INDIVIDUAL GRIEVANCES

Christine worked part-time for almost a year at a holiday camp. When she informed her manager that she was pregnant, she was told to take two weeks off,

and on her return, she found her end-of-employment document waiting for her and the manager absent. The Citizens Advice Bureau—her immediate recourse for help, as a non-unionised worker—prepared an Employment Tribunal application for unfair dismissal and sex discrimination, and she hoped for between £500 and £1,000 in compensation. But the hearing was twice postponed, and when she was nine months pregnant she accepted £200 instead. She was left with no job or support, lost her home, and had to live on income support. Christine’s experience is one of many revealed in interviews with non-unionised workers who have sought redress for employment problems with the British charity, Citizens Advice. It contributes to the untold story of Britain’s predominantly non-unionised workforce. Had Christine been unionised, this abuse of employment rights might not have occurred, and if it had, resolution would undoubtedly have been faster and fairer.

This article examines the situation of non-unionised, lower-paid workers in Britain who have suffered individual grievances at work. It explores what these problems are, what workers do about them, and the outcomes of their actions.

There has been a steady decline in trade union membership in Britain since the 1970s, so that today, the vast majority of employees—over 70%—are non-unionised. According to the Labour Force Survey, in 2007, 28.0% of United Kingdom (UK) employees were union members, down 0.6 percentage points from 2005. In the private sector, membership fell by 0.8 percentage points from 2005 to 16.1% (Mercer & Notley, 2008). While union membership may be higher than in some continental European countries, such as France, Britain’s much lower collective bargaining coverage creates a different situation for the non-unionised.

Collective bargaining coverage has declined from a peak of 85% of employees in the mid-1970s (Milner, 1995) to around 30%. In the private sector, which comprises 80% of employment (Office for National Statistics, 2006), only 20% are covered (Mercer & Notley, 2008). In the UK, non-unionised workers in workplaces covered by collective bargaining agreements benefit from the pay and working conditions negotiated for all workers, becoming so-called “free-riders.” However, such “free-riders” cannot seek the union’s help or support with regard to *individual problems* (although some unions are now developing telephone help-lines that sometimes give advice even to non-unionised workers). Moreover, the incidence of “free-riding” has declined, because collective agreements have shrunk to almost the same level as union membership and have “been transformed from being public goods supporting much unorganised labour, to being private goods confined to union members” (Brown & Nash, 2008: 95). Analysis of the Workplace Employment Relations Surveys (WERS) shows that in 1998, 25.7% of non-union members worked in workplaces covered by collective bargaining or a pay review body, but in 2004 this was down to 16.9% (Pollert & Li, 2006).

The process of legal redress for individual grievances is in Employment Tribunals (ETs), composed of a chair, an employer representative, and an employee representative. The unionised worker may obtain representation through the

union, but the system, already noted as stressful in the 1980s (Dickens et al., 1985), was deemed increasingly legalistic and adversarial by the 2001 review of Britain's tribunal system, and "cases were becoming progressively more difficult for the unrepresented user" (Leggatt, 2001: 282-284). Free state-financed legal aid is not available for tribunal representation, and extremely restrictive tests apply to advice under the Legal Service Commission contract. Workers without union representation—about 70% of the workforce—must either pay for a solicitor (which is prohibitive for the lower paid) or rely on voluntary organisations, such as Law Centres or the Citizens Advice Bureaux (CABx), which have restricted coverage and very limited resources, relying largely on unpaid volunteers (Pollert, 2007b; Pollert et al., 2008). Furthermore, ETs are a weak system of enforcement. Employment Tribunals have no direct power to enforce their awards; in England and Wales, when employers do not pay compensatory awards, applicants must seek recompense at a County Court, but they often give up (Citizens Advice, 2004a, 2005; Pollert et al., 2008). Tribunal claimants also face fears of costs being awarded against them, and some employers' legal representatives use this threat to force workers to abandon their claims (Citizens Advice, 2004b). With the exception of awards for unlawful discrimination, sanctions are low.

Nevertheless, with the de-collectivisation of industrial relations, applications to ETs have risen—from 40,000 in 1980 to 130,000 in 2001. Meanwhile, the number of strikes fell over this period from around 1,400 to 200 per annum (Burkitt, 2001; Knight & Latreille, 2000). ET applications have grown: in 2006–2007, there were 132,577 (Employment Tribunals, 2007). This is largely due to a rising number of multiple claims, which occur when a large group of workers makes the same claim against one employer. These doubled from 31,000 to 63,000 cases from 2004–2005 to 2005–2006 (Employment Tribunals, 2006)—that is, from 36% to 55% of all applications over that period—and then to 60% in 2006–2007 (OUT-LAW, 2007). A high proportion of these were equal pay and/or sex discrimination claims, and by their nature, multiple claims are organised and supported by trade unions. Put another way, multiple claims increased by 26% between 2005–2006 and 2006–2007, while individual claims rose by just 3% (OUT-LAW, 2007). In 2007–2008, the total again rose—to 189,300 applications—but again, this was due to the rise in multiple claims (Tribunals Service, 2008: 12). The rise in ET applications does not, then, indicate a rise in litigiousness by *individual* workers.

This lack of recourse to the law by individual workers is demonstrated by the 2004 WERS, which reported that only 2.2 ET claims were brought per 1,000 employees across all workplaces (Kersley et al., 2006). This was similar to WERS 1998, which found 1.7 claims per 1,000 employees, or a rate of tribunal applications (including jurisdictions other than simply unfair dismissal) that was roughly one-tenth of the rate of dismissals (Cully et al., 1999). A number of studies illustrate the low rate of recourse to the law. Genn's *Paths to Justice* survey (1999), conducted in 1997–1998, calculated that between 1992 and 1997, only 21% of a sample of 247 people with non-trivial justiciable employment problems reached

tribunal application. A more recent figure, but based on only 165 people—the 5.3% of those included in the 2006 Civil and Social Justice Survey who had employment problems (Pleasence, Balmer, & Tam, 2007)—reported that only 7.8% used the courts. The Department of Trade and Industry (DTI) 2005 survey of knowledge of employment rights found an even lower figure: out of 435 people with an employment problem, only 3% applied to an ET (Casebourne et al., 2006). More anecdotally, Citizens Advice reports large numbers of aggrieved workers who, even when advised of their rights, fail to take them further (Citizens Advice, 2001a, 2001b).

There are, however, strong indications that grievances at work are common. While it is difficult to obtain longitudinal data, an increase in individual problems is suggested by the rise in the proportion of calls from employees or workers (in relation to calls from employers) to the Advisory, Conciliation and Arbitration Service (ACAS) helpline from 34% to 57% between 2002 and 2008 (ACAS, 2002, 2008). The 2004 survey reported in this article suggests that half of British workers had experienced problems at work in the previous three years (Pollert & Charlwood, 2008), while the government survey of knowledge of employment rights found that 42% of employees had experienced a problem in the previous five years (Casebourne et al., 2006).

Recent surveys also demonstrate workers' poor knowledge or misunderstanding of employment law (Casebourne et al., 2006; Meager et al., 2002; West Midlands Low Pay Unit, 2001). Information and advice are fragmented between the under-resourced voluntary sector (Citizens Advice Bureaux, Law Centres, Low Pay Units, and other advice centres), telephone helplines, ACAS, solicitors, and other legal advisors. Employers' adherence to proper procedure and knowledge of employment legislation are poor, especially among small firms, in which employment relations are "peculiarly resistant to legal intervention" (Brown & Nash, 2008: 94; see also Earnshaw et al., 1998) and based on a "need to know" basis—based on actually having to resolve a dispute, rather than on well-informed legal adherence (Blackburn & Hart, 2002; Edwards, Ram, & Black, 2003).

Despite the evidence presented above, Britain's New Labour government asserts that apart from a narrow sector of vulnerable workers, "The climate of industrial relations in Britain is sound" and "The UK's industrial relations framework is working better than ever" (DTI, 2006: 5). Although it introduced a range of employment protection measures in established areas such as unfair dismissal and discrimination, and extended them to encompass new ones such as the national minimum wage, working time, part-time workers, family leave, and fixed-term employees, it has not strengthened the statutory enforcement process or collective bargaining and maintains its view that individual disputes should be settled within the workplace (DTI, 2006). It remains committed to maintaining a "flexible" labour force and has not repealed Conservative legislation that curtailed industrial action. New avenues to articulate workers' collective voice—the union recognition procedure and the Information and Consultation Regulations of 2004—are characterised by their modesty, indeed, their weakness

(Pollert & Smith, 2009). Neither has lowered the cost of constructing collective organisation—deliberately so (Smith & Morton, 2006).

The findings reported here, on how non-unionised workers fare with regard to workplace grievance resolution, demonstrate that the individualised system is not working. While there is much debate in Britain as to how to define “vulnerable” workers, arguably all workers are vulnerable, but those without collective representation are particularly so. This study focuses on the more disadvantaged, in labour market terms, among them—the lower paid. This narrowing, while arguably excluding many higher-paid non-unionised workers who also suffer injustice and vulnerability, is used to reflect changes in the structure of the labour market over the last 25 years, with an increase in both the number and the proportion of low-paid, replaceable, “lousy” jobs (Goos & Manning, 2007). Taking lower pay as meaning earnings that are below the median, this still applied to 40% of the workforce in 2004 (Pollert & Charlwood, 2008). The first part of this analysis draws on a regionally representative survey, conducted in 2004, of 501 low-paid, non-unionised workers with problems at work in Britain (the Unrepresented Worker Survey, or URWS). The second part uses qualitative research based on 50 in-depth interviews with a further sample of workers who sought help with employment problems from Citizens Advice Bureaux (CABx), the major British charitable organisation that helps people with a range of individual, including employment, problems.

The focus on *workplace* resolution is important here because the government assumes it is working fairly and few workers resort to the law. Furthermore, the government repealed, in 2009, the Statutory Dismissal and Disciplinary and Grievance Procedures that it enacted in 2004, after a government review (Gibbons, 2007). These procedures forced workers to comply with complex statutory requirements before they could apply to an Employment Tribunal, and employers to comply with statutory procedures before dismissing a worker. While the 2002 Employment Act, which enforced the procedures, was roundly condemned as unfair to workers by trade unions and academics (Hepple & Morris, 2002; Pollert, 2005, 2007b), it was pressure exerted by employers, not unions, that forced the procedures' repeal: the unanticipated consequences (formalisation, early recourse to the law) proved to be too great (Pollert & Smith, 2009). Government policy remains the avoidance of legal enforcement, with individual grievances resolved at workplace level and employers following voluntary compliance with codes of good practice.

THE UNREPRESENTED WORKER SURVEY

Sample Characteristics

The characteristics of the URWS sample provide an indication of the primary concentrations of lower-paid, non-unionised workers with problems at work. They can be compared to the UK government's Labour Force Survey

(LFS) respondents and to the subset of LFS respondents who were low paid and non-unionised. Like the low-paid and non-unionised LFS respondents, the workers in the URWS sample were more likely than the average UK employee to be female, to work in the private sector for companies with fewer than 50 employees, and to be employed in unskilled administrative or service occupations. Only in terms of age and full-time employment status were the URWS respondents more similar to the entire group of LFS respondents than to the subset of LFS respondents who were low paid and unrepresented. A very high proportion of sample respondents had been in their job for less than a year when they experienced their problems: 48.3%. In fact, 37.6% had been in post for *less than 6 months* (further details of the sample profile and of the research method can be found in Pollert & Charlwood, 2008).

Problems Experienced

The URWS first asked respondents about problems experienced in any job in the previous three years, then about all the problems in one job, and finally about the main problem they “pushed hardest” to resolve. The most frequent *categories of problems* among vulnerable workers in the three years prior to interview were pay (primarily pay being less than that of others in similar jobs or pay being incorrect), work relations (overwhelmingly stress, followed by management bullying), workload, job security (primarily a worry that they would lose their job), working hours (mainly unpredictability and working more than agreed), contract or job description (mainly the lack of a written job description, and being asked to do things not specified if there was such a description), health and safety, job opportunities, taking time off, and discrimination (see Table 1). In most of these areas, around half felt that their problem was an infringement of their rights. All suffered multiple problems over several years, but in focusing on the *one* screened job with the main problems, two-fifths of the sample were found to have had one problem, one-fifth were found to have had two problems, and fewer were found to have had three or four problems. When *details of problems* were examined, aspects of work intensification emerged as the main areas: stress, being given too much work without enough time, and management taking advantage or bullying.

Seeking Advice

A total of 61% of the URWS sample respondents sought advice about the problem that they pushed hardest to do something about. Respondents whose main problem related to pay, opportunities, discrimination, workload, health and safety, contract issues, and work relations, and women, disabled workers, and those who felt that their problem breached their rights were most likely to seek advice.

Table 1. Nature of the Problems

	All problems experienced in all jobs in past 3 years		All problems experienced in screened job		Main problem that respondents pushed hardest to solve	
	Number	Percentage	Number	Percentage	Number	Percentage
1. Pay ^a	191	38.1	181	36.1	80	16.0
2. Work relations, such as stress or bullying	184	37.6	172	34.3	76	15.2
3. Workload	160	31.9	143	28.5	46	9.2
4. Job Security	152	30.3	124	24.8	32	6.4
5. Working hours	143	28.5	127	25.3	32	6.4
6. Contract or job description	133	26.5	115	22.8	24	4.8
7. Health and safety	122	24.4	109	21.8	42	8.4
8. Opportunities	121	24.2	102	20.4	27	5.4
9. Taking time off	120	24.0	109	21.8	30	6.0
10. Discrimination ^b	89	17.8	76	15.2	19	3.8

Note: Results rounded to one decimal place. Number columns do not add up to $n = 501$ and percentage columns do not add up to 100% because respondents could report multiple problems.

^aFor example, not being paid the correct amount, not being paid regularly, not receiving pay for holidays or overtime, and so on.

^bAgainst the respondent.

Source: Pollert & Charlwood (2008: 12).

Table 2 shows that senior managers were the most common source of advice, closely followed by friends and colleagues at work and individuals' line managers. Interestingly, however, advice provided by friends and colleagues at work, rather than by managers, was considered the most influential by our respondents. Overall, one in five of those who sought advice, or 12% of all interviewed workers, went to an independent, external source of advice, such as a trade union, the Advisory, Conciliation and Arbitration Service (ACAS), a CAB, a solicitor, or a Law Centre. The single most important external recourse was the CAB (12.8% of those who sought advice went to a CAB, and 4.7% rated this as the most influential advice they received).

A little over half of the respondents found it easy or very easy to obtain advice, but carers, the disabled, members of ethnic minority groups, and those who felt that their problem represented a violation of their rights were less likely to have found it easy to get advice. Over half of all respondents were advised to approach their line managers and senior managers informally, one-fifth to use the formal grievance procedure, and 11% to seek support from a CAB. Surprisingly, managers, especially line managers, were less likely than average to recommend using grievance procedures. While 22.9% of all respondents were advised to use a grievance procedure, just 13.7% of those who approached a line manager received that advice. Respondents whose problem concerned workload, health and safety, and contract or job description issues were more likely to seek advice from their line

Table 2. Sources of Advice (Percentage of Sample)

	Source of advice	Most influential advice
Senior manager	34.3	11.7
Friends and colleagues at work	33.0	19.5
Line manager	31.0	10.2
Family or friends outside of work	22.2	16.4
Citizens Advice Bureau	12.8	4.7
Trade union	5.2	3.1
Others in a similar situation	4.6	—
Personnel/HR department	3.9	—
Professional body	2.9	—
ACAS	2.9	5.5
Base observations	306	128

Note: Column totals do not sum to 100% because respondents could select multiple sources of advice and the table does not include sources of advice that are less than 2% of respondents used/found influential.

Source: Pollert & Charlwood (1008: 37).

manager, as were older workers and the disabled. Those with pay problems were more likely to go to a senior manager, while those who felt that their problem had breached their rights were more likely to seek advice from friends and colleagues. Those most likely to seek advice from CABx included workers who felt that their rights were violated, and those whose problems concerned discrimination, pay, job security, taking time off, and working hours.

Action Taken

While it is often assumed that low-paid, non-unionised workers with problems at work usually just leave their job as a result, or passively accept the problem, our results refute this supposition. A large majority of respondents—86%—had attempted to do something to resolve their problem. This applied to the 58% who were still in the job with the problem and the 42% who had left the job where problems were experienced. Some workers were more passive: those in semi-skilled manual occupations and those with less than a year's tenure in the “problem” job were more likely to have “done nothing” than the overall 14% of the sample who took no action.

Most workers took two forms of action, the most common being an informal approach to line managers (81% of those taking action) or to senior managers (50%). While seeking management help among the non-unionised is unsurprising, in the context of an increasingly individualised working environment, one might expect only individualised responses to grievances. Our findings demonstrate that this is not so. A surprisingly large 28% of those taking action attempted informal joint responses with other workers with a shared problem (Table 3). While collectivism consisted primarily in informal discussions about what to do with co-workers (79% of “group actions”), 19% went as a group to managers and 13% organised a group meeting. Considering that the majority (58%) of the sample had never been union members, and given the managerial emphasis on individual employment relations at the expense of collective relations since the 1980s, these findings importantly show that spontaneous collectivism has not been destroyed and that there is potential for individual grievances to develop into collective mobilisation (Kelly, 1998).

While the government has emphasised the need to improve workplace grievance resolution in order to avoid recourse to legal jurisdiction in the Employment Tribunal system (DTI, 2001), our finding that only 14% of workers who took action did so using formal grievance procedures casts doubts on this approach. Our finding is consistent with WERS evidence of a disjuncture between the existence of formal grievance procedures and their actual use: 91% of workplaces had them in 1998, but only 30% used them, and this declined to 20% in the smallest workplaces (Cully et al., 1999).

Table 3. What Action Did Respondents Take?

Type of action	All actions		Main action	
	Percentage of respondents (base: whole sample)	Percentage of those who took action (base: all who took action)	Percentage of all respondents (base: whole sample)	Percentage of those who took action (base: all who took action)
Informal approach to line manager	69.3	80.8	37.7	44.1
Informal approach to senior manager	42.7	49.9	21.8	25.4
Joined together with other workers	24.2	28.2	6.8	7.9
Used formal complaints procedure	11.6	13.5	2.4	2.8
Went to Citizens Advice Bureau	9.2	10.7	3.0	3.5
Sought help from friends or family	8.0	9.3	2.6	3.0
Sought help from a trade union	6.0	7.0	2.4	2.8
Approach to co-workers responsible for the problem	5.2	6.1	3.0	3.5
Began Employment Tribunal proceedings	2.4	2.8	1.6	1.9

Note: Results rounded to one decimal place. Average number of actions 2.2.

Source: Pollert & Charlwood (2008: 42).

Seeking external support was rare: 11% went to a CAB and 9% to a union. Recourse to CABx was less likely if respondents reported a formal grievance procedure at their workplace and if they were educated to degree level. A larger sample would be needed to test for significance in the findings of higher proportions seeking the CABx among those who had problems with discrimination, job security (dismissal, redundancy), pay, and working hours, although these findings corroborate other research on the types of problems dealt with by CABx (Pollert, 2007a).

Only 2% began an application to an Employment Tribunal (ET)—further evidence of the lack of recourse to the law by individual workers shown by other studies.

Outcomes of Problems

The 2002 Employment Act, which introduced the Statutory Dismissal and Disciplinary and Statutory Grievance Procedures in October 2004, was designed to spur employers and employees to exhaust internal workplace resolution of disputes before the dismissal of a worker or the worker's taking a grievance to an ET would be permissible. Although the Employment Act 2008 (HM Stationery Office, 2008) repealed the statutory procedures in 2009, the government retains its commitment to "seeking to resolve more disputes in the workplace" (DTI, 2006: 39). This priority, as well as debate on what might replace the statutory procedures, requires research evidence on workplace dispute resolution. Did the workers who participated in our survey manage to bring the problem that they focused on to a conclusion, and if so, was this a successful conclusion?

The most revealing finding of the URWS was the lack of outcome of attempts to resolve problems. Respondents were asked: "Did this action lead to any conclusion with your employer?" This question was framed so as to identify any conclusion at all, rather than a resolution to the problem. Of the 429 respondents who took action about their problem, 47% reached no conclusion. Just 38% reported that their problem had any outcome and only half of these were satisfied with it. This means that a satisfactory outcome of dispute resolution was experienced by only 16% of the sample and 18.6% of the workers who took action. The low level of satisfactory resolution shown by the URWS confirms other research findings. Genn (1999) found that 52% of those who took action on an employment problem reached no agreement and no resolution. Similarly, just under half of the respondents to a survey of users of a West Midlands employment advice phone line resolved their problem (Russell & Evers, 2002).

Interestingly, the probability of achieving a satisfactory resolution among the sample was double for respondents still in their job compared to those who had quit. A total of 24% of the respondents who were still in the "problem" job achieved a satisfactory resolution compared to just 12% of those who had quit the job. This difference was statistically significant at the 1% level. Put another way,

29% of those who had achieved a satisfactory resolution had left, compared to 44% of those who had not (Pollert and Charlwood, 2008: 61).

THE QUALITATIVE STUDY OF CAB CLIENTS WITH EMPLOYMENT PROBLEMS

The Work of the CAB

The second part of the research on the experience of the low-paid, non-unionised worker in Britain focuses on a sample of workers who had sought advice at the country's largest citizens' support charity, the Citizens Advice Bureau (CAB). This is a generalist, volunteer-led service providing free advice on a range of issues, including employment problems, across England, Wales, and Northern Ireland (Citizens Advice, 2009). The general approach of the CAB—a “new industrial relations actor” in the context of union decline—is to “empower” clients by providing information, helping clients to write letters, and referring them to legal professionals (Abbott, 1998). Provision of specialist employment rights expertise is limited. In 2006–2007, only 144 out of 433 bureaux had an adviser with specific knowledge of employment law (paid and/or voluntary)—just 33%. Thus, the majority of CABs do not have advisers with more than a general knowledge of employment rights (Pollert et al., 2008).

The CAB has always been under-funded and under-resourced (Citron, 1989; Genn, 1999; Pollert, 2005, 2007b; Richard, 1989). In recent research for the Trades Union Congress's Commission on Vulnerable Employment, established in 2007, it was found that 70% of CAB advisers felt they had too few advisers, around two-thirds had experienced cuts in real terms in the previous three years, and for 81%, time spent on fund raising had increased or greatly increased over the same period (Pollert et al., 2008). Ironically, despite declared government commitment to support “vulnerable workers,” state funding to Citizens Advice headquarters—the provider of legal information and training to bureaux—was cut by 10% in 2006–2007, forcing a £4 million (20%) savings programme to reduce annual expenditure. Citizens Advice felt this would “inevitably have an impact on the levels of service” (Citizens Advice, 2006: 4). Meanwhile, changes in state funding for free state-sponsored legal aid has reduced the constituency of solicitors providing free advice to whom the CAB can refer clients (Pollert, 2005, 2007b). Most people are now directed to “no-win, no fee” lawyers, using the system that has extended from personal injury to other areas of law since 1998, allegedly to extend “access to justice” for those confident of winning their case. In this system, while no fees are charged if a case is lost, a higher fee than “normal” is charged if it is won (Lord Chancellor's Department, 1998). Growing concerns about the quality of the “no-win, no-fee” arrangements prompted the government's Ministry of Justice to commission a

major research review of the operation of these arrangements (Ministry of Justice, 2008).

Methodology

The research was conducted in 2004–2005. Thirty CABx managers agreed to participate, and they distributed to clients with employment problems a letter and a prepaid return envelope inviting them to provide a contact number for a telephone interview and offering a £10 gift voucher. A total of 50 people were interviewed, 35 women and 15 men of varied ages. Twenty came from London and the South East, 17 from the Midlands, and 13 from the North. The telephone interviews were tape recorded, after permission had been obtained, and probed the problems experienced, the process of seeking redress, and the outcomes. The interviews lasted from half an hour to over an hour and some were followed up a year later where there were ongoing problems. The names of all respondents have been changed and the workplaces anonymised.

The telephone interviews with workers who approached a CAB for help do not claim to be representative, since the research aim was to provide qualitative insights into the lived experience of problems among those approaching a CAB—the most common source of external advice (Pollert, 2005: 223). The majority of interviewees came from sectors identified as at risk of vulnerability by the CAB (Citizens Advice, 1997, 2000) and by surveys of ET applications and those facing breaches of minimum wage regulations (DTI, 2006: 25): public houses (pubs), hotels, restaurants, care-homes, cleaners, security companies, small shops, hair-dressers, and small factories. However, half of those interviewed had worked in large organisations in both the public and private sectors, including multinational companies with human resources (HR) departments. The problems encountered included summary dismissal, forced redundancy and resignation, prolonged bullying and victimisation, unpaid wages, absence of paid holidays, sexual and racial discrimination, dismissal during sickness, unlawful contract change, and dismissal during takeover. The experiences ranged from crude employer abuse of rights to protracted harassment and sophisticated evasion of legal challenges to malpractice.

Problems in Small Establishments: Dismissal and Unpaid Wages

Dismissals and unpaid wages were embedded in wider intimidation and unfair practice. Some practices were unfair but not illegal: workers were often sacked within their first year of employment, before they had unfair dismissal rights. Other practices were clearly illegal—sacking for requesting an employment right, or during pregnancy (Citizens Advice, 2001c). Some workers were dismissed simply because they were no longer wanted—often on fabricated charges and on provocation with harassment.

Tina, an 18-year-old hair stylist, paid well below the legal minimum rate as a “helper” at £1.57 per hour, and having no paid holidays or lunch breaks, merely asked for a pay increase when she discovered the level of the national minimum wage. Her employer, who also resented *Tina*’s attracting the employer’s clients, had been harassing her by forcing her to manage the salon alone, making her work while ill, and undermining her in front of customers. She sacked *Tina* as she was about to complete her first year. The CAB obtained unpaid wages and holiday pay, but did not challenge other forms of negligence. The only penalty for the salon was that the local college stopped providing it with trainees. *Tony*, a 24-year-old with two years’ service in an animal shelter charity, was unaware that he was earning below the minimum wage; when he realised this and queried it, he was accused of smoking drugs and dismissed. The CAB successfully challenged the unfair dismissal, but although *Tony* was re-engaged, management bullying ensued and he was finally provoked to walk out. The CAB now told him “not to bother with a constructive dismissal case,” because this was notoriously difficult to prove. (Constructive unfair dismissal occurs when an employee is forced to quit against his or her will because of the employer’s conduct, e.g., through bullying, serious breach of contract, or suddenly forcing a geographic move.)

In each of these narratives, the workers presented their workplace situation as a totality. To resolve or prevent the problem, it was necessary to intervene in the entire ensemble of working conditions, to exert workplace and/or external pressure. The reluctance of advisers, particularly non-specialists in employment law, to pursue complex constructive dismissal cases, which usually indicate a medley of bad practices, may also have increased following the coming into force of the 2001 Tribunal Regulations, which raised the maximum fine that could be levied against a very broad range of ET applications that could be regarded as inappropriate or misconceived from £500 to £10,000, and coming into force of the 2004 Tribunal Regulations, which extended the risk of such court costs beyond applicants to advisers too (Pollert, 2005).

In addition, interviews demonstrated employers evading employment rights enforcement. *Jacques*, a young immigrant from Burundi, was paid only £100 after two weeks, instead of £380, and although a CAB entered an ET application for unlawful deduction of wages, no respondent appeared at the hearing. Although he won the case and was awarded £289 by the court, the employer refused to pay. *Jacques* began the next step toward enforcement—an application to a County Court—but two months later, he could not afford the £30 needed for an application form and was so desperate that he asked the research interviewer if she could provide the money. *Graham*, a Nigerian student, likewise had no success in obtaining unpaid wages from a large security company. The “policy” for dealing with grievances at his workplace was a telephone on which workers could leave a message and a manager would allegedly “sort it out.” After repeated phone calls, there was either no response or only a vague promise that *Graham* would be paid. Three months later, he left and approached three different CABx, which, he

reported, told him that in Britain it was extremely easy for employers to avoid paying unpaid wages. Graham's experience with the "no-win, no-fee" solicitor to whom he was referred was no better. The solicitor failed to answer letters and asked Graham to do much of his work in pursuing the aberrant company. Other sample respondents reported similar indifference. Arguably this is because the typical CAB client is low paid, and ET compensation for legal breaches, such as unpaid wages, is based on salary and is therefore low. A "no-win, no-fee" solicitor's share of the resulting compensation is correspondingly small and provides little incentive. Graham abandoned his attempts and was grateful to find another job.

In these cases of wrongful or unfair dismissal and unpaid wages in smaller establishments, the CAB sometimes succeeded in obtaining small amounts of compensation. Although ET claims increasingly cover multiple jurisdictions (Employment Tribunals, 2006), the evidence among these CAB clients is that their advisers selected the simpler legal transgressions and avoided more complex areas, such as constructive dismissal and bullying. Workers fell into two groups in terms of their experience of CAB support. Where access to a CAB was easy (which was more likely for those already sacked, since they were free during the day) and a straightforward settlement was reached, clients were satisfied with CAB efforts, although often disappointed with the poor outcome. The other group was dissatisfied with the difficulty of access to a CAB, such as an inability to get through on the phone, or lengthy waits for an appointment, discontinuity in advice, and lack of competence or unwillingness to deal with constructive dismissal.

Complex and Prolonged Problems in Large Organisations

While cases in the smaller establishments showed employers' casual disregard for or ignorance of the law, those in large organisations showed HR departments that knew the law but that, although they sometimes initially demonstrated conformity with "good practice," finally failed to rectify employment abuse at lower enterprise levels.

Pat was the only woman among six other managers in a large pub in Leeds. She was bullied into working excessive hours and suffered verbal and physical harassment by the manager. She took out a grievance after being refused a break, left, and approached a CAB, which (unusually) tried to pursue a constructive dismissal case but failed to consider possible sex discrimination. The HR manager, rather than mounting a full investigation, arranged her grievance meeting for a Saturday, when none of *Pat*'s colleagues were working, so she was unable to choose who could accompany her under her statutory right to be accompanied at a disciplinary or grievance meeting. The meeting was inconclusive, even though her former boss admitted to hitting her—claiming it was a joke—while denying the unreasonable hours. A tribunal hearing occurred a year later, but *Pat*'s ex-boss now denied all the allegations and claimed he "couldn't remember the incident."

Pat felt too intimidated by the HR department and the tribunal process to continue, and she withdrew her case because she “couldn’t go through with it.”

Penny, an experienced team leader in a large motorway service-station catering chain, was bullied by a new, young, inexperienced, and unqualified male manager who was a friend of the site director. He sexually and verbally harassed other women workers, introduced policies that demonstrated ignorance of the sector, and persistently and publicly undermined Penny. Her patience finally snapped and she informed the site director she could no longer work under this man. She was told to “calm down” and return to work when she had “had time to think about it.” Worn down, she walked out and was signed off sick with stress for two weeks by her doctor: “I had worked so many hours, I was so tired, I wasn’t in the right state of mind to do anything.” When she resumed work, the director with whom she was to pursue the grievance was on holiday: meanwhile, the new manager had downgraded her post and changed her to three-hour shifts, which made travel unmanageable. She went back on sick leave and never returned. The CAB generalist advisor warned Penny against bringing a constructive dismissal case: she received nothing and was glad to get another job.

There were many other examples of workers intimidated by a management hierarchy that failed to challenge malpractice. These included a hotel worker in a large hospitality chain who was racially abused and yet the HR department failed to act; a woman in a large multinational information technology department who was forced to “resign voluntarily”—although she was in reality unfairly dismissed for no reason—then invited back, sacked again, and manipulated in so many ways that she ended with a mental breakdown; a stylist in a major hairdressing chain who, after 15 years’ service, was downgraded after sickness leave with an occupational injury, the HR manager always deferring to the salon manager; and two workers in a sub-contracted security company who were harassed and unfairly dismissed by the end-user (Pollert, 2007a).

PUTTING TOGETHER THE UNREPRESENTED WORKER SURVEY AND THE STORIES IN THE QUALITATIVE SURVEY

The URWS demonstrates that most non-unionised workers with problems at work try to resolve them but fail to get any result, let alone a successful resolution. The problems faced within the workplace are mainly concerned with pay, stress and bullying, workload, and other aspects of work intensification. Most try to resolve their difficulties informally with their managers; few use the formal grievance procedures and very few seek outside support from unions, the CAB, or other organisations. Of substantial interest, however, is the fact that despite the lack of any experience of collectivism or unions among 58% of the sample, and managerial and public policy emphasis since the 1980s on de-collectivised employment relations, 28% of those who tried to resolve their problems joined others with shared experiences—at least to discuss together what they might do.

Spontaneous collective identity thus remains in the workplace, even though we found no evidence of advancing this to more organised, and effective, joint action.

In the qualitative study, workers who sought help from the CAB recounted problems similar to those identified in the URWS, but by the time they resorted to external help, they had usually left their job or been dismissed. Their accounts demonstrate victimisation; sexual and racial discrimination; unfair dismissal; and dismissal before completing one year's service, for pregnancy and for requesting minimal rights. Victimisation was often complex, and while multiple discrimination and harassment were intertwined, it was usually simpler legal breaches, such as unpaid wages or final dismissal, that were challenged by the CAB. Few workers enjoyed the benefit of a CAB with an employment specialist, and the limited assistance they received reflects the difficulty that non-professional volunteers have in taking up complex legal casework. Advisers' resource problems in an already under-funded charity sector have multiplied as employment law has become more complex and funding remains static or declines in real terms (Pollert et al., 2008).

The CAB interviews identified the barriers met by both workers and their representatives in trying to enforce the law. Small companies could "disappear" as legal entities, not appear at ET hearings, or refuse to pay an ET award. More sophisticated employers could prolong and disguise malpractice with more subtle processes, such as changing contracts, setting unattainable tasks under oppressive surveillance, forcing "resignation" to disguise dismissal, confusing workers with re-engagement and then redundancy, fixing intimidating meetings, falsifying records, and "losing" employees' correspondence, including sick-notes. This occurred among larger organisations that had legal representation, and that, in addition to using such evasive manoeuvres, also sometimes used court cost threats to intimidate both workers and their representatives (Citizens Advice, 2004b). These examples demonstrated that when higher-level HR managers became involved, they initially appeared to uphold "good practice," but in the end closed ranks with the managers responsible for the problems. Workers engaged by sub-contractors or agencies suffered even more intractable problems, caught in the web between a subcontractor or agency and its client, each of them shunting responsibility for the worker onto the other. In addition to bullying, many of these cases involved breaches of European Community (EC) Transfer of Undertakings (Protection of Employment) legislation, which should protect workers' jobs, pay and conditions following company takeover, with workers dismissed or suffering pay cuts at the time of an ownership change.

A key problem for workers was access to bureaux, which was usually during normal office hours. Ironically, those trying to resolve problems while still in their jobs were at a disadvantage compared to those who had already been sacked. However, dismissed workers were then faced with the choice of pursuing their grievance with the CAB or finding another job: time constraints meant these were irreconcilable goals. But satisfaction was no greater with "no-win, no-fee"

solicitors, and many workers were deterred by costs. All the CAB clients' stories were distressing. Workers experienced frustration and anger. They suffered financially, physically, and psychologically. Many were forced to take time off work due to stress-induced mental illness and were unable to pursue their grievance until they were well enough.

CONCLUSIONS

The respondents in the URWS showed a willingness to try to resolve problems in the workplace, but largely failed to secure a result. Our evidence shows that internal workplace dispute resolution for the isolated worker does not deliver. And while spontaneous collectivity persists despite its institutional curtailment, it remains on a small scale and has yet to be harnessed into effective power. From our research, there is a strong suggestion that individualised workplace industrial relations and conflict resolution processes in Britain serve to maintain the managerial prerogative. This is illustrated by the CAB study, which reveals some of the complexity of the problems and the pain experienced by isolated workers trying to resolve unfair treatment with only a generalist volunteer organisation to help them. Both studies testify to the crisis in support for the low-paid non-unionised worker in Britain.

The URWS clearly demonstrated that most non-unionised workers do not use the law to resolve their grievances, and while they make many attempts at individual workplace resolution, the vast majority fail to achieve any conclusion at all, let alone a satisfactory resolution. The CAB interviews demonstrated the many ways in which employers, when faced with legal challenges to illegal and unfair practice, find means of evasion. This clearly points to the need to re-collectivise British industrial relations and increase union membership. However, for unions to attract members, they need to demonstrate their effectiveness, and legislation is required to strengthen union power. First, it is essential to re-establish a wide liberty to strike: the legislation that restricts and regulates trade unions and industrial action, including solidarity action, outside ILO Conventions, must be removed (Ewing, 2006). Second, the law needs to shift from merely giving trade unions *immunities* from the common law to giving them a positive right to organise, as exists in many other European countries (Pollert & Smith, 2009).

Regarding the enforcement of individual employment rights, a programme of reform needs to do the following (see Pollert & Smith, 2009):

1. Fund Citizens' Advice Bureaux, Law Centres, and other free advice-and-support organisations so that they can provide a stable and sufficient level of provision for complainants.
2. Establish a labour inspectorate to supervise employers' compliance with the law.

3. Make effective sanctions available to Employment Tribunals and give powers to Employment Tribunals to enforce awards.
4. Extend employment rights, giving equal treatment in basic employment and working conditions available to permanent employees, to temporary agency workers after six weeks in the job, thus complying with the EC Agency Worker Directive.
5. Extend the legislation that requires licensing for “gangmasters” operating as labour agencies in food production and harvesting to all sectors where sub-contracting and agency work operate.
6. Reduce the qualification period for unfair dismissal from one year in the job (initially to six months in the job).

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