Understanding the Social Process of ACAS Arbitration in the Era of Change

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Abstract

Within the British workplace, the last thirty years has witnessed considerable transformation in employment relations as evident with the decline in trade union density. The manufacturing sector has experienced a decline in size while the service and public sectors have grown. Union activities in many of these sectors have also decline over the years. For instance, employees in many sectors are no longer covered by collective bargaining and in other sectors such as the central government; national bargaining has been delegated to the local levels. Employment relationship has become more complex with the increasing use of sub-contracting and agency workers within the workplace. There has been the rise of feminisation of the workforce as women now work across the industries especially in part-time jobs. The law has become increasingly significant and most explicitly established by the increase in individual rights. Individual contracts of employment have become more important mainly because collective bargaining has retreated. The overall figure on strike and individual claims to the employment tribunal signify a summary of this reality within the British workplace. It is against this background of change that Advisory Conciliation Arbitration Service (ACAS) operates and its responsibility is ‘to promote the improvement of industrial relations in particular by exercising its functions in relation to the settlement of trade dispute’.

The objective of this study is to develop a model on the role of ACAS arbitrators during dispute settlement. This study shows that the process of arbitration and the role of arbitrators are shaped by different circumstances which are tailored according to the issues mentioned in the arbitrator’s terms of reference. This study however argues that within the different disputing circumstances and terms of reference drafted by the contending parties and which are submitted to the arbitrators, it is possible to develop a broad typology of arbitrator’s activities, actions, and operations which entails their social interaction among the parties in dispute. ACAS arbitrator’s intervention during settlement is grouped into three stages: classifying, enlightening and decision-making. In the case of classifying, the arbitrator tries to identify areas of agreement and disagreement between the disputing parties. This is achievable while the arbitrator is reading the statement of the case submitted by both parties before the actual hearing date. In the case of enlightening, the arbitrator’s involvement is mainly to provide necessary information and explanation to the parties regarding the role of ACAS, the process of arbitration and the importance of the arbitration award, provided at the end of the hearing. Decision-making intervention, aimed at framing a judgement or decision about the case based on evidence provided by the parties during the hearing in conjunction with concerns stated in the terms of reference.

This study adopted a qualitative approach although with reference to statistical data from ACAS annual reports over the period of 2001-2011. Excerpts from in-depth interviews conducted among ACAS arbitrators are used to describe the model. The study considers the social process of arbitration to be the different roles that are commonly adopted by arbitrators and acceptable to both management and unions within the dynamic internal context and external constraints. This form is an extension of the that developed on ACAS conciliation by Dix(2000). The study is
divided into four sections starting with the introduction. This is followed by the discussion on the changing context of British employment relations. The third section provides a description on the overview of ACAS and the arbitration process. The third section further examines the role of the arbitrator and the process of intervention in ACAS arbitration from which the forms are tentatively drawn. This reflects the material factors that give rise to workplace dispute as well as the dynamic social forms of ACAS arbitrator's interaction, which takes place during settlement. The findings from this study reveal that irrespective of the numerous changes that manifest within the British employment relations system, the role of ACAS is static but its social process during settlement is dynamic.
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Introduction

Collective bargaining is the term that is often used whenever employers deal directly with trade unions (as employee representatives) in order to regulate the conduct and terms of employment. Collective bargaining can therefore be defined as a process of rule-making which leads to the process of joint regulation within an industry (Edwards, 1995). The process of bargaining within this context is bipartite because it involves the employer and employees/unions. The outcome of the bargaining is known as a collective agreement and this reflects both the substantive and procedural agreements. Substantive agreement deals with specific issues that cover hourly pay, overtime rate, bonuses, hours of work, holiday pay, productivity payment, grading issues etc (Burchill, 2008b:83). Procedural agreements on the other hand deals with the relationship between workers and management. Procedural agreements also reflect the procedures that need to be adopted for the resolution of either individual or group disputes. This process consists of how matters such as grievance and disciplinary related issues are handled.

Within the British system, collective bargaining has existed for many years. For instance, after the Second World War, the process of bargaining was largely endorsed as the appropriate means for the regulation of workers terms and conditions of employment (Blyton et al., 2004b:230-231). The British state saw the extension of collective bargaining as a representation of the institutionalisation of conflict which served as a response to bouts of industrial unrest. Bargaining was used by the state to provide the mechanism needed for the promotion of industrial co-operation till the early 1960s. In the mid-1960s, a review of industrial relations was undertaken by the Royal Commission on Trade Unions and Employers’ Association. The Donovan Commission as it was otherwise known investigated the impact of industrial conflict on labour productivity within the United Kingdom and proposed the creation of an institution that would manage conflict and permit economic restructuring such that productivity was improved. This proposal led to the establishment of Advisory Conciliation Arbitration Service (ACAS) in the 1970s, details of which will be discussed later in this study (Howell, 2005:101).

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1 This article is an extract from my current PhD research work at Leeds University Business School, LEEDS, UK.
Beginning from the early 1980s till date, the pattern of collective bargaining in the United Kingdom has exhibited three major trends namely: a substantial reduction in the proportion of employees covered by collective bargaining arrangement; a growing tendency for those arrangements to be local rather than national in character and the narrowing of the scope of collective agreements. For example, over the past two decades, there has been a reduction in the coverage and scope of collective bargaining. This contraction is in addition to the decentralisation to lower levels, all of which add up to a fundamental change in the character and conduct of employee relations. For instance, in the early 1980s, over two-thirds of employees in Britain were covered by collective agreements and in only a decade and a half later, this number slumped to just two-in-five of all employees (Millward et al., 2000:197).

The decline in the coverage of bargaining is particularly significant because it is evident in all sectors of employment such as public and private sectors, manufacturing as well as service sector. For example, in the 1990s the rate of decline of bargaining coverage in private sector manufacturing was far less than the rate in the public sector. Also, the decline within the private sector services was obvious in the 1990s. Statistically, this decline is a reflection of the growing number of workplaces without union and no formal bargaining process. Even in situations whereby trade unions have recognition, the coverage of bargaining recorded a decline. This is evident in 1998 when 69% of employees in workplaces with recognised unions were covered by collective bargaining is compared to 90% in 1984 (Blyton et al., 2004b:239).

The above mentioned decline has become more evident in workplaces where union density is fairly low. This signifies that managers have used low union density level as an excuse for the withdrawal of collective bargaining for the determination of pay and other issues. Management in most organisations have achieved this end by replacing collective bargaining with unilateral managerially determined pay setting agreement. It is evident that these developments are not just the outcome of a breakdown on the part of unions to organise in new workplaces. It is due to the inability of unions to maintain active membership where they already have recognition. This entire process signifies a major change in management strategy which tends to move away from joint regulation (Colling et al., 2010b, Barratt, 2008, Department for Business, 2004 , Department for Business, 1998).
The decline in coverage of collective bargaining has resulted in a decrease in union membership and number of days lost to work stoppages. This is due to the fact that many workplaces are not unionised and very few are covered by collective agreement. For instance, in 1979 the total number of union members was 13.3 million but this number has reduced by half to 6.7 million when compared with the record for year 2009.

Statistical evidence reveals a decrease in the number of days lost per year per thousand workers due to work stoppages. For example, while examining the days lost per year per thousand workers, the figure shows that an average of 1.5 million days were lost to work stoppages from 1960-69. Also, from the years 1970-79 the average number of days lost to work stoppages was 5.6 million. Within the period of 1980-89, the average number of days lost to work stoppages per thousand workers per year was calculated at 3.3 million. In the 1990s however, there was a dramatic fall in the number of days lost to stoppages as evident in 1994 when a total number of 2.7 million days were lost to stoppages. In 1998, 2.8 million days were lost to work stoppages and in the year 2008, the total number of days lost to work stoppages was 1.4 million days. Going by the above mentioned trend, it is evident that there has been a continuous decline in the total number of days lost to work stoppages within the United Kingdom (Burchill, 2008b, Edwards, 2003, Hicks et al., 1999, Edwards, 1995). Some of the reasons attributed to this decline include: low unionization, introduction of legislations and economic restructuring (Edwards, 2003, Edwards, 1995).

It has become clear from the present discussion that despite the statistical evidence which shows decline in the coverage of bargaining and number of days lost to work stoppages in the United Kingdom, the fundamental characteristics and tension within the employment relations such as hierarchy and control, exploitation and resistance still exist (Blyton et al., 2004b). The defining characteristic (structural antagonism) of the system has not changed even though its manifestations had been transformed (Blyton et al., 2004b:350). The reduction in strike can therefore be said to mean that some of the motivations to pursue a dispute has been removed although this does not mean that a sense of loyalty has been created. Other noticeable transformations within the British employment relations will be discussed next.
British Employment Relations: An Era of Transformation

Employment relationship can be said to be the outcome of a dynamic form of interaction that exist between an organization and its employees. Within the British system prior to the 1960s, employment relation was viewed as an essentially voluntarist system whereby management, employees and unions are left to seek their own terms and conditions of employment. Due to the decline in the British economy when compared with other industrialised nations in the 1960s and 70s this principle of voluntarism was challenged and this is reflected in the political and economic context of the industrial relations which will be discussed next.

Within the political context, from the 1970s, the increasing extent of political and legal regulations of industrial relations within the British state changed the face of employment relations. This is because the state became actively involved in the passage of many of the laws that influenced the performance of employment relations (Dundon et al., 2011, Howell, 2005). From 1979 to the mid-1990s, the British government neglected the principle of non-intervention and the employment regulation became an essential board which tried to reform employment relations (Mc Loughlin et al., 1994). The election of the New Labour government in 1997 led to the establishment of additional legal and political changes which continued after the conservative-liberal coalition government assumed office in 2010. With the assumption of the Blair government, a new approach named the ‘third way’ was introduced. This new approach was seen as a path in which government would mediate between the rules obligated by state institutions on one hand and the exploitative character of the unregulated market forces on the other (Blyton et al., 2004b, Giddens, 2000).

A recall of the economic context reveals that in the 1980s, manufacturing industries which were once regarded as the main stream of British employment relations were badly hit by economic decline. During this period, the rate of inflation remained low and the service sector began to expand such that it was increasingly providing opportunities for employment and consumer confidence. In 2009, the British economic system became intermittent by economic recession with immediate effects on unemployment (Rollinson, 2005, Ghoshal, 2005, Sklair, 2002, Eaton, 2000, Giles, 2000).
One of the most evident economic changes within the British labour market is the changing structure and composition of the labour force. For instance, history recalls that in the 1900s United Kingdom population was 38 million. In 2011, this figure increased to 61 million out of which only 28 million operate within the workforce. Going by the economic changes during this period, the proportion of women who now work has increased considerably from 29% in 1900 to 50% in 2011. Another observable change has to do with wages, working and leisure hours. For instance, the average weekly hours of work has declined from the calculated 53 hours per week in the twentieth century to 42 hours from the beginning of the twenty-first century. However, evidence reveals that one-fifth of all full time employees actually work over 48 hours per week (Hughes, 2009:49).

One major change which has been brought about by the wider economic pressure is the sharp increase in service sector jobs. This increase is followed by a significant decline in employment within the manufacturing industry. Female employment has become more significant than it has been for men and this has created some form of gender convergence as seen in 2008 when 78% of men were actively employed compared to 70% of women. Going by the above analysis, Britain currently has one of the highest female labour market participation rates within the European Union. However, due to the segmentation of the labour market, majority of the jobs occupied by women tend to be part-time and of temporary nature. More than half of the women who work within the service sector are found in professions such as catering, cleaning and personal contract services majority of which are low paid and low skilled occupations and which have very limited access to union membership (Dundon et al., 2011). Going by the decline in the coverage of bargaining, union membership and number of days lost to work stoppages in addition to the changing nature and context of employment relations, it is imperative to examine how employers and employees manage disputes such that it does not disrupt productivity. It is within this framework that ACAS fits into and the next section shall examine the creation, remit and responsibilities of ACAS.

ACAS: An Overview

The framework for modern state support for conciliation and arbitration was established at the turn of the twentieth century. The framework which later became the forerunner of ACAS was the Conciliation Act of 1896. The Act gave the minister of labour general powers to investigate the circumstances and causes of any dispute which existed between employers (s) and or a group of employees. (Hawes, 2000a:3). In 1974, the Conciliation and Arbitration Service was created and later renamed the Advisory, Conciliation and Arbitration Service (ACAS). Its council
consists of a chairman and nine members (with three each appointed by the Confederation of British Industry, Trade Union Congress and the Government). The total number of ACAS staff as at 2010 was 850 and its head office is located in London. ACAS London office handles both corporate and national issues while its 13 regional offices located within England and Wales are responsible for handling regional specific disputes (ACAS Annual report & Accounts, 2009/10:11).

The Remit and Responsibilities of ACAS

The Conciliation and Arbitration Service, established in 1974 was later renamed Advisory, Conciliation and Arbitration Service (ACAS). Under the Employment Protection Act of 1975, ACAS became a statutory body and from 1976 its statutory duty was to:

‘To provide conciliation and mediation as a means of avoiding and resolving disputes, to make facilities available for arbitration, to provide advisory services to industry on industrial relations related matters and to undertake investigations as a means of promoting the improvement and extension of collective bargaining’ (Goodman, 2000:35).

ACAS’s task at its inception was wide ranging, but focused primarily on the following: firstly, the extension and improvement of collective bargaining as an objective explicitly stated in the statute. Secondly, to examine and make recommendations on applications for trade union recognition under the new trade union recommendation procedure. Thirdly, to inquire into and make recommendations on industrial relations reform in different sectors. Fourthly, to report on the need for and operation of statutory wage bodies and to issue codes of practice to guide industrial relations and lastly, to provide conciliation, mediation, arbitration and inquiry services which were formerly offered by the Department of Employment.

ACAS’s responsibility is to perform the above mentioned tasks together with a free personnel management advisory service. ACAS is expected to make provision for conciliation in unfair dismissal and other cases brought before the Employment Tribunal (Hawes, 2000a:11-12). ACAS reform objective is aimed at extending the role and effectiveness of collective bargaining as well as assisting the disputing parties (usually employers/employees and unions) to cope with conflict. ACAS planned to accomplish the above objective by using existing voluntary machinery
and judicial processes which were made available by the Industrial Tribunals which were later renamed Employment Tribunals.

From the inception of ACAS in 1974 to the 1980’s the activities of ACAS became intense and innovative due to major controversies over how to deal with recognition claims by trade unions. During this period, ACAS carried out investigations about the state of industrial relations in several sectors such as electricity supply, fire service, bus and coach transport. ACAS also conducted several inquiries into the need for an organisation of wage councils. The outcome of this process resulted in the recommendation for an extension of the reform and establishment of the collective bargaining machinery (Hawes, 2000a:12).

In 1980 for example, ACAS witnessed two significant changes one of which was the appointment of a new chairman. This institutional change coincided with the discontinuation of its reforming agenda which had been in operation since its establishment. With the abolition of ACAS statutory recognition provision, ACAS had to manage its limited budget by placing more emphasis on collective and individual conciliation as well as arbitration and small-scale advisory work (Hawes, 2000a:22). The mission of ACAS was then modified ‘to promote the improvement of industrial relations in particular by exercising its functions in relation to the settlement of trade dispute’ (Dix et al., 2004:2, Hawes, 2000a). These changes continued into the 1990s and in 1993, the Trade Union Reform &Employment Rights Act amended the statutory duty of ACAS. Based on the 1993 Act, ACAS increased its activities towards the prevention of dispute rather than dispute resolution.

Going by the above description, ACAS responsibilities can be considered in two main groups namely; dispute and non-dispute settlement activities. ACAS dispute settlement activities include: conciliation, mediation and arbitration. Non-dispute settlement activities of ACAS include: workplace trainings and projects, in-depth advisory meetings and help line services. This present study shall focus on one of ACAS dispute settlement function which is arbitration and which will be discussed in the next section.

ACAS: Arbitration process

The process of arbitration involves an impartial outsider being asked to make a final decision or judgement on a particular dispute. This function is different from conciliation which is a process that involves a conciliator discussing the issues in dispute with both parties in order to help them reach a better understanding of each other’s position and underlying interest. This is also different from mediation which
involves an independent, impartial person helping both parties reach a solution that is acceptable to everyone. In arbitration, it is the responsibility of the arbitrator to make a firm decision on the case presented before him/her based on the evidence(s) presented by the parties. ACAS arbitration is a voluntary process and as such, both sides must agree to proceed to arbitration. Both parties are also expected to agree in advance that they will abide by the arbitrator’s decision. This is because once the decision is made; the parties cannot proceed to the tribunal.

ACAS arbitration can be seen as an alternative to a court of law with its rules for procedures such as disclosure of documents, evidence and so on. Unlike a court, ACAS arbitration is private rather than public and it is a speedier, informal and less legalistic alternative to the employment tribunal hearing. In most instances, ACAS arbitrators decide on issues related to pay or job grading cases; disciplinary related matters and alleged unfair dismissal cases under flexible working legislation. This process of arbitration is free of charge and voluntary (Curtis et al., 2001, Goodman, 2000, Bamber, 1987). There are three types of arbitration namely: single, pendulum and board of arbitration. A single arbitration process requires the arbitrator to take a decision on a dispute based on the evidences provided by both parties. Pendulum arbitration requires the arbitrator to make an either/or choice between competing claims or offers put forward by either the union or the employer. A board of arbitrators on the other hand consists of an independent arbitrator who chairs the sitting and two side members, one of which represents the general interest of the union while the other the employer.

The procedure for arbitration requires that the arbitrator sits at the head of the table while the representatives of each party sit around the adjoining sides. Discussions during this process are expected to be informal and the parties are free to decide or choose whoever they wish to represent them. In the course of discussion, each party is expected to state their own case and make comments on the case of the other party. Generally, the arbitration sessions last between two to six hours and the selected venue is usually confidential. In the course of the meeting, the arbitrator is expected to ask questions and to ensure that enough information is elicited to assist with a decision on the issue in dispute (Goodman, 2000; Lowry, 1990). ACAS activities in this direction is evident in table 1 below where detailed information on disputes referred to ACAS arbitration and mediation from 2000-2011 is provided.

From table 1 below, it can be seen that in 2000/1 a total of 62 applications were reported. The trend in the number of applications increased and reached its height in 2002/3 when 80 applications were registered. Since then the number of cases has declined, with just 30 applications in 2008/9. In 2009/10 the downward trend in applications changed and increased to 44 but declined further in 2010/11 to a total of
31 (ACAS, 2010/11). This fluctuation can be attributed to the fact that workplace actors settle majority of the disputes that arise internally without the need for assistance from ACAS. Also, the success rate of dispute resolved at conciliation and which do not need to proceed to arbitrator is another reason for this decline.
Table 1: Issues referred to collective arbitration and dispute mediation (2000-2011)

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<tbody>
<tr>
<td>Annual pay</td>
<td>24</td>
<td>16</td>
<td>19</td>
<td>21</td>
<td>14</td>
<td>11</td>
<td>14</td>
<td>8</td>
<td>10</td>
<td>13</td>
<td>8</td>
</tr>
<tr>
<td>Other pay and conditions of employment</td>
<td>18</td>
<td>22</td>
<td>26</td>
<td>16</td>
<td>13</td>
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<td>12</td>
<td>12</td>
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<tr>
<td>Dismissal and discipline</td>
<td>16</td>
<td>22</td>
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<td>5</td>
<td>11</td>
<td>14</td>
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<td>Grading</td>
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<td>1</td>
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<td>Other s</td>
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<td>3</td>
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<td>21</td>
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<td>Total</td>
<td>62</td>
<td>68</td>
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<td>69</td>
<td>58</td>
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<td>47</td>
<td>47</td>
<td>30</td>
<td>44</td>
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</table>

Sources: ACAS Annual Reports for years under review
The process of arbitration, role and style of the arbitrators are shaped by different circumstances which are tailored according to the issues mentioned in the arbitrator’s terms of reference. Within these different disputing circumstances and terms of reference drafted by the contending parties and which are submitted to the arbitrators, it is possible to develop a broad typology of arbitrator’s activities, actions, and operations which entails their social interaction among the parties in dispute. It is the development of this typology that is the purpose of this study and which will be discussed in the rest of this paper.

ACAS arbitrator’s intervention during settlement is grouped into three stages namely: classifying, enlightening and decision-making. In the case of classifying, the arbitrator tries to identify areas of agreement and disagreement between the disputing parties. This is achievable while the arbitrator is reading the statement of the case submitted by both parties before the actual hearing date. In the case of enlightening, the arbitrator’s involvement is mainly to provide necessary information and explanation to the parties regarding the role of ACAS, the process of arbitration and the importance of the arbitration award, provided at the end of the hearing. Decision-making intervention, aimed at framing a judgement or decision about the case based on evidence provided by the parties during the hearing in conjunction with concerns stated in the terms of reference.

Social processes of arbitration are the different roles and styles commonly adopted by arbitrators and acceptable to both management and unions within the dynamic internal context and external constraints. This form is an extension of that developed on ACAS conciliation (Dix, 2000). Using a new model to describe the three broad forms, this section considers the role of arbitrators. It then considers the material factors that give rise to workplace dispute as well as the dynamic social forms of ACAS arbitrator’s interaction during settlement. The study examines the role of arbitrators informed by interview data from arbitrators themselves. This paper concludes by using the information regarding the role of arbitration to build an in-depth understanding of the social process of ACAS arbitration. These roles are discussed and summarized in the model at figure 1.
### Figure 1: A model of the role of ACAS Arbitration

<table>
<thead>
<tr>
<th>Type of intervention</th>
<th>Classifying</th>
<th>Enlightening</th>
<th>Decision- making</th>
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<tbody>
<tr>
<td><strong>Aims of intervention</strong></td>
<td><em>Identifying areas of agreement and disagreement between the parties</em></td>
<td><em>Providing necessary information about ACAS, the arbitration process and purpose of the award to the parties</em></td>
<td>Framing judgement to address issues mentioned in the Terms of Reference.</td>
</tr>
<tr>
<td><strong>Tasks</strong></td>
<td><em>Building expert assurance and confidence in the arbitration process</em></td>
<td><em>Clarifying the issues of the case as well as those mentioned in the Terms of Reference.</em></td>
<td><em>Writing and organising main points and relevant matters raised by the parties during the hearing.</em></td>
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<td></td>
<td><em>Being thorough and flexible while reading the statement submitted by the parties.</em></td>
<td><em>Inviting parties to give presentation of their case</em></td>
<td><em>Making a reasoned judgement based on the evidence provided at the hearing.</em></td>
</tr>
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<td></td>
<td><em>Getting a feel of the case by beginning to make some form of judgement</em></td>
<td><em>Explore the case by co-ordinating question and answer sessions</em></td>
<td><em>Ensuring that the decisions made are outlined to address the concerns stated in the Terms of Reference.</em></td>
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<tr>
<td></td>
<td></td>
<td><em>Clarifying necessary issues and ensures that answers are provided to any other question that crops up during the hearing</em></td>
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</table>
The social process of arbitration is the arbitrators' common procedures and practice of relating with both disputing parties while carrying out the responsibility of making a decision regarding a case. This process involves the approaches and techniques adopted by the arbitrator from the inception of a case to the presentation of the final arbitration award. ACAS arbitrators' social process requires examination in relations to the various forms of observable interactions, which exist among management and unions. These actions are considered using three broad headings as follows:

The initial response of ACAS arbitrators to the needs of the parties is categorised as the classification/classifying stage. It is at this stage that the arbitrator builds skilled assurance, guarantee and confidence of the parties in the arbitration process. During this period, the arbitrator has access to the statement of the case written by the parties and which will enable arbitrators' to have a better understanding of the case before the actual hearing. Whenever the arbitrator provides information and explanations to the parties regarding the role of ACAS and the arbitration process, it is considered under the enlightening stage. The process of enlightening entails clarifying the details of the case in relation to the issues mentioned in the terms of reference. In acting in this role, arbitrators are among other things, attempting to explore the case by co-ordinating questions, which will provide answers that will be required to take the final decision. The decision-making role is the final stage in this process and it requires the arbitrator to make an articulate and comprehensible judgement. This process is made possible based on the evidence (s) provided at the hearing while taking into consideration, issues stated in the arbitrators terms of reference.

The classification of a series of distinct stages within this process suggests that in order for arbitration to be effective, each case will require diverse kinds of interventions. The division of roles into three separate areas imply that arbitration is a process which requires the arbitrator to move from a categorizing to enlightening and then decision-making intervention in cases. However, arbitration is a flexible and dynamic process and arbitrators can act concurrently to accomplish an array of functions reflected in the model depending on how the case progresses and how the needs of the parties are modified. Nevertheless, while handling arbitration emphasis are placed on the importance of the issues raised in the terms of reference. One arbitrator explained the terms of reference as follows:

‘well the terms of reference are drawn up by the parties themselves, agreement by the parties with guidance by a conciliation officer and they are crucial because that’s what you’ve got to do, exactly what the parties asked you to do, no more no less’(Arbitrator X).
Concerning the involvement of ACAS arbitrators in settlement, arbitrators are appointed on ad hoc or impromptu basis. This is practically due to the volume of cases and the need to manage cost. One arbitrator’s practical reason for this was:

‘Arbitrators are appointed on ad hoc basis because there are relatively few cases of arbitration so it wouldn’t be worth the while hiring people full-time. ACAS calls on them anytime they want to….. some people hardly get any cases and others get quite a lot’ (Arbitrator T).

While discussing the background and experience of arbitrators that get involved in settlement, one arbitrator’s response to this issue is described below:

‘….. they are experts and not just academics ….there are people from the law, and people from other areas of professional life….. people interested in alternative dispute resolution’ (Arbitrator Y).

A majority of the arbitrators interviewed indicated that they usually get phone calls from ACAS central office requesting their interest to chair an arbitration session. Unlike conciliation whereby the role of the conciliator is to facilitate the process of settlement, in arbitration the right to make a decision regarding the case is vested in the arbitrator. This means that parties that decide to proceed to arbitration are willing to surrender the power conferred on them at conciliation to take a decision regarding their case into the hands of an independent third party.

The arbitration process entails that before the day of the hearing, the arbitrator ought to have received and read the terms of reference and statement of the case so as to have a feel of what the case is all about. During the hearing, the arbitrator listens as both sides present their case and then addresses the issues in dispute. Limited interruptions are allowed during the hearing and on few occasions, disruptions are allowable mainly for the purpose of questioning or explaining issues, which could be helpful to the arbitrator while making the final decision.

Classifying stage

This element of arbitration refers to the nature of arbitrators contact with both the case and the parties involved in the dispute. The arbitrator needs to read the case
papers submitted by the parties and identify areas of agreement and disagreement, which is very important. This point is further explained by one arbitrator:

‘……so I get the case papers and then what I do is look through them ......very carefully indeed and what I am interested in is first of all where the parties agree so I look for those areas of agreement. But more particularly, I examine the cases for where the parties disagree you know where there are differences in the way they see the dispute and what they think about it so I formulate then, a number of questions that I want answers to’ (Arbitrator Y).

Central to the thinking of arbitrators at this stage is the need to bear in mind that the parties have to learn to live better with each other in the future. According to one arbitrator:

‘I have to do something which improves industrial relations in the future for them.... and in this case, ........I didn’t want to undermine the union officials because I thought the initial offer was quite reasonable and two, given the context so I judge that I would make an award that was very close to management final offer.........I was trying to make an award that would re-enforce the union officials......what they are faced with and in particular sort of keeping the company afloat .........and that the management has put a lot of efforts into avoiding redundancies for instance in maintaining apprenticeship scheme etc. They have worked very closely with the union during the very difficult take over and various other complications...............I thought it was important for the future of the company in this case to send a clear signal that the collective bargaining system was working and both sides should have confidence in it (Arbitrator Z).

Arbitrators therefore try to reach a settlement that both sides in the dispute can live with comfortably. Thus, one arbitrator said: ‘the purpose is to do that which will ensure the long term health of the collective bargaining system in the workplace. It is more than just getting the acceptable settlement on the day’ (Arbitrator X). The effect of the arbitration process and its outcome on the industrial relations climate within the organisation is very important to the arbitrator particularly when the final award is been prepared. One arbitrator puts it:

‘…. my role is to reach a settlement of the case bearing in mind that the parties have got to learn to live better with each other in future so am not just solving a problem, am thinking about the impact on what you might call the industrial relations climate within the business’ (Arbitrator X).
The arbitrator is able to establish contact with both parties and understand areas of agreement and issues in disagreement, which the parties see differently at the classifying stage. It is also at this stage that the arbitrator tries to understand what the parties think about the dispute and possibly make suggestions on its solution. This process is very crucial in the arbitration process because it is the gateway to the arbitrator arriving at a decision and improving good industrial relations between both parties. Arbitrators identified a number of dimensions to the classifying role, which relates to the process of building expert assurance and confidence while trying to attune to the case.

**Building expert assurance and confidence**

Arbitrators usually benefit enormously from the trust, gained and built up with the parties by ACAS conciliators. This is irrespective of the fact that parties proceed to arbitration because they are unable to arrive at settlement during conciliation. In most instances, disputing parties who proceed to arbitration usually request a conciliator’s assistance while drafting the terms of reference, submitted to the arbitrator. The process of arbitration is however completely independent of prior discussion and evidence (s) provided at the conciliation stage.

Parties that decide to proceed to ACAS arbitration are usually required to start their case afresh with arbitrators. This is because ACAS procedure does not permit an arbitrator to receive any prior briefing about the case from the conciliator who had handled the case before it proceeded to arbitration. The hearing day for arbitration is usually the first time that the parties would officially meet with the arbitrator although there are some exceptional cases whereby the arbitrator would have met with the parties ahead of the day of the hearing. One arbitrator’s experience was:

‘I may have met them before because I have been around for so long you know I meet managers and trade union officials but I do not have any connection at all and I mean no financial connection or what so ever with the parties to a case’ (Arbitrator Y).

At the hearing, arbitrators are required to establish assurance and confidence with both parties. This is summarised by one arbitrator: ‘the key consideration in any arbitral proceeding is that the parties must have a full confidence in the process so we do not force anyone into arbitration’ (Arbitrator Y). Arbitrators are required to carry out their duties with the parties based firstly, on their experience as arbitrators and secondly, on their knowledge of the case. One arbitrator’s way of doing this is:
‘.....when I attend the hearing, one of the first things that I do is to inform the parties about the process and the way am going to operate. I tell them what am doing there, how long the whole thing will last and how it’s meant to be informal. I then find out if the parties have ever been to arbitration before and it’s quite interesting that many haven’t......’ (Arbitrator Z).

The strategies for building confidence of the parties during this process are interwoven with the role of the arbitrator. This is particularly evident when arbitrators attempt to place emphasis on the parties being relaxed and comfortable during the hearing. This confidence building strategy was widely seen by arbitrators to be very important particularly when unrepresented parties are involved in the case. The arbitrator’s manner of approach and presentation of the case to the parties is very important. This is because it reveals how well the arbitrator understands the case in dispute. Arbitrators explain to the parties, not only their expertise and experience, but the impartiality and integrity of ACAS throughout the hearing. Gaining the confidence of the parties and building relationship among the parties require some level of sensitivity, understanding and knowledge of the different types of cases that arise and how individual’s respond emotionally to them. According to one arbitrator:

‘I try to feel as sure as I can that I fully understand the arguments and approach of each party. As I said, if you are dealing with an experienced manager or solicitor then you can fall fairly short generally that they are putting the best side of their case and that’s not always the case for the person that is not represented or is fairly represented or is not experienced. In arbitration both management and trade union officials may not be that familiar with the arbitration process’ (Arbitrator I).

Part of the arbitrator’s role is to be responsive and easily approachable by the parties during arbitration and this involves being a good listener. This is particularly important when parties, especially the unrepresented ones are not familiar with arbitration and the administration that goes with its process. In such a situation, some arbitrators see it as their role to make the parties feel they could turn to them for more information and explanation during the hearing. One arbitrator’s description regarding this is:

‘.....if I go to a case where there is a person on their own who are not represented you know I feel I need to do a bit more to make sure that an unrepresented, inexperienced person gets sufficient information’ (Arbitrator Y).
This aspect of the arbitrator’s job appears involving and time consuming. Arbitrators mentioned the need to ensure that unrepresented parties relate their case and visit their concern in detail. One of the means by which the arbitrators get to have an in-depth understanding of the case as well as the concerns and motivations of the parties is by listening to the details of the case during the hearing. Nevertheless, there is the need for the arbitrator to maintain a balance between giving a listening ear to the parties and meeting the anticipated time needed to arrive at a settlement of the case. Gaining the confidence of the parties requires the arbitrator to act as an umpire who manages the emotions and likely frustrations of the parties during the hearing.

According to one arbitrator:

‘….. getting people to think about the problem and in that way often cut through some of the pure emotion that comes from angry people being angry with each other which is how they sort of……a lot of dispute manifest by people being angry with each other and you’ve got to get the facts behind and once you are on the fact, you then are on the pathway if not to finding the solution ….I think to helping the parties to find a solution and to understand the point of view of other side which is very important’ (Arbitrator Y).

This moderating role requires the arbitrator to be firm and decisive right from the beginning to the end of the hearing. One arbitrator’s way of doing this is by being mindful that it is his responsibility to control the entire process. Another arbitrator’s approach of being firm is:

‘I will say that comments should come through me as the chairman and I make sure everyone has a chance to speak and say what is on their mind. I don’t allow cross-table insults and attempts to renegotiate and you do get that sometimes so I will be firm about that and make it clear that those days are past’ (Arbitrator X).

Being detailed and flexible

In describing the approaches needed to build expert assurance and confidence, arbitrators stress the need to be thorough, and flexible when reading the statement of the case and while dealing with the parties during the hearing. For instance, one arbitrator’s way of doing this is: ‘I read through the case submissions carefully for about two or three hours and then compile two lists of between twelve and twenty
questions for both unions and employer/management side'(Arbitrator Z). Based on the understanding that the arbitrator has after reading the statement, he asks questions regarding the context and circumstances of the case in order to have a broader idea of the dispute.

While discussing the flexibility of the process, arbitrators can suggest the use of mediation within the arbitration process. This process means that the arbitrator meets the disputing parties together then breaks them up into separate rooms to discuss the issues in a more objective, impartial and convincing manner. The arbitrator examines the concerns in dispute with both parties in a practical and independent manner in order to enable the parties to step out of their entrenched positions and work towards settlement. The introduction of mediation within arbitration usually makes it a lot easier for the parties to see the problem in a more practical manner before the arbitrator goes ahead to perform his role as an umpire.

One arbitrator’s explanation on the introduction of mediation within arbitration is:

‘...although arbitration is a quasi-judicial role, you work to rules laid down by ACAS, they are very flexible and I like whenever I can to mediate as well as arbitrate within the terms of reference. So if I could think of a way that gets satisfaction to both parties, I do try that on and more often than not, it does work so I get quite a good rate of positive feedback from the parties about whatever I put in’(Arbitrator Y).

Within this context, arbitrators characterise mediation as a medium by which both parties are brought together to discuss, examine and understand their own case and that of the other party better. This examination and understanding of the dispute by both parties is aimed at enabling the arbitrator to assist the parties to identify something within their case that can promote settlement such that in the long run the arbitrator’s decision making responsibility is made more easily acceptable and satisfactory to both parties.

A practical example of how an arbitrator introduced mediation within an arbitration process is summarised in the quotation below:

‘……I put them in separate rooms and said to the union….look I think I can talk to management to rip off this agreement which will go a long way to meeting your needs and if you can drop this particular part of your claim……am sure management will buy this……so I went to the management
and said…..look, I think the union will be really happy to meet you on this key points but you've got to rip off that agreement because …….and I did it in such a way where I said to the management ….look, go in and offer to remove that …..[agreement/grievance] and then demand in return the union will change something as a reasonable condition and I went back to the union and said look go in there and demand the agreement is ripped off but concede that you meet this point and............so when I sit back in arbitration after the adjournment they come out with this settlement which they developed themselves and I write that down as the settlement of the case' (Arbitrator X).

The importance of the award is summarised in this quotation by one arbitrator:

‘ I think that anyone that goes to arbitration has got to be able to be prepared to live with the decision even if it does not go in their favour............If they can’t do that or it seem to be more difficult in doing then they should really consider whether arbitration is the correct route for them’(Arbitrator Z).

Getting a feel of the case

One of the approaches by which an arbitrator attempts to build the confidence of the parties during arbitration is by being open-minded and impartial. This is required firstly, while the arbitrator is reading the statement of the case submitted by the parties and secondly, when the parties are making their presentation and responding to questions during the hearing. One arbitrator introduced this approach as creating rapport, being detailed and summarising key issues:

‘........you just feel what to do and you go along with it. I don’t have a clear idea necessarily of what or how I will react before I hear the case and that is the great surprise and pleasure of doing the job. Although you can read the case and come to a decision in your head; you can often be surprised by how wrong your initial impression was from the paper work so I keep an open mind and try to be flexible. I have to illustrate in the course of the way I carry out the arbitration that I have really understood the issues so I always keep summarising what I think the key issues are and get both parties to agree on my version of events’ (Arbitrator X).
Gaining the benefits of the classifying stage

The process of getting to know about the case and the parties enable arbitrators to familiarize themselves with the case and the respective positions held by the parties. Good understanding and confidence in the arbitrator and the arbitration process is regarded as having fundamental benefits to the parties. For instance, it tends to assist parties with the promotion of settlement and improvement of good employer-employee relations. Having created a good rapport and shown empathy and understanding among the parties, arbitrators are able to use their experience and position to carry out their task. These processes enable arbitrators to make acceptable decisions to the parties and which promote good industrial relations in future. One arbitrators understanding of this process is summarised in the quotation: ‘……I am always thinking about the impact of my decision on the industrial relations climate within the organisation’ (Arbitrator U).

Finally, in seeking the confidence of the parties, the good reputation of ACAS and the prior interaction of the parties with ACAS conciliators are helpful. This reputation of integrity and impartiality is been used to bring parties to resolve the dispute and encourage a good industrial relations climate. The protection of ACAS reputation of trustworthiness and independence is very important to the arbitration process. The arbitrator therefore needs to maintain his/her impartiality by ensuring that the award is written in a simple, detailed and clear manner, which is acceptable to both parties.

Enlightening stage

This stage in the arbitration process involves providing information to the parties on concerns raised in the terms of reference. The aim of this is to ensure that both parties have adequate knowledge and understanding of the different dimensions and context by which the case will be examined by the arbitrator. Usually, terms of reference are used to limit the scope of the problem and direct the arbitrator to the main essence of the disagreement. According to one arbitrator:

‘Sometimes, the parties have written the terms of reference in a certain way for a specific reason and they wouldn’t change them. What I wanna be clear is that it’s absolutely clear as far as the panel is concerned and as far as I’m concerned what am required to do’ (Arbitrator X).
With unrepresented parties, the arbitrator may need to explore in more details, the main issues raised in the case so they can have a better understanding of the dispute. One arbitrator noted that it is important to explain to the parties, the terms of reference, their requirement and likely procedures that will be adopted before the final decision is made. An example of ACAS open-ended terms of reference is described by one arbitrator: ‘……that the arbitrator is asked to consider the position of the company and union regarding the pay award done on 1st April 2012 and to make an award settling the question of pay for 2012’(Arbitrator G).

Arbitrators have identified the provision of information as a vital step in which other activities build on in the arbitration process. Therefore, in order for the parties to understand the requirements of the arbitration process, the arbitrator reads out the terms of reference and obtains necessary information and clarifications from the parties. One arbitrator’s way of doing this is:

‘……what I do is say to parties, now it is to my understanding that the terms of reference means such and such. If they agree that is fine; if they do not agree then I would explore what they mean. If it is necessary, I will alter the terms of reference but I will do that with the agreement of the two parties’ (Arbitrator Y).

In the course of the hearing, some of the information provided earlier in the discussion by the arbitrator is reiterated to refresh the memories of both parties. The arbitrator’s role is usually to ensure that neither party is lacking during the hearing due to lack of information. One arbitrators experience regarding information sharing during the arbitration hearing is:

‘……I always make sure that the parties’ have exchanged copies of their statements. I usually ask them have you got everything that you’ve exchanged. But I remember saying to one party can I refer to your appendix page and the union is like we haven’t got an appendix page’ (Arbitrator D).

Going by the above situation, the arbitrator had to request that the union be provided with the required information (appendix page) in order to continue with the discussion. Other ways by which ACAS shares information with both parties is described next.
Describing the role of ACAS in arbitration

At the outset of the case, ACAS sends a package to the parties. This includes an introductory letter, a leaflet explaining the role of ACAS as well as the date and venue of the hearing. This package also contains ACAS pamphlet that explains in detail, the process of arbitration, which the parties would be attending. Regarding the presentation of the case during the hearing, the parties are required to write and submit to the arbitrator, a statement of their case. The arbitrator reads this statement in preparation for the discussions that will come up on the day of the hearing. On the day of the arbitration hearing, the arbitrator arrives at the venue and gives a brief introduction about himself and about his years of experience and expertise as an ACAS arbitrator to the parties. Then the arbitrator ensures that the parties have received the information package and understood the materials in it. A majority of the arbitrators mentioned that in most cases, the parties acknowledge that they have read and understood the information stated in the documents. However, as they progress in the discussions arbitrators observe that many of disputants do not have a good understanding of the role of the arbitrator and the status of ACAS.

For example, there are instances whereby the parties are oblivious of the independence and impartiality of ACAS and how the arbitration process would work. In such situations, the arbitrator thoroughly describes the role of ACAS, how the particular arbitration process would operate to the parties. According to one arbitrator:

‘often we start doing the explaining because people don’t really understand the role and because it’s a free service for employers and trade unions in Britain and they don’t have to pay any amount for this…. so there is a lot of explaining to be done ….’ (Arbitrator Y).

Another commonly mentioned issue by arbitrators is the need to clarify what the understandings of the parties are about the terms of reference. This is because the parties at times tend to have different opinions and understanding concerning the terms of reference submitted for arbitration. Most arbitrators ensure that whenever the terms of reference is viewed differently by the parties, such a difference is identified and incorporated into the modified reference, which both parties accept before the actual arbitration. Arbitrators try to ensure before they proceed on the hearing that both parties have exchanged their complete statement with each other and that no additional document has been included during this exchange. One arbitrator’s way of ensuring that no extra document is included is:
'I ask them if they’ve exchanged all the documents that they’ve given to me so as to reduce the element of surprise; now sometimes they may have an extra piece of documentation and I’ll have to deal with that at the time. I try to make it clear to them before but some people still try to bring an extra documentation. I generally will only get these things submitted with the agreement of all the parties and then try to make an adjournment so that the other party can scan them properly before they respond' (Arbitrator Y).

Arbitrators mentioned the fact that generally, when the parties arrive on the day of the hearing, they are seeing the main issues in the dispute differently. It is therefore the responsibility of the arbitrator to explain these differing opinions to the parties from an independent and impartial point of view while taking into consideration, the concerns stated in the terms of reference. According to one arbitrator:

‘Sometimes the terms of reference are what we call the flip-flop when you either choose A or you choose B. Well the conciliation officer would explain that and sometimes that’s what is done….. but on other occasions the terms are open ended and for example, a terms of reference could read: the arbitrator is asked to consider the submission put by both parties in connection with pay round for the year 2012 and to make an award’ (Arbitrator Z).

Majority of the arbitrators emphasized the need to keep summarizing the key issues of the case and getting the parties to agree on the newly summarised version during the hearing. Going by these demands, arbitrators have to confirm that enough information is provided during their discussions with the parties. Thus, one arbitrator’s approach is:

‘I will sometimes say that these are the key things that I think we want to determine, the rest are just statements which need not concern the judgement……and I put it as politely as possible with a little touch of humour……I mean it’s not a laugh but it is certainly some way to sometimes diffuse tension’ (Arbitrator X).
Presentation of opening statement by the parties

A further dimension of the enlightening role is in making the parties aware of the core of the disagreement. This is aimed at dealing with the expectations of the party and also guiding the arbitrator from falling foul of breach of duty during the hearing. The arbitrator tries to deal with parties misunderstanding about the process in order to ease their concerns and fears. The arbitrator reminds the parties about the informality and quiet nature of the process. The presentation of the case is usually done by the parties and this process is been presided over by the arbitrator.

In most instances, the arbitrator would ask the union or employee side that is making the claim to make the first formal presentation of their case. During this presentation, the arbitrator expects the parties to summarise what they have brought to the disputing table. At this stage of the presentation, the parties answer some of the questions jotted down by the arbitrator. Once each question listed on the arbitrator’s notebook has been addressed, the arbitrator takes it off and continues to listen to the rest of the presentation.

Once the union side completes their presentation, the management side is usually asked to answer the questions raised during the union side’s presentation. In most instances, the management could say that they would present their own statement and address the questions raised by the union side during their presentation. However, there are situations whereby the management would answer the questions raised by the union side before going ahead to make their own presentation. There are also instances whereby the parties try to correct whatever wrong impression or fact that has been made by their opponent. This point is summarised in the quotation below by one arbitrator: ‘…….usually, they try to correct a fact that they think the other side has got wrong during their presentation’ (Arbitrator Y).

Exploring the case and co-ordinating question and answer sessions

Arbitrators try to start discussions during this session by asking relatively simple questions, which helps them to understand what the parties mean by some specific terms or statement. Once the parties have answered these questions satisfactorily, the arbitrator then proceeds to ask more detail questions in order to seek clarifications and further explanations at the same time. Some of the skills often used
by arbitrator during this discussion include the ability to probe and analyse the issues in dispute. One arbitrator's way of doing this is:

‘....I try to ask questions that might extract information that is relevant to understanding what the underlined cause of the dispute might be........ I also make both sides get the impression that you have given them a proper hearing...... and that is one reason why I ask quite a lot of questions that are not directly relevant to the case. It gives them a chance to say things that might be on their minds but might not be directly relevant but indirectly relevant’ (Arbitrator N).

Once all the questions on the arbitrator's notepad are exhausted, arbitrators usually welcome questions from the parties. In order to ensure that this process is smooth, a majority of the arbitrators suggested that they usually request that questions are forwarded to them so they can then direct such questions to the appropriate party for response. Arbitrators mentioned the need to have a critical thinking and fact-finding mind while listening to the details of the responses made by the parties during this session. One arbitrator's way of finding facts from the parties is: ‘......when you have been a mediator and arbitrator, you are used to listening and asking questions and in particular when you’ve got both sides present you have to be quite ......[tactical] in asking questions’ (Arbitrator Y).

Some arbitrators' way of assisting the parties whenever they notice attempts to renegotiate at the table is to ask for a comfort break whereby each party sits in a separate room. The arbitrator then goes in to visit them in turns usually to have more detailed discussions and probably make suggestions about the situation of their case to them. According to one arbitrator:

‘........a way to do that is to put the parties in separate rooms and say we need a break now let's have a comfort break and I will come and visit each of you in turns and let you know the situation' (Arbitrator Z).

A recurrent challenge for most arbitrators is the ability to strike a balance between providing explanation and advice to the parties. Many arbitrators see this role as highly complex particularly when they try to maintain their impartiality during settlement. The manner by which arbitrators provide explanation can be exposed to considerable differences. For example, some arbitrators ask the parties to summarise the most important five or six key points that they want them as arbitrator to take away in deciding the outcome of their case. Other arbitrators assist the parties by listing the key issues raised and agreed upon during the discussions.
According to one arbitrator: ‘……..I often help them…..I say you know do not forget we have agreed that A, B and C are the key issues so direct your comments on your view of A, B and C’ (Arbitrator V). Usually, arbitrators try to provide the parties with guidance and assistance at this stage particularly whenever such requests are necessary.

Invitation of the parties to make final submission

During the final presentation by the parties, arbitrators mentioned the need to be alert and very attentive particularly when the parties are summing up their case. This is because there are instances whereby just as the parties are making their final speech, few points mentioned could reverse the entire arbitration process and lead to the introduction of an entirely new dispute. Arbitrators therefore ensure that necessary clarifications are made concerning the issues in discuss such that answers are provided for each question raised during the hearing. Once both sides have made their final presentation and the arbitrator feels that s/he has exhausted all the questions regarding the case, the arbitrator acknowledges everyone present for their time and contributions during the hearing. The arbitrator then informs the parties of when ACAS will present the award to their case. Arbitrators stated that the ability to manage the dispute and ensure that it is kept within its limits at this stage is very important. In order to actualise this goal, arbitrators tend to utilize their organizing and supervisory skills. According to one arbitrator:

‘……..I ensure that the summary of their case is tight and compact. I try to write the two sides cases as strongly as possible so that when they read my very brief summary of what they have said, they would feel that it is a fair summary and that will make them feel they have made a good case’ (Arbitrator X).

So much is dependent on the style that arbitrators adopt during dispute settlement. This involves the ability of the arbitrator to read, understand, summarise and interpret the main problems of the case. This process tends to facilitate the arbitrator’s ability to appreciate both the case and positions of the parties. Arbitrators felt that achieving the right balance in such situation came with their years of experience and knowledge of their role while settling dispute. The need to draw a boundary between providing guidance and assistance was a challenge for arbitrators. Majority of arbitrators mentioned the need to be extremely thoughtful while providing assistance and maintaining impartiality. The manner in which arbitrators present information to the parties can be subject to considerable variation
and can be used more or less as a tool for making decision. This is true of many of the dimensions of arbitration described so far and in the next section on the ‘decision-making involvement of the arbitrator in cases’.

Decision-making stage

Beyond the building of expert assurance and the provision of information and enlightenment, arbitrators identified a wide range of roles that they undertake while endeavouring to meet their goal of dispute settlement. When the arbitrator has a good understanding of the case as well as the position of each of the parties in dispute, the likelihood of ACAS to be successful in this process is enhanced (classifying role). The parties are also in a better position when they have a good understanding of the arbitration process and the role of ACAS (influenced by ACAS arbitrators playing the enlightening role). Yet the stage whereby the arbitrator has to make a significant influence is with the decision-making impact on the outcome of the case. This process involves the arbitrator directly dealing with the details and facts of the case. It also entails exploring the issues in a critical way to consider the position of each party as well as their strengths and weaknesses. This will enable the arbitrator to make a decision on the outcome of the case that is acceptable to the parties and promote the future of good industrial relations.

ACAS arbitrator’s approach this element of their work differently because it depends on the arbitrator’s style. For example, Dix (2000) found in conciliation that while some conciliators try to be proactive and very influential, others are reactive and prefer to act as message bearers. A similar range of approaches are identified among arbitrators working with ACAS and these different styles will not be discussed in this study and as such are suggested as areas of further research. Irrespective of the approach that has been adopted by the arbitrator, this decision-making element of arbitration is undoubtedly the most tactical because it requires a high level of ingenuity, firmness and decisiveness on the part of the arbitrator.

A significant goal of ACAS intervention at this stage is to remind the parties that by coming to arbitration, they have both given the arbitrator the right to make a final decision on their case. The parties are expected to abide by the outcome of the arbitration process as they cannot proceed to the employment tribunal once the arbitration award has been presented to them. Arbitrators differ in the way they explain the process of arbitration that they would adopt in a case. Particularly, arbitrators differ in the degree of emphasis that they place on the role of ACAS and their explanation about the terms of reference. However, the quality of information and explanation given to the parties does not seem to differ. Some arbitrators are more explicit than others while trying to arrive at a settlement.
The following quotation demonstrates some of the considerations made by arbitrators while deciding a case: ‘I consider the fact that the purpose of the whole process is to get a settlement that both sides can live with comfortably’ (Arbitrator Y). Another arbitrator’s response: ‘I always consider the long term implication of the employment relations and health of collective bargaining’ (Arbitrator Z).

Going by the excerpt described above, it is evident that arbitrators are not only concentrating on making a decision but more importantly, they are interested in sustaining the future of employment relationship. Strategies adopted by arbitrators while carrying out their decision-making intervention during settlement are described below:

Summarising the main points and making a reasoned judgement

One tactic for highlighting the strengths and weaknesses in a case and bringing about a more critical understanding of the issues involved in the dispute is by summarising the main points and positions of the parties. According to one arbitrator:

‘......I examine the case from where the parties disagree and try to know the difference in the way they both see the dispute and what they think about the dispute. I always keep summarising for the parties, what I think the key issues in the dispute are’ (Arbitrator Y).

This process requires the arbitrator to take note of and put into consideration, the main points raised by both parties while providing an overview of the case. One arbitrator described this process of arbitration as:

‘......I let the parties explore as far as possible and once I feel am getting to the navel of the case, I make sure that I get answers to those questions that I have indicated I need answers to........Once I know that I have enough information to make a decision, I ask the parties if they think there is anything else they think I should know and if there is none, I offer them the opportunity to adjourn and very often they take that opportunity to go back and formulate their thoughts and construct their final submission’(Arbitrator Z).
The understanding of these points by the arbitrator would lead to the presentation of the outcome and award of the case, which the arbitrator presents through ACAS to both parties. This point is summarised in the following quotation by one arbitrator:

‘…..now it is very important at the hearing that I get all the information correct…..and so I do need to make sure that I get them to discuss while I make my jottings which I then take away with me and have got to go back and make a decision’ (Arbitrator Z).

In the course of the discussion, arbitrators were asked how long a typical arbitration process takes. An excerpt from the responses by one arbitrator is provided below:

‘…..the hearing takes three hours and sometimes, it takes a bit longer but people tend to do justice on their case in three hours’ (Arbitrator T).

Another arbitrator’s response to the question is provided in the quotation below:

‘…..the hearing takes between two to three hours within a day and the whole process of arbitration from getting the case to submission of the award takes an average of one month’ (Arbitrator ZV).

The above excerpt reveals that the actual arbitration hearing is done within a day. On the average, the hearing would last between two to three hours although; there are some exceptions which could last up to five hours and which are mentioned by arbitrators.

Arbitrators mentioned that they have to go away from the hearing with their jottings and which is used to write the final award. The process of writing this award by the arbitrator takes an average of one week and once this is completed, the award is sent to ACAS. On submission of the award to ACAS, arbitrators mentioned that there are instances whereby ACAS staff will send the award back to them, requesting for clarifications or more information regarding a particular point which they have mentioned. In all, on the average a typical process of arbitration which starts from the appointment of the arbitrator up to when the award is submitted to the parties lasts one month. The process of making and writing the final decision of arbitration is discussed next.
Ensuring that the final decision addresses the concerns mentioned in the terms of reference

A significant role of the arbitrator is to logically think through the case and make a final decision that would be acceptable to both parties for the promotion of employment relations within the organisation. In order for the arbitrator to explore this possibility, it is very important that the issues in discuss is hinged on the terms of reference submitted for arbitration. This is because any attempt by arbitrators to make decisions outside the terms of reference could result in them going beyond their line of duty and which could negatively influence the outcome of the case. For example, if the terms of reference request that the arbitrator should determine a case of unfair dismissal. The arbitrator could ask the employer questions regarding the procedure for handling unfair dismissal cases within the organisation. The arbitrator will ask union members to provide evidences that support their unfair dismissal claim within the organisation. Hence, the arbitrator tries to consider the arguments and evidences provided by both sides before making the final decision on the case.

In order to assist the parties to assess their case, arbitrators have identified the need to build confidence with the parties in dispute particularly during the hearing. This assurance building process enables both parties to be relaxed and confident all through the arbitration. This is particularly important when the arbitrator is conducting the critical assessment of the case and during the question and answer session. The importance of an arbitrator’s intervention at this point during the hearing is been appreciated and highly valued by majority of the arbitrators interviewed. This is because a majority of them have mentioned that the process of assessing the case enables them to identify and understand the contextual industrial relations climate that is operational within the organisation as well as the circumstances in which the dispute occurred. The need to understand the contextual environment and industrial relations climate is been recognized by arbitrators to be essential for the settlement of dispute and promotion of good employer-employee relations.

The concluding part of the decision-making intervention considers a wide range of tactics, which arbitrators adopt while trying to make final decision regarding a dispute. This process begins with a summary of the key points raised by each party and which will be used to make a reasoned judgement that would take into consideration, the concerns stated in the terms of reference submitted for arbitration. In trying to understand the industrial relations context where the dispute occurred, it may be appropriate for arbitrators to conduct a preceding visit to the organisation. Arbitrators embark on such visits before or after the actual hearing day and most of the time; arbitrators go to the shop floor or factory site accompanied by either management or union officials or both.
This approach is been used by some of the arbitrators to understand how the organisation operates and how employees interact with each other on day-to-day basis. Both union and management have been reported to feel more comfortable with the arbitrator and the process of arbitration on the day of the hearing whenever prior factory visits have been conducted by the arbitrator. This is because during such visits by the arbitrator, both union and management would have engaged in some form of discussions with the arbitrator. The arbitrator would have established the rapport, relationship and confidence needed to work with both parties prior to the actual hearing. The following quotation demonstrates how one arbitrator puts it:

‘……..it was also helpful when I was shown round the factory which is interesting because it was an engineering factory and they were doing ….exciting things. Also you could pick up the impression from the way which the people interact and in this case with the production manager who was my guide. It gave the impression that sort of thing about the mood of the place and that people were working hard and the way they greeted him and he greeted them…….and they were pointing at me and commenting and……. all indicated that the underlining labour relations was very good’(Arbitrator X).
Conclusion

In summary, this study examines the social process of ACAS arbitration and develops a new model to describe the typology of arbitrators’ activities, actions and operations all of which involves their social interaction with the parties during a dispute settlement. The new model broadly categorizes arbitrator’s role to include: classifying, enlightening and decision-making intervention. This qualitative study is based on interviews among arbitrators who describe the different roles that are commonly adopted by them and which are acceptable to both management and union within the dynamic internal and external constraints of employment relations.

A brief overview of the British employment relations context provides an understanding for the increase in the involvement of ACAS during settlement. Some of the dynamic contextual changes identified include: a decline in the coverage of collective bargaining and which has resulted in decline in union membership and number of days lost to work stoppages. Other significant changes include the decline in employment in the manufacturing sector and a sharp increase in employment in service sector jobs. Increase in female participation within the labour market is also a major trend and more particularly in part-time and temporary jobs. It is within this context of less union involvement at work and increased individual employment legislations that ACAS operates and assumes an increasing responsibility over the years. The objective of ACAS is mainly to promote the development of industrial relations by implementing its functions in relations to the settlement of trade disputes. The activities of ACAS are divided into two groups namely: dispute and non-dispute settlement and arbitration is a dispute settlement function of ACAS.

The process of arbitration involves an impartial arbiter making a final decision on a particular dispute and which is binding in principle on both parties. Arbitrators classifying intervention during settlement is aimed at ensuring that the arbitrator identifies the key areas of agreement and disagreement between both parties and in order for the arbitrator to achieve this, there is the need to build the assurance and confidence of both parties in the arbitrator and the arbitration process. While reading the statement of the case submitted by the parties, the arbitrator places more emphasis on the need to be flexible and thorough particularly while trying to get a feel of the case and while making the final judgement of the case.
Arbitrators’ enlightening intervention is brought to the fore while the arbitrator is providing necessary information to the parties about ACAS, the process of arbitration and the purpose of the arbitration award. While carrying out this task, arbitrators ensure that they clarify the issues of the case and those mentioned in the arbitrator’s terms of reference. Arbitrators’ involvement at this stage is evident during the presentation of the case by the parties and during the question and answer session. This process enables arbitrators to appreciate better the case and position of both parties during the hearing. Arbitrators have mentioned that their years of experience and knowledge of their role has been instrumental particularly while they are trying to achieve the right balance and draw a boundary between providing guidance and assistance to the parties.

The decision-making intervention is the final stage in this process, the purpose of which is to enable the arbitrator to frame a decision or judgement on the case based on the evidences provided by both parties and which addresses the issues mentioned in the arbitrator’s terms of reference. In order to accomplish this objective, the arbitrator is expected to make reference to the main points raised by the parties during their presentation and make a reasoned judgement that is acceptable to both parties and which promotes the future of good industrial relations within the organisation.

In conclusion, this study has explored and developed a model on the roles of ACAS arbitration. This description provided is underpinned by what arbitrators believe to be the goal of arbitration and how they go about accomplishing them. By using information on these identified and described roles of arbitration, this study has been able to build an in-depth understanding of the social process of ACAS arbitration. A majority of arbitrators mentioned some of the method of intervention discussed in this study. Some identified a broad range of goals; others simply gave preferences to certain tasks and approaches that they adopt during settlement. Although arbitrators’ are guided by ACAS operating rules, it is apparent that there is a substantial amount of discretion left to individual arbitrators in the way that they go about their work and achieve settlement and which is the interesting part of the social process which this study has explored.
References

ACAS 2010/11. Annual Reports and Accounts.


