

THE IMPACT OF EMPLOYMENT REGULATION ON HUMAN
RESOURCE PROFESSIONALS: A STUDY SET IN THE PUBLIC SECTOR
By

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Abstract

The impact of employment legislation on the conduct of employment relations has been widely studied, but there has been relatively little attention to the effects on human resource professionals. The thesis investigates this issue by conducting thirty one semi-structured interviews at three public sector organisations. Three potential areas of impact are identified: The conduct of the role, notably whether it has become more legalistic; the potential to play a part in organisations' wider strategies; and the professional status of human resource. With regard to the first, the role of the human resource professional in working practice is found to be akin to that of an organisational legal adviser, including mitigating potential risks of employee litigation. On the second, strategic decision making is found to be a problematic area in employee relations as there are too many unknowns and external influences that are beyond the control of the human resource function. Nonetheless, the strength of the function lies in sound pragmatic operational strategic practices. Finally, on the third the thesis argues that human resource professionals within the employee relations environment are organisation-based pragmatic legal advisors but that they lack the educational advantage and decision making skills required of legal professionals. Nevertheless, employment regulation has raised the expertise level needed in the profession, which in turn has elevated the human resource identity such that in future the role may move even further in the direction of formalisation and professionalisation.

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I dedicate this research to all women and girls who are campaigning and living in often dangerous circumstances for the right to be educated and treated fairly in a world that still struggles to allow full equality to women.

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CHAPTER 1 – INTRODUCTION

1.1 Introduction

This research investigates the impact of increased employment regulation on defining human resource professional identity and practice in public sector organisations (Poole, 1986). In recent decades public sector organisations in Britain have undergone changes in composition and structure, which has necessitated changes in human resource practices and increased the influence of employment regulation (Heery 2011b, Dickens and Nea1, 1993). Against this background the thesis research focuses on the relationship between employment regulation and human resource professional identity. In addition, the research explores how employment regulation defines human resource strategic decision making with line managers and trade union officials as public sector stakeholders.

Human resource professionals in the traditional sense are not “buyers or sellers of labour” (Coyle-Shapiro and Conway, 2004) but they are pivotal in securing and managing labour on behalf of the organisation. This role brings them into direct contact with the demands of employment regulation. As such, human resource management as a function has an important role in organisations. A CIPD (2005:5) report found “human resource policies are an effective way of implementing employment legislation, and that many employers already go beyond the minimum requirements, showing that good people management in areas such as flexibility is good for the business as well as employees.” The human resource function is the natural home in organisations to implement new employment legal changes through

policies and practices. Such changes usually manifest in organisational policy changes and advice in diverse areas such as recruitment and selection, anti-discrimination policies, and work place disputes, against the ever increasing backdrop of potential employee litigation (Harris, 2009).

Increased employment regulation has not always played such an important part in employee relations in Britain. The current position is in direct contrast to “the so-called voluntarist system, which characterized British industrial relations for most of the twentieth century” (Dickens 2012:1). Recent legislative changes have been pivotal in changing not only workplace relations but also, importantly in the context of this research, the human resource professional role. There has been extensive and relevant research (Dickens 2012, Heery 2011b) outlining the effects of employment legislation on employee relations but limited research on understanding how regulation impacts on the human resource professional role and organisational practice.

The context of human resource management is acknowledged by Dibben et al. (2011:95): “the development of human resource practices must be situated within the context of social, economic and political conditions.” This is particularly pertinent with regard to employment regulation as the expansion of employment law both at statutory and common law levels during the last thirty years has resulted in nearly one hundred different types of appellant cases that can be heard by Employment Tribunals. This does not discount cases heard in other courts (Taylor and Emir, 2015). The Human Resource Magazine (2012) conducted a survey that recognised the diversity of regulation-based human resource practices and found that the most consulted employment issues were: “redundancy, disciplinary and grievance,

maternity-rights, discrimination and collective consultation, which have a direct impact on practice”(magazine.co.uk/article-details/top-10-uk-employment-law-issues-in-2012). This has not gone unnoticed in the employee relations field. Heery (2011:90) observed that “the growth of legal regulation is arguably the single most important trend in the real world of industrial relations of recent decades”, which has affected both the human resource and trade union roles.

There has been much discussion on the origins of the human resource role (Legge, 2005, Torrington and Hall, 1997) in relation to trade unions as a stakeholder, but insufficient depth around how the law has affected and enhanced human resource professional identity. Essentially, this research is taking a pragmatic stance by getting to the “nuts and bolts of human resource practices” (Thompson 2011:365) in relation to how employment regulation influences strategic decision making, and the role of the human resource professional. For instance, previous studies(Fevre et al. 2009, Fair Treatment at Work Survey 2008) have illustrated how employment regulation has failed to provide equality and fairness, especially to the most vulnerable in the workplace, both on a collective and individual level, whilst not illustrating what this means for human resource practice or identity.

Dickens (2012) makes a fundamental point that employment (legal) rights are a matter of “enforcement and compliance.” Enforcement and compliance are central to the role of the human resource function as human resource professionals act as enforcers of employment regulation through organisational policies and guidance to line managers in order to get them to comply with the regulatory environment when managing employees. This is further discussed by Edwards (1995) in the context of employee

relations as a form of control, both negative and positive, which is recognised in how parties act within the employment relationship. Increased employment regulation on the human resource role is pivotal, as HR has to adapt organisational policies to meet external legal requirements (Dobbin et al. 1993).

Moreover, as Dickens (2012:3) notes, “the 2008 Fair Treatment at Work survey showed that only three per cent of employees who report experiencing a problem at work actually go on to register an Employment Tribunal claim, and the profile of Employment Tribunal claimants differs from the profile of those who report experiencing workplace problems”(Fevre et al. 2009). This is important in understanding the role of the human resource function, as managing employee disputes starts from the moment a grievance or disciplinary procedure is enacted and not just when a court action is commenced. Subsequently, this has created increasing demands on human resource professionals to have knowledge and skills in integrating employment regulation into organisational policies. Such work not only needs specialist knowledge but can also have resourcing implications for the organisation and subsequently the human resource function.

The public sector workplace has become more centered on procedural practices such as monitoring employees for sickness and grievance procedures, in stark contrast to previous decades where collective bargaining was actively promoted as "the main way of regulating employment" (Brown et al. 2009: 22). This makes the public sector particularly interesting as a research project in investigating the effects of employment regulation. One important reason for greater adherence to employment regulation in the public sector is the concept of public sector management (model employer) that

has evolved since the 1950s when it first gained recognition. Bach et al. (2009: 309) described the term “model employer”, as noted in the Priestley Report (1955), as endorsing the “principles of fairness, involvement and equity [in] its treatment of workforce” that could be viewed as “characteristic” of the public sector during the 1960s and 1970s (Bach et al. 2009: 309).

Today, the understanding of the model employer concept (Bach et al. 2009) is more rooted in the work of the human resource function as contemporary employee relations moves more towards the private sector employee relations model, relying more on individual contracts and negotiation, in contrast to the collective approach. The model has been dismantled from the 1980s onwards and has been replaced with an approach more based on contracts and regulation (Heery 2011b), which has strengthened managers’ authority over workers.

The rationale for the research in this thesis is based on the need to understand what human resource managers are doing with regard to managing employment regulation in the public sector. Human resource professionals in the public sector have different forms of pressure from the private sector (Bach et al. 2009), due to having the state being the employer and the originator of employment regulation. For human resource professionals the relevance is that they have to manage key stakeholder relationships such as trade unions relationships, line managers and interactions with employees against a regulatory environment (Heery 2011a). In addition, there is the added pressure of the publicity that can go with mismanaged employment relationships that

can reach public and government attention through the media or via the judicial review processes.

There has been much insightful research (Heery, 2011b; Dickens and Neal, 2006) that has opened up the discussion into how employment regulation has impacted on institutions and inequality, alongside changes to the employment relationship. The employment legal agenda has been driven by successive governments' piecemeal approach to developing the Employment Acts during the 1980s and beyond, whereby they forced the trade unions and employers into a reactive position of having to live with the law. Often, employers were also hampered because they did not understand the consequences of employment law or how to manage it. The purpose of the Acts, as Dickens et al. (2009) note, was more about controlling the collective rather than advancing individual legal rights. There has been much research (Davies and Freedland 2007; McCarthy, 1992: 60) regarding the effects of employment regulation on the role of trade unions in organisations as a collective force, but very little regarding the role of legal professionals.

The rise in both statutory and common law in the workplace has unintentionally stimulated its own industry with the subsequent growth in legal professionals and new legal disciplines. Employment law is a relevantly new legal discipline. By "1971 [employment law] was beginning to be taught increasingly in a number of academic institutions" (Rubenstein, 2011:1). At that time there were no specific courses on employment law as a separate discipline: "employment law, as we now know it, did not exist either in name or substance" (Rubenstein, 2011:1). Recent statistics

produced by the Law Society's "*Trends in the solicitors profession Annual Statistics Report 2014*" illustrate that practicing solicitors have increased from 90,000 (2005) to nearly 150,000 by 2014 (Law Society 2014 :1), and employment lawyers are seen as a significant component of the growth (The Law Society , 2014 :2).

There are, however, omissions in the current employee relations literature on what constitutes a legal (employment) intervention, or what an intervention consists of in relation to contemporary employment relationships, despite the term being used frequently. As Dickens (2012 :1) comments: "the reasons for this are many and complex, but part of the explanation is that the development of a more comprehensive role for legislation has not been accompanied by any strategic consideration of the mechanisms, institutions and processes for rights enforcement" by the Government. The lack of definition has not facilitated an appreciation of the different forms of employment regulation, and how the legal system interacts with workplace stakeholders and the human resource profession.

Frequently, as noted by Heery and Frege (2006: 601), employee relations focus on "narrow definition(s) of the field" without evaluating fully all aspects of the English legal system in employee relations. In essence, although the state decrees legislation, there is no strong norm coming out of the state to direct what individuals should do as implementation of employment regulations is left to individuals, organisations and ultimately the judiciary. This leads to different attitudes as to how to interpret regulation in workplace practices, which can lead to confusion and variance in both human resource and managers' practices.

The employment legal environment has brought change not just for human resource professionals in how they carry out their role but has also changed their interpersonal relationships with organisational stakeholders such as line managers and trade union officials. As Heery (2011:81) comments, organisational control is obtained through “specialist management functions”, but there is little understanding of how law has controlled the human resource profession’s role and function.

The onus is now on human resource professionals, (representing the employer) to ensure that compliance with the employment legal framework is adhered to throughout organisations in order to help prevent employee litigation (Dickens 2012). This means that human resource professionals require legal expertise, through study and practice, in order to give sound legal advice to stakeholders. Specialist expertise is particularly required in understanding the complexity of the “Common (Case) law” (Heery 2011:80b). Consequently, the responsibility lies with human resource professionals to cover the back of the employer against legal claims; this in turn has led to more formalized stakeholder relationships in order to prevent financial repercussions to the employer.

In all fairness to the human resource profession it is not as if they had much choice about moving into the employment legal arena. Increased regulation in the workplace has put much pressure on the human resource role to be “retheorized” (Heery 2011:81b), yet this research sees the changes in the human resource role as a pragmatic reaction to external events, rather than a deliberate strategy to re-define human resource professional identity by the profession.

Furthermore, this research finds that whilst employment regulation has changed the human resource professional role in organisations, it has also created unique opportunities for the profession. Dobbin and Sutton (1998:442) note that: “the uncertainties raised by legal reform have created opportunities for ambitious personnel managers to expand their purview.” Human resource professionals are filling this void. The narrow scope of employment compliance can hinder a stakeholder’s view of the human resource role if such a role is seen to be akin to enforcing a rule book. Similarly, a narrow view could overlook potential development opportunities for the organisation’s human resource function. To date little research has been conducted into how professional development opportunities for human resource professionals have occurred in relation to increased employment regulation.

The requirement for legal knowledge and skills has caused human resource practitioners to have more formal knowledge in legal skills than was noted in the past (Wolf and Jenkins, 2006), this being a response to increased employment regulation and the pressure of the legal services market. This thesis recognizes that there are two views. On one hand employment regulation increases human resource professional identity as it enhances skills-sets and knowledge. On the other hand it marginalizes and constrains the profession in to being legal monitors reactive to external pressures that they have no control over. The point is made by Noordegraaf (2011: 465) who comments that: "the connections between professionalism and organizations are not so much shaped inside, but outside the organization." The significance to the human resource profession lies in their interface within the legal services arena and whether they have overlapped with another professional boundary whilst being service providers within organisations.

Furthermore, this thesis argues that the entry of new stakeholders such as legal professionals, solicitors, barristers and civil society organisations (Fine, 2006; Heery and Frege, 2006; Williams et al. 2011) has changed the interplay between organisational stakeholders and human resource professionals. This thesis notes that little discussion has taken place in the employee relations literature in relation to how increased workplace regulation has altered workplace relations and the subsequent interaction between legal and human resource professionals in workplace disputes. The overlap into the arena of legal services is recognised by the Law Society (2014). In reviewing their market share and future market scenarios for the legal profession they state “the role of the non-solicitor and barrister is significant.”

Moreover, this thesis contends that there is a gap in current knowledge between understanding the role of the human resource professional and understanding the role of other stakeholders such as line managers and trade union officials in relation to how employment regulation impacts on strategic decision making (Harris, 2009). For example, does the human resource function have any strategic choices bearing in mind that they are constrained by an external regulatory framework? There has always been difficulty in aligning the concept of strategic choice (Child 1972, 1998) with industrial relations practice, as noted by Kochan et al. (1984, 1986). This is because employment practices are not just developed within the organisation (Boxall and Purcell, 2008), they also stem from the interaction of external legal process and stakeholders. This calls into question whether legal best practice, stemming from legal judgments or practice guidance from employment tribunals, influences the strategic direction of the function, rather than the organisation’s current strategic models. This thesis argues that strategic decision making in the human resource role will always be

limited due to the constraining influence that employment regulation has on workplace practices.

1.2 Research objectives and purpose of study

The purpose of the thesis is to investigate the relationship between employment regulation and the development of the human resource professional role by canvassing thirty one human resource participants and other stakeholders in three public sector case studies. The public sector was chosen as the researcher was interested in exploring stakeholder relationships with trade unions, and thus finding out how human resource as a profession was viewed by representatives of trade unions.

There are three research questions broken into sub questions that enquire into how the increased growth of employment regulation has impacted on the role of the human resource professional role:

1. What is the relationship between employment regulation and professional identity for human resource practitioners?

Is professional identity grounded in an identification of being a legal expert?

How does the activity of human resource practitioners interact with the activity of legal professionals?

2. What are the implications of increased employment regulation for human resource professional practice in public organisations?

How has increased employment regulation changed the human resource practice in public sector organisations?

How has employment regulation informed human resource practice implications with organisational stakeholders?

3. How has employment regulation influenced human resource's strategic decision making at an organisational level?

Has employment regulation influenced human resource strategic decision making at an organisational level?

How has increased employment regulation enhanced human resource strategic decision making?

1.3 Chapters

The thesis is organized into the following seven chapters.

One – Introduction

The contents of this chapter.

Chapter Two - Literature review

In this chapter the researcher discusses the current relevant empirical concerns and weaknesses in relation to evolving employment regulation in the workplace. Analysis centres on the development of the human resource professional role as a consequence of managing and interpreting employment regulation in public sector organisations. Also considered are the roles of statutory interpretation, the contract of employment, the effects of the judiciary and employment tribunals on human resource practice, and stakeholder relationships such as with line managers and trade unions. The discussion then turns to how human resource strategic decision making has evolved as a consequence of managing all forms of employment regulation in public sector organisations.

Chapter Three – Methodology

In this chapter the researcher reviews the methods used for this qualitative case study research. Ethical and confidentiality considerations are discussed alongside a specific discussion of the three case studies in relation to the research questions.

The empirical findings in this research are presented across chapter's four to six.

Chapter Four – What is the relationship between employment regulation and professional identity for human resource practitioners?

In this chapter the researcher explores the relationship between employment regulation and the development of the human resource professional's identity by exploring how human resource professionals' identities relate to being legal experts.

This is followed by an exploration of the interaction and the relationships between the human resource professional's role and the activity of legal professionals, in the context of public sector organisations.

Chapter Five – What are the implications of increased employment regulation for human resource professional practice in public sector organisations?

The main focus of the chapter is on the implications of increased employment regulation for human resource professional practice in public sector organisations. The emphasis is on the types of legal practice that affect stakeholder relationships and how increased employment regulation has changed the human resource practice in public sector organisations. How employment regulation informs human resource in interpersonal relationships with organisational stakeholders is also explored.

Chapter Six – How has employment regulation influenced human resource's strategic decision making at an organisational level?

In this chapter the researcher explores participants' attitudes to the interrelationship between the human resource legal role as employment legal experts and strategic decision making. How employment regulation has influenced human resource strategic decision making at an organisational level is explored, along with an exploration of how increased employment has enhanced human resource decision making.

Chapter Seven – Discussion and conclusions

This chapter explores the results generated from three public sector cases studies and relates the findings to known academic research. This chapter presents conclusions related to the research questions and makes suggestions for human resource professional practice.

CHAPTER 2 – LITERATURE REVIEW

2. Introduction

The literature review assimilates current academic perspectives on how employment regulation interacts with the human resource professional identity, followed by the impact employment regulation has on professional practice and its influences on strategic decision making. Section 2.1 discusses the relationship between employment regulation and professional identity for human resource practitioners. Section 2.2 discusses the implications of increased employment regulation on human resource professional practice in public organisations, including interactions with stakeholders. Section 2.3 discusses how employment regulation has influenced human resource's strategic decision making at an organisational level in public sector organisations.

2.1 The relationship between employment regulation and professional identity for human resource practitioners

These subsections look at how employment regulation has impacted on the development of the human resource identity and professional practice. Subsection 2.1.1 reviews how employment regulation in its many forms has influenced the human resource practitioner's identity in relation to professional jurisdiction and role. Subsection 2.1.2 demonstrates how employment regulation interacts with human

resource professional practice in managing organisational stakeholder relationships. Subsection 2.1.3 is the section summary.

2.1.1 How is the human resource practitioner's identity grounded in relation to employment legal expertise in public sector organisations?

There has been much discussion over the historical development of human resource management in terms of the function moving away from personnel management into human resource management (Legge, 2005, Torrington and Hall, 1989). Often the propositions by academics are that the change has happened due to the role becoming more strategic (Storey, 1992, Guest, 1989). However, there has been little discussion focusing on what activities and practices within the human resource role have caused this shift away from personnel management. Therefore, a pragmatic understanding of what constitutes human resource professional identity is lacking, especially with regard to the role employment regulation plays in formulating professional human resource practices.

There is an acceptance that increased employment regulation has made demands on human resource professionals (Leopold and Beaumont, 1985) by pushing them in to a role of being organisational experts in employment regulation, thus redefining their professional identity. Dobbin and Sutton (1998:470) noted the formation of the specialist function by the “expanding scope of the law and fragmentation of administration led organizations to establish specialty departments.”

Harris (2005:79) remarked that "despite initiatives to professionalize the human resource function it was still difficult to identify a specialism that distinguished the occupation from other managerial groups until the expansion of labour law in the mid-1970s." It can therefore be asked whether employment regulation has been the force that has legitimized specialism within the human resource professional role. The complexity of employment regulation has had a positive and negative influence on the human resource function and profession (Dobbin and Sutton, 1998:470). Firstly, by being managers of the policies and procedures relating to employment regulation, human resource professionals fulfill a professional gatekeeper role, or an important first line of defence, to incoming employment regulatory demands. Secondly this has created negative repercussions in that employees can view human resource professionals as being rule book enforcers.

In order to understand the human resource professional role it is important to understand from an academic perspective how professional identity and professionalism are defined in relation to the workplace. The classical definition of a professional occupation goes back to Addison and Steele (1711) who referred to "the the great professions of divinity, law and physics professions", which were noted for the lack of managerial control (Wilensky 1963: 138). These traditional professions were developed outside of commercial business centres and organisations, and based solely on technical knowledge (expertise). However, Muzio and Kirkpatrick (2011) have asserted that professionals have more in common with large organisations, with professional practices being integrated into businesses and with the traditional view of professions moving towards an organisational based model.

This distinction is not without problems as there are underlying assumptions that many public servants such as human resource managers are managers rather than professionals. Additionally, when a particular professional feature is absent then the group may assume a “semi-professional title” (Bach, et al 2006). Essentially, professional groups mark their boundaries of expertise and control. This is fundamental to group survival if an occupation is to protect its exclusive professional domain from other professional groupings. There are exceptions, such as human resource professionals who work as independent consultants, but there is an acceptance that human resource professionalism is based around an organisational model of professionalism.

There have been various sociological approaches taken to understanding what constitutes professionalism or what being a professional actually means in the context of technical expertise. The functionalist writers, notably Carr-Saunders and Wilson (1933), were interested in the normative values of technical work such as medicine and law. They analyzed the development of professionalism based on historical perspectives through the use of case studies of individual professions. The theory was not very flexible when dealing with new types of industry and personal career development, as the studies focused on law and medicine. Carr-Saunders and Wilson (1933) saw the professional grouping as a structured and ordered way to view professionalism through training, professional bodies and ethical behaviour. The contemporary importance of Carr-Saunders’ and Wilson’s (1933) theory is that it was formulated in response to “new growing professionalism” when the boundaries of existing professions were challenged by other occupations. However, this view does not take in to account professions arising out of large organisations.

The structuralist writers' (Millerson, 1964; Wilensky, 1963 Caplow, 1954) view of professional behaviour is about how to structure professionals rather than professionalism based on functions, as advocated by Millerson (1964), who saw professionalism as developing along the lines of known characteristic traits. Millerson (1964) went beyond functionalism, devising a model based on the characteristics of expertise. The characteristics were broad and quite diverse and had themes in common with the analysis of the functionalists such as education, ethics and skills, with a strong emphasis on expertise and trust. The problem with the model is that it is based on an "asymmetry of expertise", needing the clients to trust a professional and with the necessity for strong institutional control by a professional body, ethical codes and licensing (Abbott, 1988).

Structuralist writers such as Wilensky (1963) and Caplow (1954:139) saw the vital ingredients consisting of having a "professional association to assert their monopoly, code of ethics and to get legal recognition." The CIPD sees its remit as a professional association in setting a "benchmark for human resource excellence both for individual and the human resource function, which has an impact on the nature of career paths." (CIPD, 2013) Wilensky (1963) also advocated the role of universities and training as fundamental to professional development to gain status and expertise, which has since driven the educational agenda of the CIPD. This has relevance to the human resource professional role as many universities provide dual accredited courses that not only provide a higher education qualification, but also the sought after professional accreditation to become a member of the CIPD.

Through the 'System Model of Professionalism', Abbott (1988) suggested that professionalism is more about a form of control than providing a public service, and also being a professional monopoly in trying to stop infiltration from groups and individuals. In other words, it is about professional jurisdiction and competition. In the case of human resource professionals in the public sector, their work is generally based around an organisation, rather than competing as sole professionals in the market, but the legal specialist aspect of their work encroaches into legal professionals' jurisdictions.

Studies by Freidson (1970a, b), Abbott (1988) and Muzio and Kirkpatrick (2011) are heavily dominated by a view of professionalism as seen through the eyes of the medical or legal professions with regard to determining professional makeup and dominance. Other more contemporary theories see professionalism as an expertise in the control of work (Johnson, 1972), with shared competences (Evetts, 2011) through formal learning and education (Freidson, 2001). The current perspectives have not taken into account that professional jurisdictions are changing and boundaries are less controllable as more occupations obtain professional status.

Wilensky (1963: 137) questioned whether "professionalization would [eventually] include everyone" in all types of occupations. Additionally, Dent and Whitehead's (2002) research showed that there is now a merger and reconfiguration between managerialism and professionalism, due to the progressive loss of control over specialist knowledge by the professional domain, with accessibility being granted to a wider audience. The work of human resource management is, in the main, an organisationally-based professional activity that has developed over a period of time

through working mainly within the boundaries of organisations, although there are many freelance consultants who specialize in human resource management practice.

Sociologists have struggled to understand whether human resource professionals engage in a different form of professionalism (Cohen et al. 2003: 4). This could stem from the lack of occupational control due to being an organisational function limited by the constraints of organisational boundaries. Evetts (2012: 16) argues that occupation control is also recognised in that the “organization can provide new territories and opportunities for professionalization (e.g management and personnel management)” at the risk of removing “old professional boundaries.” Although an organisational context can be viewed as constraining professional independence it is this context that has moved human resource into a professional jurisdiction (Cohen, et al. 2003, Evetts (2012). The past decade has seen a move into organisational professionalism, such as human resource management, and a move away from the type of occupational professionalism exemplified by medicine and law. Arguably, this could be down to managerial tasks flowing into professional work such as the use of formal targets (Boussard, 2006) and regulation.

The rise of human resource management as a profession has been on the back of organisational requirements, especially in the public sector, for management functions that can deal with people management issues. Noordegraaf (2011: 465) also comments that: "The connections between professionalism and organizations are not so much shaped inside, but outside the organization." The need for legal expertise in relation to the employment relationship in order that organisations can be legally compliant is a clear example. This is particularly pertinent in relation to the work of

the human resource professional as there is no clear understanding of what constitutes human resource's occupational value or responsibilities in relation to providing employment legal advice to the organisation. Potentially, this places human resource professionalism into boundary disputes where work overlaps with the domains of other professions (Evetts 2012), such as lawyers.

Human resource professional practice has not been discussed in depth regarding which roles add value in promoting their professional status. The requirement for legal knowledge and skills has caused human resource practitioners to have more formal knowledge in employment law and to a higher standard than was noted in the past (Wolf and Jenkins, 2006). Evetts (2012: 240) points out that few researchers have focused on the issue that "human resource procedures have contributed to the spectacular growth in professional employment" in areas such as employment regulation by both lawyers and human resource professionals.

Professional bodies have an important role as they seek legitimacy in being recognised by Royal Charter (Privy Council), which is a way of incorporating an occupational professional body into a single legal entity. In the case of the Chartered Institute of Personnel and Development (CIPD), they have to "represent a field of activity which is unique and is not covered by other professional bodies." (Privy Council, 2011) Currently there is no compulsory license needed to practice human resource professional work, which differs from some other professions such as medicine and law. In addition, there is no mandatory requirement for membership of the CIPD in order to practice human resource work. Despite this, the CIPD has gained "power and domination" (Gold, et al. 2003: 437) in the human resource occupational

market since the end of the last century. Furthermore, it is recognised by human resource practitioners that membership of the CIPD advances career progression and is seen as a recruitment benchmark in order to obtain employment in the sector (Gold, et al. 2003).

The CIPD has professional jurisdiction and at present has no competitors within the UK employment human resource professional market, and is generally recognised by employers. However, recognizing professional jurisdictions and control is very important in establishing the legitimacy of a profession, not least because one of the Privy Council's main criteria before awarding a Charter is that professional bodies' work does not overlap. The significance, as Flood (2011) argues, is that the nature of professional work is changing alongside globalization, which is extending professional legal work into new boundaries and professions world-wide. The future influence of decisions at government level on professional legal practice and on the development of professional boundaries is likely to remain strong. The UK Legal Services Act 2007, for instance, is a good example of where law has been "potentially leading to the development of new organizational forms, managerial structures and to the separation of ownership from control within professional work" (Flood, 2011: 508).

The professional body also has a role as a regulator of professional standards. The CIPD also provides continuing professional development to help ensure that practitioners have the requisite competences to do the work. Freidson (2001: 209-10) highlights the issue of professional standards' "assault on the professions by the state and employers" that could result in "many professional tasks being reassigned to less

qualified workers" (Bach et al, 2006:5). The issue over professionals not being competent or regulated insufficiently by the professional associations was raised in Francis (2013), with poor care standards and issues over individual professionalism being uncovered in the public sector. In this report, criticism was laid at individuals, organisations and external professional bodies for failing to manage and regulate ethical professional standards.

The issue of power and control is central to theories of professionalism and to the survival of professional groups in many "over-occupied" competitive professional markets (Larson 1977). Furthermore, Parry et al. (1976) perceived power as a fixed sequence of events through professional dominance, although their models are based only on Anglo-American professional models. The previous literature assumes that all professions have the same unlimited power and that established professions will not become extinct whereas professions in the past have become extinct. Extinction of professional boundaries can be due to shrinking areas of jurisdiction as well as existing, or new professions seeking new ground (Abbott, 1988).

Realistically, there will always be the need for occasional boundary changes, either to reflect changes in organisational practices or redundant skills. In relation to this, Abbott (1988: 54) sees the jurisdiction of professional work as problematic not just because it is about the "power and prestige of academic knowledge" but also because boundaries become "vulnerable due to seizure by absorption." Professional legal services are particularly susceptible to such "jurisdictional assaults" (Abbott 1998: 55) because it is hard to police legal professional boundaries as the underlying knowledge

base is available in the public domain and therefore not immune to being utilized by another grouping.

The immediate professional comparison for human resource professionals engaged in employment-legal work is with those lawyers who are also competing in the employment legal marketplace. The legal professions have their own professional bodies and institutes with their own jurisdictions and controlling powers, often competing in the same arenas as each other. Sociologists have concentrated on the differences between occupational profession and organisational professionalism (Evetts, 2011; Noordegraaf, 2011), and the rise of managerialism, but not on how professional associations are going to adapt to future membership.

Transfer of professional skills has already been recognised by lawyers in that there have been calls for the relaxation "of law society rules prohibiting partnerships in firms for practitioners accredited by other professional bodies." (Adams et al. 2006: 262). This is further noted by Adams et al. (ibid.) as a fusion between professional bodies "that represent new groupings, bodies that would indeed serve a similar function to those that exist at present." The author of this thesis is not aware of any research to date on whether gaining expertise in employment regulation, both as a theory and practice, is leading human resource professionals into the remit of legal professionals.

Poignantly, Harris (2009: 87) described the position of the human resource profession as the "double bind", where human resource professionals are taking responsibility for ensuring legal compliance whilst not having the competences or training of legally

qualified individuals”. The advancement towards legal specialism in human resource management allows the human resource role to interface with other professionals’ knowledge. Human resource professionalism is now moving towards a stronger identity and employment regulation has been one of the strongest factors in shaping the contemporary identity of the profession. If the rate and density of employment legislation continues on its upwards trajectory human resource professionals in the future could become part of a different professional grouping, such as the Law Society.

2.1.2 The interactions between employment regulation, the role of human resource practitioners and an organisation’s stakeholder relationships.

This section will contextualize the human resource professional role in relation to known human resource management models and the subsequent formal interaction with organisational stakeholders in public sector organisations, against the backdrop of increased employment regulation. The development of the human resource professional role has been discussed widely by Ulrich (1997, 1998) through his competency model (Michigan), which sets out theories about how the human resource role should be developed. Since then the model has been modified into the “three legged stool model”, which argues that there should be three main components of contemporary human resource practice: shared service centers, business partners and centres of expertise” (I.E.S, 2007: 1).

The intrinsic weakness of the model has engendered extensive debate amongst academics and practitioners. The model can be read as being “inspirational”, which

may lead to an under-appreciation of its limitations, such as explaining the effect that employment regulation has on the human resource role. The CIPD (2007) found that only thirty per cent of their survey respondents had introduced the Ulrich model in full, with the “business partners” aspect of the model the most frequently implemented.

Since the 1990s there has been a move in both academic and practitioner circles to promote the importance of the “business partnerships” or “strategic business partners” role (CIPD 2007). The term business partner has no agreed definition, although Ulrich et al. (2008) argue that the role is to support the business through the human resource function’s strategic practices and policies to meet performance targets. In essence, the model is quite prescriptive as it argues for the function to be moved away from an environment that is based on operational tasks, with the focus becoming more on strategic outcomes, but at the same time failing to agree on what constitutes operational or strategic tasks (CIPD, 2007).

The weakness of the model is in defining the operational in contrast to the strategic role, noted by Caldwell (2003: 986) when comparing the Ulrich model to Storey’s “four roles of personnel managers”(Storey1992: 171). Caldwell (2003: 996) acknowledges Storey’s (1992:176) research and argues that “the regulator role was representative of the classic IR or ‘contracts manager type’ engaged in devising, negotiating and defending the procedural and substantial rules which govern employee relations.” For Caldwell (2003:996) the activities of the regulator role were “decidedly interventionary but rarely strategic in relation to organisational performance”, suggesting that the role may be predominantly operational.

Both models (Storey, 1992; Ulrich, 1997) have failed to address regarding employment regulation when looking at the role of the human resource function or the role of individual human resource professionals as “change agents” (Ulrich, 2005, 2007). There is little engagement by these models with the restrictions employment regulation imposes on the role of individual human resource professional decision-making in promoting change in organisations. Both models are prescriptive with little flexibility for practitioners’ roles to operate outside of the boundaries of the models in relation to stakeholder involvement when dealing with employment regulation. Losey et al. (2005: 202), in addressing stakeholder involvement, argues that: "Human resource professionals do not work in a vacuum. They almost always work with line managers who bear ultimate responsibility for overall business results." Furthermore, there is a failure in the current literature (Losey et al., 2005) to identify ownership in organisations for the overall responsibility for legal decisions in stakeholder relationships.

The CIPD (2007) report also failed to fully comprehend how organisations operate when working in an employment regulatory environment, especially in relation to the human resource function’s service delivery and facilitation roles (CIPD, 2007). The service delivery and facilitation role outputs are noted as existing at both operational and strategic level with no line drawn between what is a strategic or operational practice. There is limited reference in the research report (CIPD, 2007) as to how the models can be applied in conflict situations between human resource professionals and organisational stakeholders.

Additionally, there has been insufficient attention in the human resource management literature, especially in the models of Storey (1997) and Ulrich (1997), as to whether stakeholders view the human resource function as a service dispensing legal advice to stakeholders. There is evidence that the human resource professional relationship with stakeholders is now more complex as they are involved in the concerns "of a wide range of stakeholders" (Legge 2005: xv), making it hard to comply consistently with all stakeholders' interests. For instance, many line managers do not necessarily object to employment legal rights, but are concerned with operational realities, such as how employment regulation might reduce their competitiveness, due to the cost, training and other work required (Harris, 2002).

Losey et al. (2005: 203) contend that it is about "collaboration" and this might be "vertical between managers and employees, or horizontal between business units as a network or "personal between individuals in a team." This has merit as the human resource function, through individual human resource professional's relationships, interacts on several interpersonal levels, where different levels of legal skill and knowledge are required.

The CIPD (2005: 18) found, amongst other concerns, "that 51% of organizations surveyed responded that Employment Tribunals and risk of litigation were a strong influence on managerial behavior." Moreover, there is a lack of clarity where the human resource professional role acts as a legal service provider. This aspect is not well developed in relation to the strategic business partner role, especially within public sector organizations.

The perception of the human resource function's "legal management" role links into how successful the service is viewed as a whole, because feedback is often based on individual responses from organisational stakeholders. Williams et al. (2011: 358) argue that employees "blamed human resource for operating as a cheerleader for the board and brand, rather than an honest regulator of the employment relationship." Interestingly, Wolf and Jenkins (2006: 206) found that the "formalization of human resource management and the regulatory environment are driving change", although their research is unspecific over which aspects of employment regulation have more impact. Williams et al. (2011: 967) see the wider influence of "voluntary codes and canons of good practice developed in the shadow of employment law, to which employers are encouraged to subscribe through enlightened self-interest." This could be the result of the shadow effect (Dickens, 2007) of the law, or a direct legal impact that is driving a change in how the human resource function interacts with stakeholders, which requires investigation.

Regarding styles of management practice Purcell (1986) used "cost-cutting interventions" to draw out four contrasting types of management style. Marchington and Parker (1990) renamed the terms as "investment orientation" and "management attitudes." Others, such as McLaughlin and Gourlay (1992), "contrasted management styles on the basis of individual and collective methods of job regulation" (Storey and Bacon, 1993: 669). Yet there is no distinction in the legal work of the human resource function between what is an individual or a collective practice as the roles of individual and collective legal rights are not in isolation from each other in regard to management styles of practice. The role of law has been left out of current typologies (Purcell 1986, Marchington and Parker 1990, McLaughlin and Gourlay 1992, Storey

and Bacon 1993). This thesis argues that the role of law needs to receive greater appreciation in areas where management styles are discussed and developed.

Moreover, Storey and Bacon (1993: 670) comment that “individualism” and “collectivism” are rich, suggestive terms but at the same time they are “elusive, abstract and ambiguous.” Ultimately, there appears to be no consensus on the use of the simplistic terms of individual or collective actions in relation to legal actions. Indeed, for example in redundancy cases, individual and collective actions are sometimes negotiated side-by-side. Additionally, trade unions as stakeholders are involved in both collective and individual rights, just as the human resource professional interfaces between all aspects of the employment legal relationship. Consequently, the function’s policies and practices are not devised on an individual basis; they are a management tool used to speak to the organisation as a whole. This has ramifications for the competencies required to carry out the roles, as Losey et al. (2005: 204) comment: “the body of knowledge is becoming ever more complex; thus, human resource professionals must become more adept at responding.”

2.1.3 Section summary

There has been little engagement in the current academic literature regarding the relationship between employment regulation and professional identity for human resource professionals. Human resource professionals meet the definition of an organisationally based profession in that they are providing an occupational activity, but what the current literature has not got to grips with is identifying the skill that defines their professional identity. Certainly, human resource professionals engage in

a different form of professionalism (Cohen et al. 2003: 4) compared, say, to lawyers or doctors. Human resource professionals are limited by organisational boundaries with limited professional independence, but times have changed for the traditional professions as well so the distinction is less pronounced. As Evetts (2012) argues, new territories have opened up for human resource professionals but no research has actually defined how the human resource function is distinct and separable from other employment-legal practitioners (e.g. lawyers).

There has been little attention in the literature as to how the growing requirement to be organisationally based experts in employment regulation has altered human resource professional skill and identity. Pragmatically, it is hard not to see that employment regulation has altered their professional identity as prior to the 1980s the role of personnel specialists was more based on a reactive normative welfare model (Legge 2005). This thesis argues that there has not been enough research evaluating the effects of employment regulation on the human resource role's development.

Furthermore, there has been little research regarding the human resource practitioner's professional identity inside and outside of organisations in relation to managing employment regulation. In other words, are human resources professionals seen as just managers or administrators of law, or have they crossed over into being semi-legal professionals? This research provides illumination as to whether human resource professionals have moved into the remit of legal professionals, or whether they are they just a splinter group of legal employment specialists within their professional grouping. On a practice level human resource professionals interact with the activity of legal professionals, but there has been a limited understanding regarding what this

means in terms of the amount of theoretical legal knowledge that is required in order to carry out their role.

There has been a lack of focus in the current literature in understanding how employment regulation has changed the role of the human resource professional in organisations. Some models (Ulrich, 1998) are based on an ambiguous aspiration for the future in how human resource professionals' work can be integrated into the business model, without allowing for what the function does in terms of working legal practices. There needs to be a better evaluation of the consequences of employment regulatory practice on the development of the human resource professional role in terms of the relationship between expertise and management practice, and also in terms of how the human resource role is acknowledged by organisational stakeholders.

2.2 The implications of increased employment regulation for human resource professional practice in public sector organisations

This section illustrates how increased employment regulation has changed the human resource professional role and practice in relation to stakeholders in the public sector. Subsection 2.2.1 focuses on why employment regulation has changed human resource professional practice in public sector organisations, looking at the political and legal changes. Subsection 2.2.2 demonstrates how the contract of employment, judicial decision making and Employment Tribunals have influenced human resource practices. Subsection 2.2.3 is the section summary.

2.2.1 The effect of increased employment regulation in changing human resource professional practice in public sector organisations

This section explores the implications for human resource professionals in how they practice within the public sector by looking at changes that have occurred due to increased juridification. The development of a more regulated workforce has strongly altered the human resource professional role and presence in the public sector. Successive governments' usage of employment regulation to control workers' rights has resulted in human resource practices having to adapt to increased juridification (Harris, 2009). Often, the perception of organisational stakeholders such as line managers is that the human resource function and professionals are there to restrict their activities not least due to the bureaucratic policies and procedures produced by the human resource function (Harris, 2009, Sheppard et al., 1992).

There are few human resource policies and procedures that do not have some regulatory basis, such as grievance, disciplinary, or recruitment procedures, and in all these areas there is potential for litigation to be instigated, possibly partly because "regulatory rules and laws encourage or force certain behaviors that otherwise would not have taken place" (Gollan, 2011:11). This can be seen in employees' willingness to enforce legal rights in order to obtain financial compensation, through the use of external lawyers. The strength of the human resource function is its ability to try to mitigate any potential legal action by instigating formal policies and practices; it allows the organisation a form of self protection in the event of legal claims.

The intensity of the usage of employment regulation in the public sector has not always been the defining factor in the human resource role, and nor did it have such a

strong influence in relation to employee relations and stakeholder relationships. Prior to the Employment Acts [1980s], employee relations were no less complex but were addressed under a more informal and less legalized process. As Heery (2011:90) comments: “The growth of legal regulation is arguably the single most important trend in the real world of industrial relations of recent decades. From the 1960s onwards, we have witnessed a progressive juridification of the employment relationship as an increasing volume of statutory employment law has set the terms on which labour is hired, performed and managed.”

The most intensive period of employment juridification stems from the legacy of the Thatcher years from the 1980s onwards where employment regulation was used as a tool for reforming the public sector, including by loosening trade union controls that previously dominated workplace relationships through collective bargaining (Brown et al. 2009). This ultimately changed the role of law in the workplace, moving away from what Kahn-Freund (1972: 3) articulated as being a "secondary force in human affairs and especially in labour relations in which law has only a marginal influence." The subsequent Employment Acts in the 1980s laid down the structure of current employment regulation by providing an alternative route for workforce management that changed how employees' representation moved away from a voluntary framework (Heery 2011b). As Dickens (2012:1) comments: “The main thrust of enforcement in Britain [now] rests on individuals asserting their statutory rights, if necessary by making a claim at an employment tribunal (ET).”

The success of the Employment Acts, commencing in the 1980s, has changed the climate of employee relations in the public sector organisations, in contrast to an

evident political and legal failure of the Industrial Relations Act 1971. The legal importance of the 1971 Act cannot be disputed as it brought about the introduction of the right not to be “unfairly dismissed.” It then became the foundation of individual statutory employment rights (Meeram, 2006: 130). Nonetheless, from a legal perspective, the 1971 Act and the later Employment Protection Act 1975 extended the tribunal system, and this can be seen as the basis of many anti-litigation human resource practices (Meerlam, 2006). Prior to the Employment Protection Act 1975, scholars and practitioners alike sought legal solutions through the “master and servant law, but this was formed almost entirely out of common law cases” (Rubenstein, 2011:1).

The 1980s Conservative Governments’ legislative push was part of a larger management agenda by these Governments to transform the public sector away from the “model employer” concept, as an example to the private sector (Lewis et al. 2003: 186) of good management practice. This was a deliberate departure from the public sector model (Hollinshead et al., 2003:539), in particular the core value of encouraging trade unions’ roles in the public sector, most notably by using legal interventions to remove the immunity from trade unions regarding the effects of secondary action (Employment Act 1980), and removing blanket immunity from liability in tort (Employment Act 1982). This demonstrated that the Government had introduced a more radical legal agenda in the workplace (Dickens, 2012; Bach et al. 2009; Fredman and Morris, 1989). As Heery (2011:71) comments, the “voluntarist system has been swamped by a flood of statutory regulation.”

Such changes in the statutory framework were paramount in changing management practices, as they controlled trade unions' freedom to take industrial action (Dickens, 2012; Dickens et al., 2009). Furthermore, the prominence of statutory employment regulation in human resource professional practice is most evident in public sector organisations since the 1980s (Bach et al, 2009). Notably, the "model employer concept" (Priestley Report 1955) has not been extensively embraced by politicians, public sector managers, or human resource professionals.

Bach et al. (2009:309) characterize the model employer with "the principles that were associated with the encouragement of trade union membership, support for centralised systems of collective bargaining and other form of workplace participation." Subsequent government interventions such as compulsory competitive tendering, privatization and the use of outsourcing alongside the development of the employment regulatory framework "set in train a process of radical change marked by the adoption of private sector management practices" (Bach et al. 2009:309).

The changes initiated in the public sector were against a backdrop of individual employment regulation becoming a stronger feature in employees' working lives (Dickens, 2012; Dickens 2008). Such progressive juridification has changed professional human resource practices and, as Dobbin and Sutton (1998:445) comment, "human resources specialists... saw in employment legislation new possibilities for professional growth." The reality is that employment regulation is a tool to be utilized, but due to its generic nature the way that it is managed or mismanaged is down to the interaction between stakeholders and individuals' legal

expertise (Dickens 2012). An importance of the human resource role lies in attempts to get the best fit between regulation and organisational practice.

It is hard to deny that increased employment legal rights, whether over contractual or statutory rights, are challenging employers in managing individual and organisational performances. This is a reason why the human resource function has prominence in organisations. Dobbin and Sutton (1998:442) state that “a personnel office is frequently the first line of defence executives establish against employment litigation.” This view is further reinforced in a CIPD (2007:1) survey that found that “those organisations are increasingly relying on their human resource departments to manage conflict as managers shy away from tackling disputes in case they do or say something that might be held against them during any formal proceedings.” There are opposing views on the limits that law (Whitehouse, 1992, Dobbin and Sutton, 1998) has on the employment relationship, sometimes illustrated by a failure to give protection to workers in some circumstances, non-compliance with minimum legal requirements, and a lack of monitoring compliance.

What has not been explored in depth is whether human resource professionals in organisations are actually being successful in translating regulation into organisational policy and practice. Heery (2011:80) makes a valid point in relation to how actors have an influence on the strength of law that is “critically dependent on the mediating role of managerial and professional groups within and across organisations who interpret the law and formulate standards of compliance.” This is important as it is not all about whether law has a weak or strong effect on the statute books; it is also about, as Dickens (2012; 1989) contends, how law is “mediated” by actors in the workplace

as a “positive” and “negative” benefit. Furthermore, to completely understand how law is mediated in organisations one has to understand the different types of legal instruments and remedies. As Dobbin et al (1998, 1999) argue, the different legal areas have varied strengths.

The increase in employment regulation has led to formalization of working practices and communication stemming from the human resource function (Wood et al. 2004), especially as more employees see the opportunity to solve workplace disputes through legal remedies with or without trade union involvement (Harris, 2009). The 2011 Workplace Employment Relations Survey found that formalization of policies and practices, such as grievance policies, in the human resource function can be classed as a reaction to increased juridification, illustrated by “procedures for dealing with grievances standing at 89% and discipline and dismissals at 89%, noted more in large larger workplaces” (2013:27). Moreover, the need to comply with grievance procedures, for example, has justified the development of human resource systems around employment law in order to protect the employer from litigation (Dibben et al. 2011).

Furthermore, Heery (2011:80), on reviewing the work of Dobbin and Sutton (1998); Kelly and Dobbin, (1999) and Sutton et al. (1994) concerning “American employment rights revolution” comments “that the ambiguity and complexity of the law has encouraged employers to develop their own compliance mechanisms, based on specialist management functions.” Interestingly, being a procedurally based service is not new for human resource management. As Bach (2009: 311) notes, previous to the 1980s “the development of standardized employment procedures assigned an

essentially routine and administrative role to the personnel function.” The difference now is increased juridification, which has required human resource professionals to have specialist knowledge to deal with legal issues, so raising the profile and status of the function in organisations. This has allowed the human resource function to create an organisational niche for itself by seizing the “opportunity presented by law to carve out positions within the business based on interpreting the law and ensuring compliance” (Heery 2011:80b).

In turn, the need to manage and give advice on contentious employee issues has led human resource to seek external advice, as noted by the WERS (2016:10) survey where it was stated that “there was considerable evidence of the increasing need among human resource managers to seek expert advice from external bodies”, notably external lawyers and ACAS. The proposition, although based on the American legal system, made by Dobbin and Sutton (1998:459) has some relevance: “Links to labor and employment-law attorneys should have a particularly strong effect on the creation of compliance departments.” Human resource management is an organisational compliance department in terms of employment regulation, dealing with legal issues on a day-to-day basis, therefore creating a more “sensitive” (Sutton and Dobbin, 1996) environment. In other words, being more compliant due to having greater knowledge of the repercussions of failing to meet minimum legal requirements shows a greater level of sensitivity to the legal environment.

Sensitivity is not the only issue; it is also about how to proportionally react and implement regulation. Sutton and Dobbin (1998:470) partly answer the question by pointing out that “organizations created new offices not because the law dictated that

they do so but because the law did not tell them what to do.” There is a separate point to be made in that employment regulation may have created a stronger profile for the human resource management professionals due in part to organisational requirements, but what has not been explored in depth is how the human resource function has “retheorized” its professional role in relation to the impact of increased juridification.

However, what does this mean for employee voice (Freeman and Medoff, 1984) in the public sector, as discussion regarding employee voice is concerned with the expression of complaints or suggestions to management through a collective channel? Furthermore, Freeman and Medoff’s (1984) study recognised the conflicts and benefits to both the employer and employee in having a voice mechanism, which they ultimately thought the trade union was best placed to provide. During the last twenty years some organisations have focused on activities (Wood et al. 2004), using the human resource function to involve employees in moving away from reliance on trade unions and towards participation in more individual-focused procedures that can be managed by an organisation’s human resource management function (CIPD, 2011).

However, the use of external stakeholders, such as lawyers and agencies like the Citizens Advice Bureau, for articulating employees’ legal concerns is an example of an “active voice” for individual employee representation external to the employing organisation (Abbott, 1988). Furthermore, the WERS 2011 (Van Wanrooy et al. 2013:13) found that in the organisations surveyed there was an increase of human resource managers obtaining external advice on employment law by up to 59%. The report also found that 29% of human resource managers obtained advice from external lawyers, 26% from ACAS sources, with Citizens Advice standing at 3%.

The concept of employee voice has not always taken account of the development of the individual employee's legal voice. In "Voice and participation in the modern workplace: challenges and prospects" (ACAS 2012:1) it was acknowledged that: "Trade unions remain a strong force in British employment relations, particularly in the public sector However, they can no longer claim to be the single channel of communication and representation for working people." As Emmott (2010: 4) argues, the contemporary employee voice is about much more than trade unions, but also about changing workplace environments in which the quality and process of the voice is important.

Moreover, the WERS 2011 (Van Wanrooy et al. 2013:14) found that trade unions are still "the most prevalent arrangement through which employees are represented at work" in the public sector, yet the analysis has not taken into account the increase in legal advice taken by both sides to deal with employee issues. ACAS (2012:11) recognised the role that law plays in "getting institutions established and good practice embedded especially in the area of consultation." Hence, the effect on the human resource function of the employee legal voice, by internal or external stakeholders, has not been understood fully by the wider academic community. There is a requirement for a fuller evaluation as to whether a "legal voice" is developing in organisations alongside trade union representation and how this interacts with the work of the human resource function. There has been insightful research (Hall 2010, Purcell and Hall 2011) into the methods of employee voice, but to date there has been little discussion of the role legal professionals representing employees in the workplace have had in altering the employee voice mechanism.

2.2.2 The roles the contract of employment, judicial decision making and Employment Tribunals have had in influencing human resource practices

The perspective taken in this section is that more discussion is required into the overall effects that managing legal issues, such as the contract of employment, common law judgments and the tribunal system, have on human resource professionals' practices in organisations (Harris, 2009). There is a tendency in current research to be more focused on the reasons behind new laws (Williams et al. 2011, Blyton et al. 2010) or specific laws such as anti-discrimination legislation (Harris, 2009, Blyton et al. 2010). Nevertheless, the character and complexity of the English and Welsh legal system has not been extensively explored in relation to organisational practice despite the infringement of the legal system into the workplace.

For instance, the employment contract is complex in controlling workers' freedoms and is at the centre of "the legal framework of private individualized contractual relationship" Collins (2010: 4), and subsequently is at the heart of human resource professional work. Notably, contractual remedies for employment did exist prior to 1963, but they were under-utilized by employees as they relied on the common law to enforce terms prior to the Contract of Employment Act 1963 (later consolidated into the ER Act 1996). Moreover, the civil legal system was not particularly accessible or understood by workers prior to the Act as resolving disputes in the public sector was dominated by collective bargaining (Brown et al. 2009). Kahn-Freund (1954), even as a lawyer, had overtly simplistic views about the status of the contract of employment,

seeing it as an "indispensable figment of the legal mind known as the contract of employment." (1972:5)

Interestingly, the CIPD (2005) report on statutory legal interventions made no mention of the contract of employment as a legal intervention, failing to address the whole picture of how human resource professionals manage contractual processes. Freedom of contract for employers and employees allows varied contracts, both in duration and status, but contractual frameworks differ, which can produce different levels of employment security for workers (Collins 2010:36), perhaps most notably in the level of protection given to temporary and agency workers. However, for organisations it allows flexible options, and in the case of redundancy the legitimacy to dismiss individuals, in line with the provisions of the Act. The management of contractual procedure is under the direct control of human resource professionals and line managers in large organisations (Van Wanrooy et al. 2013), and different types of contracts of employment are issued in accordance with an "employer's need for flexibility" (Collins, 2010: 36).

There is still divergence between individual and collective legal rights as the contract of employment is not designed to protect the collective workforce. Rarely are collective contractual legal disputes accepted into tribunals and court rooms as class actions, so the majority of cases that enter Employment Tribunals are individual claims. Hendy (2011) argues that the current legal provisions offer very limited protection for the individual involved in collective industrial disputes. As Colling (2009: 14) notes, "unions and others have argued rapidly for the right to join cases before tribunals where collective interests of their members are at stake."

However, this trend may be changing in the area of anti-discrimination legislation, with the recent example of the Birmingham City Council case where a class action for equal pay was won by workers. It will cost the employer in the region of £2 million in total back pay (Churchard, 2012). The case (*Birmingham City Council v Adbulla and others* 2011, EWCA CIV 1412) was not brought by a trade union but by a firm of solicitors on a “no win no fee” basis, the firm being one of the many who have become more active in representing claims of workers.

Understanding the full implications of contractual employment breaches is complex and thus requires that human resource professionals have up-to-date specialized knowledge. Hepple (1986:2) comments that "in order for workers to enter the magic circle of employment, a worker has to solve the riddle of the type of contract available." This is because there are many varied forms of employment contracts that influence employment practices in organisations. The contractual terms define organisational rules and how the job should be performed, with obligations governing the behaviour of employers and employees, which are often linked to a staff handbook. Collins (2010: 4) reflects on the lack of choice for workers: "To get a life people need work and to do this workers are prepared to enter into some form of contract." The old adage that “the devil is in the detail” rings true when evaluating how case law, the employment contract, and tribunals, are now impacting on organisations.

Furthermore, linked to understanding the complex nature of contracts there is currently insufficient consideration in the employee relations literature given to the

role of the judiciary (Collins, 2010: 34) in the creation of new law (precedent) or the prevention of new laws through the common law, by stopping the “floodgates” opening to future litigation claims. Dobbin and Sutton (1998:450) point out that: “Administrative and judicial rulings were responsible for much of the growth in the law [and where] “new employment laws were ambiguous and complex, [are] subject to frequent expansion, by the judiciary.”

The impact on the human resource function is that policies and practices have to reflect changes in legal precedent with human resource professionals having to be able to understand the repercussions and then respond accordingly. Additionally, there has been little consideration given in the employee relations literature to the wider public policy debate that judges are directed to take into account when they interpret statute to create common law judgments (Bennion, 2008), although there is willingness for the courts to apply terms in areas such as good faith, trust and confidence, psychological injury or stress through implied terms in the contract. Dibben et al. (2011:280) note that during “2009/10 the most successful claims [at employment tribunals] were redundancy pay (24% of cases), breach of contract (18%), and working time (18%).”

Interestingly, all the above categories rely on an employment contract to establish the basis of the employment relationship yet there is a limited understanding of the effects of law in establishing “welfareism” “or welfare to work” (Beaumont, 1984) for employees through implied terms, such as the obligation of “mutual trust and confidence”, as illustrated in the case of *Baldwin v Brighton & Hove City Council* [2007], which developed the objective test. This is given purpose by Hepple

(1981:135), who sees the term of trust and confidence as having a far reaching effect on “good industrial relations practice”, embracing “not only the material conditions of employment such as pay and safety; but also the psychological conditions which are essential to the performance by an employee of his part of the bargain.” The issue of human resource management retreating from welfare practices in the work of the profession has been much discussed (Legge 2005, Torrington and Hall, 1997). Yet this thesis concurs with Beaumont (1984) in that welfare has not retreated from the human resource role but has been redefined in recent decades into more formalized practices alongside the development of employment regulation.

The importance of contractual terms is that both the employer and employee have different expectations and therefore there is often an underlying tension, as employers will exert control and power (Dibben et al. 2011) over the workforce to meet the needs of the organisation. Yet both parties are subject to “excessive legalism - and towards increasing complexity because of the numerous situations that have to be covered in any regulatory framework” (Dibben et al. 2011). The role of the contract of employment and the rise of common law is in relation to the state expanding statutory law in order to regulate and constrict social power within organisations (Bellace, 1994). Nonetheless, there has been only restricted discussion regarding the effectiveness of case law or other legal judgments in defining employee relations practices in organisations. Heery (2011: 82) asserts that: “the law is used to promote the interests of the professional occupational group but compliance procedures put in place may carry only a modest benefit for workers.”

Case law has an influential role in the public sector as professionals are expected to keep up to date with relevant case law and understand how judgments can affect organisational practices. Heery (2011: 80) comments that “the continuing elaboration of law through case law” has developed legal policies and practices in organisations. Edleman (1990:1401-3), and Dobbin and Sutton (1998), also comment on the link between employment law and the development of the legal environment in the human resource function and professional role. Commonly, employment disputes are minor and can be resolved by line managers or human resource professionals, but if they are dealt with ineffectively they can result in time consuming and expensive situations.

Since 1971, the use of Employment Tribunals for settling employment disputes has steadily grown, especially in the area of unfair dismissal, moving away from the original foundations of the voluntarist (collective) labour relations system (Gouldstone and Morris, 2006), despite the Royal Commission’s Report (Donovan, 1968: 157/578) finding that Tribunals should provide “an easily accessible, speedy, informal and inexpensive procedure for settlements of their disputes.” The Industrial Relations Act 1971 and the Employment Protection Act 1975, through the doctrine of unfair dismissal, helped extend the tribunal system. Rubenstein (2011: 1) commented that “in the first nine months of its existence, nearly 7,000 unfair dismissal claims were made.”

While few could doubt that the government’s historical role as a legislator has been successful in controlling the workforce in the public sector from “an initial phase of suppression of workers organisations and collective action at the onset of industrialization, moving to one of toleration and encouragement, to be followed by a

later period of greater detailed regulation” (Dibben et al. 2011:14), this marked the real beginning of modern employment law and, with it, the end of the “abstentionist” tradition as trade union officials found a new role representing their members in Industrial Tribunals.

Since then there has been a growth in case law due to the growing number of individual legal disputes, of which unfair dismissal, unauthorized deductions and working time directive issues have represented the highest proportions of referrals (EAT 2012). This is in part due to the composition and usage of the Employment Tribunal, illustrating a departure from the purpose of the Industrial Training Act 1964, which stated that the primary concern of tribunals was with "work related issues arising between individuals and organs of state", signaling a move away from the collectivist norm (Meeran, 2006: 129).

The original intention for tribunals was more about a common sense approach to be taken between individuals and organisations and not requiring legal representation, being more based on the voluntarist approach to workplace relations (Industrial Training Act 1964). The current situation is quite the opposite. As Merran (2006: 130) notes, "the rise of the doctrine of unfair dismissal has moved the way tribunals operate towards ‘party-versus-party disputes.’” Some critics argue that, as they are dominated by lawyers and now fall under the domain of the Ministry of Justice, “some tribunals have become so like courts that they have lost any advantage over the courts” (Darbyshire, 2001: 222).

There have been recent changes to the tribunal system with the enactment of the Tribunals, Courts and Enforcement (TCE) Act 2007. The reason given for making the changes was that a response was required in order to address criticism that the tribunal system was under too much direct governmental control and that the independence of the judiciary's decision-making was compromised. The tribunal system has increasingly focused on who is legally right (Gaymer, 2006: 125). The use of judicial expertise and the fact that Employment Tribunals are now covering far more jurisdictions and having to deal with more legal complexity than was originally envisaged has necessitated more participation by the legal profession. There needs to be more debate on how changes to the tribunal system have moved disputes in organisations towards a win-lose scenario rather than dispute resolution.

Since 1971, the operation of tribunals alongside the increased use of legal professionals in tribunal hearings has attracted the comparison between tribunals and court rooms. The Employment Tribunals (Constitution and Rules Procedure) Regulations 2013 indicated that: "Claimants who wish to bring a claim to the tribunal or appeal tribunal will have to pay a fee." (ACAS 2013) Controversially, the Government argued that the fee system transfers the financial burden away from the tax payer (employer) to the individual, encouraging them to look at other alternatives such as conciliation and mediation before taking legal action. Trade unions and lawyers have voiced concerns that this will prevent access to the tribunal system for more vulnerable employees.

Under the Equality Act 2010, Employment Tribunals can make collective recommendations that can affect the employer's whole workforce, giving the legal

system more direct intervention in organisations. Under s.124 (3) (b), of the Equality Act 2010 “an Employment Tribunal can make recommendations which affect the wider workforce.” Recommendations could potentially cover all areas of anti-discrimination employment practice. Implementing new policies in recruitment and selection, equal opportunities training for employees and promotion procedures are just a few examples of the areas in which tribunals could order employers to make changes to organisational procedures (EC, 2011: 212).

The collective recommendation will allow legal intervention into management practice by the judiciary, further questioning the need for voluntary codes of conduct in such cases (EC 2011). At the very least, if such cases reach the Employment Appeal Tribunal, new forms of codes of practice can be identified and potentially new legal precedent could develop. In terms of the human resource function the new remit of the tribunal decision-making power means that not only can employers be subject to levels of collective bargaining with trade unions but also subject to collective decision making by the tribunals.

The human resource professional’s legal role now interacts with a more diverse range of stakeholders, helped by the growth in employees seeking legal remedies to workplace disputes, although employees who need to assert their legal rights are often not the ones who feel confident to do so. This is borne out by research conducted by Casebourne et al. (2006) where it was noted that only 24% of those who experienced issues at work raised it with management and only 3% were prepared to go as far as an Employment Tribunal.

Cases that reach Employment Tribunals often do not reflect a fair balance of power between the two parties in a contractual breach, as it is down to managers or worker prerogative whether to take a case to an Employment Tribunal hearing. A CIPD survey (CIPD, 2007) found that the role of direct legal regulation sits alongside the symbolic impact of law in controlling employee relations. The CBI (Challinor 2013: 1) criticized the legalistic nature of tribunals by calling for "an emphasis on tackling what it called 'the root cause of the problem' - that tribunals have become too much like courts, which was never their role."

2.2.3 Section summary

This thesis research recognizes that the current literature has only partially evaluated the implications of employment regulation on human resource professional practice, particularly in relation to how employment regulation formulates human resource policy and practice. There are practice implications stemming from legal processes that influence human resource practice. For example, increased workplace juridification has pushed human resource professionals in to developing a heightened awareness of when legal issues can occur in relationships between the employee and the employer, particularly when disputes are not managed effectively either through badly made decisions or where insensitive handling can lead to difficult tensions in relations. The risk of a dispute escalating to an Employment Tribunal, with the implications on the reputation of organisation both financially and culturally is a performance indicator of the effectiveness of human resource professionals' management of such disputes.

Consequently, there needs to be more evaluation in to how common law cases, the contract of employment and tribunals have altered workplace relations and in particular the role of the human resource profession. As Williams et al. (2011: 967) state : "When it comes to interpreting regulatory change in work and employment relations, then, it is misleading simply to focus on out-right deregulation or to focus simply on statutory provisions." As such, cases or judicial decisions are crucial to human resource practice as policies and practices can change due to case law (common law), which can have a direct effect on organisational practice. There needs to be more contemporary discussion on the organisational impact of tribunal decisions, and a better understanding of how the subsequent case law is interpreted by human resource professionals. Harris (2009: 95) points out that: "Increased employment rights provide opportunities for greater innovation in the development and application of human resource [in] resourcing policy and practice but the current evaluation fails to address all legal interventions."

There needs to be further discussion with reference to the observation by Dobbin and Sutton (1998:445) that: "Human resource management specialists...saw in employment legislation new possibilities for professional growth." Further discussion also needs to include how employment law has changed the stakeholder relationships in public sector organisations, particularly around how human resource practice is viewed in relation to the advice human resource practitioners give to managers and other organisational stakeholders.

It is relevant to understand how employee voice has been affected by relations with legal professionals (solicitors), who are challenging the traditional negotiating and

bargaining channels. There has been a lack of full engagement in examining how these new actors and employment regulations have changed stakeholder relationships, especially with regard to the roles and practices between human resource professionals and the trade unions. This is in line with Heery (2012:83) who comments that “the relationship to the law of human resource specialist is a neglected topic in the UK; there is evidence that they perform an important mediating function.”

2.3 How has employment regulation influenced the human resource function’s strategic decision-making at the level of the organisation?

This section concentrates on assessing whether there is a link between human resource strategic decision making at an organisational level and employment regulation. Subsection 2.3.1 reviews whether employment regulation has influenced strategic decision making at the organisational level. Subsection 2.3.2 looks at how increased employment regulation has enhanced human resource strategic decision making. Subsection 2.3.3 is the section summary.

2.3.1 Has employment regulation influenced strategic decision-making practice at the organisational level?

This section studies the effect of employment regulation on influencing strategic decision making by human resource professionals in managing employee relations. One of the key issues is that the current literature has not clearly identified which human resource professional practices are more strategic than others when operating in a legal (employment) climate, or how employment regulation, or the tribunal

process (CIPD 2005), has impacted on strategy. Harris (2005: 67) identifies "employment rights as a critical factor in the selection of human resource management strategic practices. Strategic human resource management is a diverse phenomenon that assumes that human resource is a key source of sustainable competitive advantage, and that human resource management's strategy should be integrated with the overarching business strategy" (Storey 2001, 2006).

In this sense, human resource management becomes dissimilar to personnel management by taking on this strategic function, a distinction recognised in the literature. This thesis argues that increased employment regulation does not necessarily provide the freedom for strategic decision making due to the need to comply with external legislation. The main problem is, as Boxall and Purcell (2008: 56) comment, that there is "no single way of linking human resource management to strategy" as strategic decisions can vary depending on the nature of the sector, resources available and the economic climate. Human resource practices in essence are at best generic as they cover a wide range of activities from the start to the finish of the employee's contract, with the potential for a dispute to take place at any point, despite a workplace strategy being in place.

No strategy can be formulated for every situation, which means potential litigation or collective action that can derail strategic decision making without warning. The importance of having a human resource strategy includes alignment with policy decisions that complement the overall organisational strategy (Storey 1992:6-7), so it could be problematic where human resource management's key strategic focus was unidentified. Guest (1987) argues that for organisations it is about having strategic

“agility” both on a cultural and organisational level, but this thesis research argues that this depends on employees mutually supporting the organisational wider strategic objectives irrespective of the situation they find themselves in. Such views of strategic decision making are not pragmatic on several levels when dealing with employee disputes in organisations as often, when relationships break down, there is little likelihood that both sides will be in harmony with each other, let alone with the organisation’s strategic objectives.

This thesis recognizes that there needs to be a more precise and pragmatic understanding of how employment regulation controls and advances human resource strategic decision making in public sector organisations (Storey, 2009). The lack of full engagement is in part due to academic discussion inadequately linking the growth of employment regulation to the development of the human resource role and practices. However, to date there has not been a useful evaluation of what strategic choices are available when the human resource function acts as a legal service provider. For example, there is limited strategic maneuverability in how redundancy scenarios are managed, where poor management or communication (DTI 2005) of legal rules can damage legitimacy goals, which in turn can affect reputations and employee commitment. Boxall and Purcell, et al. (2008) argue that the issue is complex in that good legal relations with employees are a strategic (legitimacy) goal for employers, who wish to avoid prosecution and bad publicity.

Moreover, Williams et al. (2011: 359) found that "it has become increasingly difficult to sustain optimistic human resource narratives through periods of downsizing, financial re-engineering and perpetual restructuring." This can be seen with the

current squeeze (www.localgovernment.lawyer.com) on the public sector: "there were 5.7 million people working in the public sector across the UK, accounting for 19.2% of all people in employment, the lowest percentage since records began in 1999." (Office for National Statistics 2012) There is a relationship between how well the human resource professional is able to manage any future downsizing exercise in the public sector, with this relating to human resource professional expertise and communication with organisational stakeholders (CIPD 2005) and how redundancy exercises influence the human resource function's strategic plan.

Additionally, mismanagement of downsizing or redundancy can bring individual and collective legal repercussions to the organisation, not to mention a longer term negative impact on relations between the human resource function and employees. As Milmore et al. (2007: 505) found, "the process of downsizing hesitating the development of other human resource strategic intentions, as such processes are hard to evaluate in terms of a successful human resource strategy."

There is an assumption in the strategic choice perspective that actors in firms have a choice, with some actors having greater freedom than others (Porter, 1985). Strategic choice theory (Child, 1997) argues that most organisations are not necessarily constrained within their own environment and neither are they able to completely control their environment (Boxall and Purcell 2008:43). There has been little attempt to understand the effects of a regulatory environment as a benefit or burden on the human resource function being able to "exercise strategic choice" (Harris, 2005: 87, Child, 1997) when faced with legal consequences.

The institutionalist perspective is advocated by DiMaggio and Powell (1983), and they argue that strategic similarity between organisations deriving from being in the same sectors and with equivalent pressures can affect approaches to strategy. This is relevant to public sector organisations as there are many organisations within the public sector remit such as education, health and local government that have similarities due to being state organisations, but often with different cultures and internal regulations (Farnham, 2005:224).

Kochan et al. (1984), in noting the difficulties in forming an employee relations strategy, did not address fully where the professional role in managing the legal process fits in relation to strategic decision-making. Are human resource professionals more than just “gamekeepers” (Purcell 1995)? Boxall and Purcell (2008: 43) contend that “the choice in strategic choice is real but its extent is variable” because environmental factors, such as the decisions of various actors, are not always predictable. This is particularly relevant when looking at how poor decision-making by human resource professionals in giving incorrect legal advice influences the remit of the human resource strategy both in terms of employee resources, and the overall reputation of the human resource function.

There is choice for human resource directors when formulating a strategic plan but, as Boxall and Purcell (2008: 43) state, the reality is that a “blend of constraint and choice [fits] somewhere in between these two extremes.” The constraints conferred by an organisation’s environment are considered extensively in the literature. Boxall and Purcell (2008) are consistent with Child’s (1997; 1972) perspective in seeing strategic choice for organisations as a path to be navigated between “hyper-determinism”,

where the organisation has no choice but to conform, and “hyper-voluntarism”, where the organisation determines its own pathway. In relation to employment regulation in the public sector, Child’s (1972; 1997) perspective has not fully taken into account how employment regulation constrains human resource practice on two levels. Firstly, in how employment regulation, set by external political and legal process, constrains the human resource environment and thus determines human resource management’s operating practices. Secondly, how operating within a legal environment influences the human resource professional role and the levels of knowledge and skills needed in order to support the work of the human resource management function.

The level at which human resource professional decisions operate was considered by Purcell (1989) who saw that strategic choice could be categorized into ‘upstream’ and ‘downstream’ decision-making, and with human resource management’s strategic decision-making being ‘third order’ decisions. The justification for the work of human resource professionals as belonging to a ‘third order’ decision category was due to the work being perceived as reactive to the organisational strategy due to the human resource function working at an operational level. This perspective is limited when trying to consider the strategic repercussions of managing employment regulation, as it fails to address the strategic importance of individual employee case management as an upward ‘flow’ affecting the organisational strategy.

In other words, consideration must be given to the effects of individual decisions by human resource professionals in managing employee disputes, alongside the corresponding implications for financial resourcing, to ensure that human resource professionals have the right level of legal competency. Such factors have received

little attention in relation to the overall human resource strategy and the legal competency of human resource professionals. These are relevant points as the growing concerns about potential litigation can result in a more ‘procedural approach’ by the human resource function and line managers in defending managerial decisions (Leopold and Beaumont, 1985). Some line managers are more reluctant to take on employment regulation as they see it "as too hot to handle" (Harris, 2005: 88), leaving the responsibility with the professional.

There has been little consideration of the expertise human resource managers have in handling law, especially in individual decision-making with respect to strategy, either in terms of how they communicate legal procedures to stakeholders, or the effect of individual decision-making. Boxall and Purcell (2008: 19) state that managers “need some degree of freedom to manage but the issue is how much legal compliance affects the legitimacy to direct employees.” Purcell and Ahlstrand (1994) argue that the basic concept of strategic choice makes the assumption that firms make decisions independently of the environment they find themselves in. Many public sector organisations are often more focused on forming a strategy based on ‘goal attainment’ of the senior management or political actors (Kochan et al. 1984) rather than a realistic reflection of the way the organisation is managed. This is important as it emphasizes how constraints such as employment regulation can alter human resource management’s strategic ‘agility’ (Guest, 1987a) in communication with stakeholders, as well as the future development of the human resource function.

The main strategic models in relation to strategic human resources management focus on aligning human resource management to the business strategy, but lack focus on

how employment regulation affects management strategy. Models such as “best fit” (Baird and Meshoulam, 1988), “best practice” (Pfeffer, 1998) and “resource based view” suggest all that is necessary for strategic choice is to dissolve away environmental constraint. This concurs with Penrose’s (1959) comment in regard to strategic decision making that one just has to remove walls that imprison actors. This approach fails to appreciate external legal environment limitations. For example, some commentators note that the best fit approach fails to address social norms and legal rules (Redman and Wilkinson, 2001) and is too tied up in fitting the human resource function with the organisation’s strategy. This model is very much dependent on strategic integration, or a close fit to the strategy.

With regard to best practice, Bach and Edwards (2013: 18) stress the importance of "alignment of individual human resource systems or bundles is even more powerful for increasing performance than applying individual best practices in human resource management." This is in part due to the best practice model failing to offer solutions as it only describes universal human resource practices. The model is prescriptive with little flexibility to respond quickly to employee relations issues in organisations. This criticism is particularly relevant with the trend of downsizing or the current (2014) economic environment, which is not well reflected in all the models, but can be better taken into account with best practice initiatives. Boxall et al. (2008) contend that some government best practice initiatives have become legal requirements, such as consultation, but practices are varied and the focus too narrow due to not taking into account "every day human resource practices" (Thompson, 2011: 357).

The resource based (model) view assumes that a firm reflects societal norms in its goals and that there is trust amongst employees in supporting a common aim throughout the organisation. Storey (2007: 64) found this resource based approach to be influential as it "shifted the attention from outside of the firm and underscored the importance of human resource alongside a number of other intangible assets such as culture and reputation." A limitation of this model is that it fails to grasp the role of employment regulation as a constraint on the human resource role, because the model fails to be able to reflect events that are beyond human resource management's professional control.

The role and level of employment compliance is not well defined in any of the models, especially in how they add value when the human resource professional enforces anti-litigation practices, because the models tend to concentrate on high performance gained from high commitment management. Keenoy (1992: 95) argues "no matter how extensive the controls, in the final analysis, management is reliant on employee co-operation." The assumption is still made that there is a choice exercised by employees as to whether they will cooperate. There is little or no commentary as to the legal repercussions of the failure to comply by individual employees. The aforementioned models have a propensity towards employer bias, and what the employer wants to achieve strategically, while at the same time seeing employees' behaviour as not completely controllable.

There needs to be more clarity around aspects of employment regulation, contractual or statutory, that bring about the biggest effect on human resource practices, including what is now standard legal practice in terms of human resource strategic decision

making. Harris (2009: 85) comments that "increased regulation stimulated growth in human resource procedures below and beyond legal minimums by becoming standard practice in human resource management."Currently, there is little discussion in the literature of the contractually related terms and obligations of strategic decision making stemming from different forms of employment contracts.

2.3.2 How increased employment regulation has enhanced the human resource decision making at an organisational level

Another difficulty is trying to pin down exactly which human resource practices link directly or indirectly to outputs due to the lack of definition between strategic and operational practices. In the recent WERS 2011 Survey (Van Wanrooy et al. 2013:12) it was found that the recession arguably offered an "opportunity for human resource management function to take on a more central position in the workplace", in part because of having to deal with increased downsizing and redundancy procedures. Yet the survey (Van Wanrooy et al. 2013:13) also commented that "there was little indication of an increasingly strategic role for human resource", illustrating that human resource importance lies in dealing with short term employee relations issues when an organisation needs to realign its interests.

The concept of human resource management's strategic agility (Guest 1989) is not helped by there being no distinction to date determining when human resource practices stop being operational. By not understanding when a practice has taken on more strategic importance has not helped professionals recognize whether they are being strategic or just service providers (Thompson, 2011). Furthermore, Thompson

(2011:365) suggests that what is needed is “at work place level, greater attention to the nuts and bolts of human resource practices or what some call ‘hard human resource management’ particularly on issues such as performance management, sickness absence and work intensity will provide a potentially useful dialogue among social sciences.”

Understanding professional day-to-day activities is fundamental in addressing where human resource professionals’ role lies. As Torrington and Hall (1996: 81) state, “the assumption that relying on strategic involvement, while giving away operational and technical personal activities, will increase the influence and the future of the personnel function is flawed.” Tyson and Fell (1995) also contend that there has not been a clear description regarding what are human resource management’s technical abilities in operational activities. This thesis argues that a more realistic evaluation of the strategic and operational influences, stemming from employment regulation, is required as this is where human resource professional practice enhances the strategic objectives of the function.

2.3.3 Section Summary

There has been little reference in the current literature to how employment regulation controls and advances human resource management’s strategic decision making and choice in organisations through compliance with legal requirements. As Salaman, Storey and Billsberry (2005:4) indicate, strategy in the human resource function is a moving target that changes over time and not least because of “overarching societal, political and legal discourses” which alter the course of the strategic human resource

management ideology (Salaman, Storey and Billsberry, 2005:4). There needs to be more focus on which human resource practices are more strategic than others when operating in a legal-employment context and on how employment regulation impacts on the human resource function's strategy. This is because employment practices are not just developed within the organisation (Boxall and Purcell, 2008); they stem from the interaction of external legal processes and stakeholders.

The current best known strategic models (best practice, best fit and resource based view) have not taken into account the restrictions on human resource strategic decision making provided by the employment legal environment, but instead they have a more generic overview of employee relations (Salaman, Storey and Billsbury 2005:5). Therefore, this thesis argues that the models are not flexible enough to understand the demands of the legal environment in which human resource professionals now find themselves.

Overall, the regulatory environment has not been reflected in the lack of strategic choices available to human resource, or how employment regulation advances human resource status. There has been difficulty in aligning the concept of strategic choice with industrial relations practice, as noted by Kochan et al. (1984, 1986) Current research has not recognised the strategic importance of operational work, or whether operational work is now the driving force behind strategic decision-making, especially in the area of employment regulation compliance.

2.4 Chapter conclusion

The thesis research finds that there are omissions in the current literature in relation to the impact of employment regulation on the development of human resource managers' professional role, especially in relation to human resources professional practice, such as disciplinary procedures, due to the impact of increased employment regulation. Moreover, the current academic discussion has not fully evaluated how employment regulation has influenced human resource's strategic decision-making at the level of the organisation.

The relationship between the required human resource skills and how the professional identity of human resource professionals is defined has not been fully explored. Human resource management has been recognised as a profession but they are in the main limited by organisational boundaries with limited professional independence. Evetts (2012) observes that new opportunities have arisen for the human resource profession but it is hard to define the specific skill or technical knowledge that distinguishes the profession. There has been no examination of how the human resource professional's skill and identity was altered by the necessity for human resource professionals to be organisation-based experts in employment regulation. This thesis research found an omission in the current literature relating to assessing the effects of employment regulation on the human resource professional's development.

Moreover, this research asks whether the link between employment regulation and the human resource profession has changed not just the individual status of human resource practitioners, but also moved the profession more into the orbit of legal professional activities and professional groupings. Debate now needs to take place on professional consequences for human resource professional expertise in the wake of increased employment regulation in the workplace, including because employment regulation has been a strong influence in making the profession stand out from just being organisational administrators, with the professional standing having attracted gravitas.

The thesis research also recognises that more evaluation is required in relation to the implications of increased employment regulation on human resource professional practice in public sector organisations. This discussion has only partly taken place in relation to how employment regulation influences policy and practice in organisations (Harris 2009). This aspect is particularly notable in relation to how the employee relations literature deals with the impact of the common law, the contract of employment and how Employment Tribunal decisions sway the role of the human resource profession. Heery (2012:83) comments that “the relationship to the law of human resource specialist is a neglected topic in the UK; there is evidence that they perform an important mediating function.”

Furthermore, more discussion is required on how employee voice has changed due to new stakeholders entering the organisation, such as legal professionals, who are changing and challenging the traditional negotiating and bargaining channel in

employee relations. As Dickens (2010: 7) states, “generally in UK [law] is passive and individualized [more about how the] ‘victim complains’ rather than requiring employer action or agency enforcement; remedies relate to individual”. There has been a lack of full engagement on how employee voice mechanisms have changed stakeholder relationships especially with regard to the role of legal professionals representing employees in public sector organisations. Sutton (1998:445), in relation to how employment regulation has changed stakeholder relationships in public sector organisations, contends that “human resource management specialists... saw in employment legislation new possibilities for professional growth.”

Furthermore, more research is needed as to whether employment regulation actually increases human resource managers’ professional standing due to their technical expertise in understanding employment regulation (Dobbin and Sutton, 1998). The literature review also found that the current academic discussion does not fully recognise the role of employment regulation in constraining strategic decision-making choice, or whether such regulation could be a benefit or a burden on the activities of the human resource function. Moreover, current research has not recognised the strategic importance of operational work, or whether operational work is now the driving force behind strategic decision-making, especially in the area of employment regulation compliance. Overall, the regulatory environment has not been reflected in the lack of strategic choices or restrictions on the human resource professional role.

This research investigates each of these areas, by using a qualitative case study methodology applied in three public sector organisations, and then arrives at a synthesis presenting new knowledge.

CHAPTER THREE – METHODOLOGY

3. Introduction

This chapter discusses the methods of data collection, analysis, and presentation in three sections. Section 3.1 considers the research rationale and philosophy. Section 3.2 discusses the research strategy and justifies the use of case studies as a research method. The section also reviews confidentiality and ethical concerns in relation to the research project. Section 3.3 explains the data collection method of qualitative interviews and the specific processes involved in this type of method. Section 3.4 discusses data interpretation using template analysis, and the use of the NVivo computer software package. Section 3.5 discusses the presentation of the research data.

3.1 Research rationale and philosophy

The justification for this research project is the limited research to date regarding the relationship between employment regulation and the human resource management professional identity in the UK. The enquiry suits the public sector because of the strong emphasis on compliance to employment regulation in the sector due to being a state employer. Three different industries have been selected within the classification of the public sector to give a broader perspective to see if there is a comparison between the different industries, or whether there is a divergence in human resource

practice within the public sector. Furthermore, the sensitivity around asking questions on the topic of employment regulation made some organisations very wary of granting access so, in essence, the researcher's scope was limited by this factor. The researcher recognizes that the private sector has not been incorporated into this particular research, but as this research is looking at a new direction of inquiry by focusing on the public sector only, it allows the research focus to be narrowed to one sector. This can to some extent control problems caused by deriving data from fundamentally different types of organisations. The original intention was to do a three case comparison in more depth, but it became obvious after the interviews and the subsequent coding that adherence to employment regulation across all the three cases studies brought human resource practice closer together within the public sector. There is the potential for the research to be broadened out into other sectors at a later date based on the findings of this research project.

This research has a strong direction of enquiry (Adams and Schvaneveldt, 1991) in a known subject (employment regulation) and, as Robson (2002:59) comments, the research investigates: "what is happening; seeking new insights; asking questions and to assess phenomena in a new light." This section has been divided into the following subsections: subsection 3.1.1 looks at the research philosophy in relation to how the research was conducted. Subsection 3.1.2 discusses the researcher's epistemological view of the research. Subsection 3.1.3 centres on the ontological issues in the research. Subsection 3.1.4 focuses on reflexivity in relation to the how the research was conducted. Subsection 3.1.6 looks at the overall research approach.

3.1.1 Philosophical positions

This thesis research is based on known subject matter (employment regulation), but applied to a lesser known area, that being the relationship with the professional identity of human resource management. The reality is that research process is influenced by the values of the researcher and what is being researched, whether it is objects or people, hence it is important that the philosophy is not too distant from the practical considerations of conducting a research project. Eriksson and Kovalainan (2008:11) assert that "it is possible to do qualitative business research, without much knowledge of the basic concepts in the philosophy of social science." However, they argue that understanding the philosophical concepts of the research allows the researcher "to design a solid piece of study that delivers what it promises" (Eriksson and Kovalainan, 2008:11). The following sub-sections discuss epistemological and ontological issues relating to this thesis.

3.1.2 Epistemological issues

There is a close link between epistemology and ontology. Eriksson and Kovalainan (2008:14) see epistemological issues as being centered on "how knowledge can be produced and argued for", while ontology is more "concerned with beliefs about what there is to know about the world [and] whether or not social reality exists independently of human conceptions and interactions" (Ritchie and Lewis, 2008:11).

The epistemological position taken in this research project is interpretivism, and not positivism. There are many different types of interpretivism but as Eriksson and Kovalainen (2008:19) state: “common to all of these is a concern with subjective and shared meanings” and language. The emphasis in interpretivism is on understanding people’s attitudes rather than viewing them as objects; this means there is an acceptance that "methods of the natural sciences are not appropriate because the social world is not governed by law like regularities but is mediated through meaning and human agency" and language (Ritchie and Lewis, 2008:17). The rationale for the thesis research being based on interpretivism is that the researcher and the social world impact on each other; there is not a distant relationship between researcher and research (Ritchie and Lewis, 2008). Given the aim of this research, it is necessary to understand how an external influence (employment law) impacts on a human resource professional role in public sector organisations. As Eriksson and Kovalainen (2008:20) comment, interpretivism fits well with qualitative research as “they [both] emphasize the close relationship between researcher and research field, interaction and understanding as basic tenets of research.”

3.1.3 Ontological issues

The relationship between ontology and research can be seen in the way "research questions formulated in research are carried out" (Bryman and Bell, 2007: 25). This research takes a “subjectivist” stance (Burrell and Morgan, 1979) or, as it is commonly known, a “constructionism” approach (Eriksson and Kovalainan, 2008), because "it is necessary to explore the subject meanings motivating the actions of social actors in order for the researcher to be able to understand these actions"

(Saunders et al, 2009:111). Constructionism is about social interaction with stakeholders who are seen as social actors interacting with research participants and organisations. As such, in the context of this thesis, social actors can also be individuals outside of the organisation, such as trade union officials or legal representatives.

3.1.4 Reflexivity

Reflexivity is central to the way this research project was conducted due to reflexive interactions in data collection and analysis. Reflexivity refers to where, on collecting and analyzing primary data, the researcher is not alone owing to it being an interactive process influenced by organisations and individual agendas. An additional point, noted by Davey and Liefoghe (2006:181), is: "reflexivity involves both an openness and honesty about ordering position, and serious reflection on our responsibility as researchers."

Responsibility and independence regarding both the social and ethical content, which must not be overlooked in order to be an effective researcher, was noted in this research project. The researcher recognised that the research could have been construed by participants as assessing their own expertise in employment regulation, as well as having the potential to expose the organisation to risk. Attempts were made to make the participants feel comfortable with the process by explaining that any comments would not relate to an evaluation of their individual performance but would only relate to the wider context of the effect of employment regulation on the human resource management profession. The level of trust given by the participants to the

researcher is evident in how open and frank the interviewees were in discussing their roles.

3.1.5 Research Approach

The approach taken in this project has more in common with an inductive research approach where the data have been collected, followed by subsequent interpretation and theory development. This type of approach is commonly employed in research involving case studies. However, the demarcation between the two approaches, inductive and deductive, is not always clear. There is often an overlap between the deductive approach of testing out theory (Saunders *et al*, 2009) and the inductive approach of testing the context in which events are taking place and how interviewees react to events.

Researchers may begin by using one approach and then change to the other. As Eriksson and Kovalainan (2008:23) comment, "many researchers use both induction and deduction in different phases of their study." Combining the two approaches by using induction to formulate hypotheses and then deduction to test the hypotheses through data (Schwandt, 2001) allows a more flexible research approach. This is supported by Bryman and Bell (2007:15) who argue that a "deductive, and inductive strategy are possibly better thought of as sequences rather than as hard and fast distinctions."

3.2 Research Design

This section discusses qualitative issues, the overall research strategy, the use of multiple case studies, and ethical issues taken into account for the research. The section has been divided in to the following subsections: Subsection 3.2.1 describes the qualitative research practices used in conducting the research. Subsection 3.2.2 looks at the overall research strategy. Subsection 3.2.3 reviews the use of case studies as a method to conduct qualitative research. Subsection 3.2.4 focuses on the selection of the case studies and obtaining access to conduct the research. Subsection 3.2.5 presents the role of case study organisations in the research. Subsection 3.2.6 reviews the confidentiality issues in gaining access. Subsection 3.2.7 discusses anonymity and confidentiality in relation to the research project. Subsection 3.2.8 looks at the Data Protection Act 1998. Subsection 3.2.9 acknowledges that consent has been granted by the University of Birmingham Ethical Committee in order to start collecting primary research.

3.2.1 Qualitative research practices

The research approach taken for this research is qualitative. Denzin and Lincoln, (2005:3) observe that "qualitative research involves an interpretive, naturalistic approach to the world. This means that qualitative researchers study things in the natural settings, attempting to make sense of, or interpret, phenomena in terms of the meanings people bring to them." The justification for taking a qualitative approach to

designing, collecting and analyzing data in this research is the need to collect data based on meanings rather than collecting standardized data through quantitative approaches (Saunders et al. 2009). The main distinction drawn between qualitative and quantitative research processes is that qualitative research is less standardized and less focused on numbers. In addition, Robson (2002) argues qualitative research is characterized by the richness of the data it generates.

This is relevant to how the research ideas and research questions have been conceived, as the research questions needed to be able to probe several levels in order to collect data. The design strategy of any research study is closely linked to the research question(s). As DeVaus (2001:9) acknowledges, "the function of a research design is to ensure that the evidence obtained enables us to answer the initial question as unambiguously as possible." This study attempts to understand how the human resource profession is developing as a result of increased employment regulation by conducting a multi-case study made up of human resource professionals, line managers and union representatives who were working in the public sector. Two further insightful interviews are also included from two directors from another public sector organisation, but it was considered that only two interviews did not provide enough data to represent a significant case study on its own but did give useful information in the context of the research.

There were practical and ethical concerns that had to be taken into account in relation to the project's design, which were unknown at the start of the project, as the subject area turned out to be much more sensitive than expected. The researcher identified that participants were concerned about a potential liability that could arise from

disclosing confidential legal situations, and there was a prior concern that the participant would be judged on their own knowledge of correct legal procedures, which could then leave the participant concerned about their own professional position. The sensitive nature, as indicated above, made access to organisations difficult in order to ask questions about employment legal procedures and outcomes.

The case study organisations in this research granted access on the basis of confidentiality agreements between the researcher and the organisations, not just for the individuals' protection but also to ensure that the organisations could not be identified. Therefore, extra care had to be taken not to divulge any names, locations, or status that could compromise the organisations' and participants' positions. These restrictions had to be built into the design process as noted by Ritchie and Lewis, (2008: 75): "Research relationships have to be negotiated. Accessing settings and samples requires patience, flexibility, and an understanding of the proposed setting. Research studies also need to be accessible to those who are intended to participate. Ethical issues also have to be considered."

3.2.2. Research strategy

The research strategy takes a multi-case research approach (Yin 1989) in three public sector organisations. The thesis research required an organisational context, because the relevant professionals generally work within organisations, and this is where the profession has its bedrock. Dyer and Wilkins (1991) argue that the overriding concern of case study research is about how the cases can provide participants' opinions on an organisational basis, rather than focusing on the wider conceptual richness. Therefore,

the study seeks to draw the attention of academics and practitioners to the broader trends arising from the role of employment regulation in relation to the work of human resource professionals.

3.2.3 Case studies as a method

There are various approaches that can be taken to gathering data for qualitative research. This is not to say that any one strategy is better than another, but it is important for the researcher to develop a strategy that is appropriate to the focus and aims of the research. Yin argues (2003) that exploratory research is suited to all of the known research strategies. Saunders et al. (2009:141) note that "what is most important is not the label that is attached to a particular strategy, but whether it will enable you to answer your particular research questions and meet your objectives."

The strategy chosen for this research is based on case studies using human resource professionals in public sector organisations as the main focus of the research. As the work they do is closely associated with an organisation a case study approach is appropriate. Bryman and Bell (2007:63) state that "the case is an object of interest in its own right and the researcher aims to provide an in-depth elucidation of it." Case studies are specifically helpful in that not only can researchers try to uncover new areas of knowledge, but they can also give more practical effect to the findings by exhibiting the unique and shared characteristics of cases (Bryman and Bell, 2007).

This project used participants who were either based in one of the three public sector organisations or were stakeholders involved with the organisations, which allowed an

opportunity for comparison. Yin (2004) points out that one of the advantages of using case studies is that if there are some issues with one case study (such as insufficient data for some of the research questions) there are the other cases to provide meaningful data. Using more than one case study enables the researcher to compare responses, thus giving a more in-depth and valid understanding of the subject matter. The original intention was to do a three case comparison in more depth, but what became obvious after the interviews and the subsequent coding, was that adherence to employment regulation across all the three cases studies brought human resource practice closer together in the public sector. There were some minor variations based on themes or merely local conditions and are reported as such.

3.2.4 Selection of case studies and obtaining access

In this project the decision was made to try to obtain as much access to interviewees in medium to large public sector organisations as possible. Once access was obtained, the researcher worked with the organisation's representative to gain contact with the human resource participants. The researcher made direct contact with representatives of the trade union in the individual case studies. As there is a high level of confidentiality involved in this research, it was important to make both the organisation and the individuals feel confident in the researcher's competency to protect their privacy and act in a professional manner. Having gained access the decision was made to refer to each of the three organisations with replacement names so that they could not be identified in the future.

The replacement names chosen to provide confidentiality to the organisations were health, local government and education. An additional factor that had to be taken into

account was that organisations were reluctant to be involved in a study where questions were being asked regarding their legal practices. Therefore, obtaining access required a considerable amount of time and patience from the researcher. These practical considerations cannot be overlooked. As Bryman and Bell (2007:33) state: "All business research is a coming together of the ideal and the feasible", and that because of this "the topic or subjects of an investigation and the constraints on a researcher loom large in decisions about how best to proceed."

Health

The backdrop for the health case study is a Primary Care Trust (PCT) in a large urban area. The organisation is responsible for improving and maintaining the health of their local population and the PCT board is made up of executive and non-executive directors, including members from the Professional Executive Committee. The human resource management department is part of the professional directorate and is led by a director of human resource management, who has the responsibility to develop and drive the strategy within the whole of the workforce of the PCT. The human resource management function went through a re-organisation during the period of this research, but after the interviews had taken place. Therefore, the responses from the participants are focused on how the PCT was organised prior to the re-organisation. Notably, one of the key areas that the human resource management function has advertised as a feature is the development of employment practices and development of human resource policies and procedures in line with current employment regulation.

Education

A further case study is based on a university, which operates from a purpose built campus focusing on research, teaching and enterprise. The University has several internationally recognised research faculties where student numbers have grown to substantial undergraduate and postgraduate intakes of national and international students.

The human resource management department, led by a human resource director who has responsibility for all strategic, operational and personnel issues, is part of the University's professional administrative support service. In the human resource team, the director is supported by three other directors who help to manage the various divisions within the function in relation to people-related matters. There are over 150 members of the human resource team comprising managers and assistants. The human resource management department is represented in all the University faculties. Furthermore, the human resource function is also represented, usually at office level, as a devolved service within the separate University academic and service functions.

Local Authority

The third case study is based on a local government organisation in southern England. The human resource management function has the following teams: Organizational Development & Training, Recruitment and Retention, Personnel Services, Business Support, and, Payroll and Pensions. Participants, including the human resource

director, were interviewed from all sections except payroll and pensions. The service was not decentralized and operated from one location.

3.2.5 The case study organisation's role in the research.

The role of organisations in a project, as argued by Eriksson and Kovalainan, (2008:53) is as "gate keepers of research." That was certainly the case for this research as the researcher was very much dependent on the goodwill and contacts within the three case studies. The researcher was reliant on the organisations for access to participants, although the trade union representatives were directly contacted by the researcher via telephone and email.

There were limits placed in terms of who the researcher could speak to and whether further access would be allowed in order to obtain any additional information from the organisation, which had a "direct effect" (Feldman et al., 2003) on the research. Some research can be controlled and influenced by what the case study organisation wants and what they will allow to be publicly on show at the end of the research project (Eriksson and Kovalainan, 2008). The researcher needed to be both aware and respectful of this.

3.2.6 Confidentiality issues in gaining access

The need to follow ethical and confidential research practices starts from the moment the researcher contacts organisations in order to gain access. Eriksson and Kovalainan

(2008: 53) state that organisations can be "very concerned about confidentiality of information that has a link to their management, business operations, or the future plans." Confidentiality is not the only reason why organisations do not want to participate in research; there can be other reasons such as work disruption.

It took almost six months to gain access by contacting over 100 organisations. Ideally, the researcher would have liked to have gained access to more case study organisations but this has not hindered the validity of the research project. It is not unusual for limitations to be placed on access to case studies and participants but as Eriksson and Kovalainen (2008:56) explain, "it is up to the researcher to consider what kind of limitations you can accept and yet be able to pursue a good quality study." The organisations placed no restrictions in terms of questions; they did not ask to see my questions, or monitor the time participants took in taking part.

Without exception, the researcher found all participants very open and willing to answer any questions notwithstanding concerns held by organisations, participants, or the researcher prior to the interviews, that some restrictions may be encountered. All three organisations made the researcher very welcome and made no attempt to influence any of the outcomes of the research during the whole process. No restrictions were encountered.

3.2.7 Anonymity and confidentiality

At all times the research must conform to ethical standards to protect the interviewee and interviewer and to make sure that no deception has taken place in obtaining,

storing and presenting the data. An additional reason is provided by Robson (2002), who asserts that there is a link between the ethical conduct of the researcher and a better quality research report due to the high standards in obtaining the data.

The researcher-participant relationship is often a close two-way relationship (Ritchie and Lewis, 2008), where trust is paramount for both parties. As far as the fieldwork for this thesis is concerned, the researcher stressed that organisations and individuals would have complete anonymity and all of their comments would be non-attributable, thus preserving confidentiality.

Ritchie and Lewis (2008:67) describe anonymity as "the identity of those taking part not being known outside the research team. It may be compromised if participation is arranged by or through a third party (an employer or organisation) or, in case studies or other designs where there is a structural linkage between samples." Realistically, as this is case study research based on organisations it would have been impossible for the researcher to have interviewed participants in the organisations' premises without some colleagues knowing who had taken part in the research. The human resource participants were very willing to discuss the subject of employment regulation when it was explained that none of the comments would be attributed to them by position, name, or organisation.

The researcher encouraged participants to reflect on the subject matter in a way that they were not under any stress or anxiety during or after the interview process, because a role of the researcher is to assess whether the participants are coping with the questions that are being asked (Bryman and Bell 2007). In this study, most of the

interviewees said they enjoyed talking about the subject as it took them away from their day to day activities. Talking about the subject made them reflect on how much employment regulation is now influencing their role in the organisation. An unexpected result was that the participants were more concerned that they were going to be tested on a technical legal issue rather than being asked to make comments on how employment regulation was affecting their overall role. Once they realized that the questions were “easy” they tended to relax, making many insightful comments.

As much information as possible was given to the participants so that they could give informed consent to the questions being asked and could withdraw if at any time they felt uncomfortable answering the questions. The issue of informed consent is complex and, as Erikson (1967:369) states, "if we happen to harm people who have agreed to act as subjects, we can at least argue that they knew something of the risks involved."

In all the interviews the participants agreed to be interviewed and gave the impression that they were engaged in the process. Some even offered to contact their colleagues to see if they would also agree to be interviewed to generate more data for the research project.

The researcher did not name any of the participants in the research or individual case study organisations. The researcher did not ask the names of the participants as part of protecting confidentiality. Consequently, the only names known by the researcher are of the organisational contacts who arranged the interviews. Any commentary in the interview transcripts that could make the organisation or interviewees identifiable either by geographical location or sector has been removed to protect participants'

confidentiality. At no time was pressure put on the participants to take part in the research and all participants were offered the chance to contact the researcher if they wished to discuss anything further stemming from the research. It was explained to interviewees at the outset that the interview would be audio-recorded and if they felt uncomfortable about that then the researcher could take written notes only. Only one person (who worked outside of human resource management departmental remit) declined to be audio-recorded. Since carrying out the research, the researcher has not been contacted by any of the case study organisations or participants asking to be removed from the research.

3.2.8 Data Protection Act 1998

Once data have been collected there may be issues about the confidentiality and storage of the data. The Data Protection Act 1998 broadly states in relation to research data that for processing, displaying and storage of data that "the principles of data collection, enshrined in the Act relate specifically to personal data which are data that relate to a living individual who can be identified, either from the data or from other information in possession of the data holder" (Bryman and Bell, 2007:143). The data from this research project is stored principally on a computer accessed only by the researcher with the data coded in numbers rather than names in relation to the research project. No respondent names have been retained or associated with the respondent numbers, so any data subject access request in accordance with the Data Protection Act 1998 could yield no attributable results. The only individually attributable information retained is the names of the contacts used to arrange interviews.

3.2.9 The University of Birmingham ethical committee

The researcher submitted the methodology to the University Ethics Committee during 2009 and received approval to continue with the research as outlined by the researcher.

3.3 Interviews

This section displays relevant information regarding the construction and conduct of the interview process in relation to this research project. The section is divided into the following subsections. Subsection 3.3.1 discusses the construction of interviews involving the case studies' participants. Subsection 3.3.2 defines the interview questions. Subsection 3.3.3 lists the interview questions. Subsection 3.3.4 focuses on the time and location of the interviews. Subsection 3.3.5 explains the issues around audio recording of interviews. Subsection 3.3.6 discusses how the interviews were transcribed. Subsection 3.3.7 looks at the interview method.

3.3.1 Construction of interviews

The decision to use semi-structured interviews stems from the desire for a flexible and fluid approach to obtaining data from participants. This leaves the researcher with the ability to be more interactive with the interviewee and ask questions that may be in addition to those that were pre-planned. Bryman and Bell (2007:474) further suggest

that "by and large, all the questions will be asked and a similar wording will be used from interviewee to interviewee." With this approach there is still a structure but the interviewer can ask more probing questions if an interviewee makes an interesting comment. The same interview questions were used as a framework when interviewing human resource personnel, trade union officials and line managers, but adapted to the individual role of the interviewee. This is consistent with Robson (1997:231) in that: "the interviewer has worked out a set of questions in advance, but is free to modify their order. Based upon their perception of what seems most appropriate in the context of the conversation..... lets the conversation develops within this area." In the researcher's opinion the questions worked well in generating conservation as the data generated from all the interviews are extensive and in-depth.

3.3.2 Defining the interview questions

The construction of the interview questions is paramount in obtaining appropriate responses from the research participants. King (2006) recommends that questions must not be too ambiguous. Often, a simple format that the participants feel comfortable about answering will provide more focused responses. The participants across all three case studies in this thesis research are human resource directors, human resource managers, trade union officials and line managers. The questions were focused on the research objectives, which necessitated asking questions the answers to which might have seemed obvious, but several respondents answered by saying they had not thought about the role in this context.

The researcher structured the research questions into specific interview questions as the issues and themes were the same for all, so that one interview schedule was appropriate. For example, the interview question of “how does the activity of human resource professionals interact with the activity of legal professionals?” translated into the interview question: “if you are using external expertise what is the nature of the interface?” This question applied equally well to human resource professionals, line manager and trade union officials. It was felt that line managers and trade union officials had the most interaction as organisational stakeholders with the human resource function so they had the most relevant contribution to the debate as research participants.

Robson (1997:228) comments that "a distinction is commonly made between seeking to find out what people know, what they do and what they think they will feel." The researcher needs to be able to explore answers during the interview process as the relationship between the interviewer and the interviewee is fundamental to obtaining comprehensive answers to the questions. King (2006) sees the "key feature of the qualitative research interview method is the nature of the relationship between the interviewer and interviewee. In a quantitative study using structured interviews, the interviewee is seen as a research subject in much the same way as if contemplating a questionnaire or taking part in an experiment... In contrast the qualitative researcher believes that there can be no such thing as a relationship free interview." This is particularly important in this research as employment regulation could be a very sensitive issue to the interviewee.

There is also the potential for participants to feel compromised if they think their legal knowledge and expertise is being questioned. Clear direct questions were used allowing the respondents plenty of time to consider their responses. Although the

interviews were conducted across three different case studies, there was a notable parallel between the terminologies in all the organisations. Rarely did respondents ask for further clarification in order to answer any questions.

3.3.3 The interview questions

The table below illustrates the questions used in collecting primary data from the three case studies regarding how employment regulation interacts with the human resource role and in their stakeholder relationships. The same questions were used for all participants but were adapted in line with the individual roles of the participants: human resource, line managers and trade union officials within the case study organisations.

Table 1 – Interview questions

Role
How much does dealing with employment regulation impact on your role?
Whose responsibility (human resource or the organisation) is it to make decisions regarding employees' (employment) cases? For, instance is it delegated to the line manager, or others?
Is legal advice/consultation on employment law obtained from in-house legal services, or external sources such as law on line, ACAS? Or is it human resource's responsibility to be the managers of the contract of employment on behalf of the organisation?
If you are using external expertise – what is the nature of the interface?
How does complying with and managing the ICE regulations impact on the role and function of service?
What are the formal/informal methods used in dealing with the trade union? How does this impact on your role?
How does the organisation expect regulation to be managed and how is such legal rights/procedures/compliance communicated to employees?

Function

How much of the human resource function in terms of time and resources in your opinion is taken up with dealing with legal compliance, or queries?

Do internal and external stakeholders see human resource as having a pivotal part in the organisation's legal procedures?

What methods are used to ensure employment compliance? Please give examples.

How much are you involved in giving advice to line managers (etc.) on employee contractual issues?

How does legal compliance influence how policies and procedures are constructed?

Where does the authority originate from to change policies, practices and procedures in relation to legal compliance?

Are you aware of how much time and resources are invested in dealing with legal issues? In your opinion is this raising the profile of service? Please expand more.

How do you prioritize employment regulatory issues?

How is the success of the human resource management function measured?

Status

Why did you choose a career in human resource? How much did you realize that dealing with employment regulation would be part of the role?

Is there a relationship between human resource strategies in dealing with employment regulation? Does there need to be one?

How important is employee training in dealing with legal procedures, e.g. redundancy

In your opinion is dealing with legal aspects a necessary skill/expertise in order to be able to deliver the human resource function?

How much have legal training/updates become a part of employee development or continuing professional education?

How do you perceive the status of the function, and do you feel that this has changed over a period of time? If you perceive that it is watered down what reasoning do you base this on?

3.3.4 Time and location

The purpose of the interview process is to gather data. In order to do this, it is important to build enough time into the process to allow this to happen and not to let the interview overrun. The interview process must be managed skillfully by organising the interview at a time and place that does not put the interviewee under pressure (Saunders et al. 2009). Some of the interviewees had a problem attending when the researcher was in the organisation and they found it much easier with their

workloads to conduct a telephone interview. Therefore, this research project utilized two types of interviews: face-to-face and over the telephone. The majority of the interviews took between forty five minutes and one hour.

The researcher found that the level of data generated from the telephone interviews was not inferior to face-to-face interviews. Once practical issues, such as how to audio-record and establish trust, have been managed, it is down to the quality of the research questions coupled with the skill of the interviewer. For this research project, the interviewer had extensive experience in interviewing participants in the commercial world and in research projects, so was able to pace the interviews and make the questions relevant to the topic so that they engaged the participants. The participants were very keen to talk about how employment regulation was affecting their role and also about their concerns in dealing with employment law.

3.3.5 Audio recording the interviews

Permission was sought from interviewees at the start of the interview process to audio record the interviews irrespective of whether they took place within the organisation or over the telephone. Only one trade union representative declined to be audio recorded, so the researcher took handwritten notes. The participants gave frank answers to the questions. Eriksson and Kovalainan (2008:85) assert that there are several different ways to record interviews and that the researcher must be aware that "the interview is very sensitive. The research participants may prefer that you take notes instead of tape or video recording." The researcher fully expected more participants to prefer notes to be taken rather than audio recordings but this turned out

not to be the case. With the participants being happy to be audio recorded, the researcher had more flexibility in the interview process. A small digital recorder was used to record the interviews, which were transferred to a computer ready for transcription.

3.3.6 Transcribing interviews

The interviews were transcribed verbatim with earlier transcriptions being undertaken by the researcher. In the later stages a professional transcription service was used. In the one case where written notes were taken, these were typed up. Transcribing the interviews and checking the drafts were time-consuming. The advantage of the researcher transcribing some of the interviews from each case study was that it allowed closer examination of the data. Then sequential coding and analysis after each transcription allowed the development of emerging themes, with the emergent themes becoming more apparent at an early stage. Bryman and Bell (2007: 491) agree "there are good grounds for making analysis an ongoing activity, because it allows the researcher to be more aware of emerging themes that he or she may want to ask about in a more direct way in later interviews."

3.3.7 Advantages and disadvantages of using the interview method

There are advantages and disadvantages of all types of data collection methods but it is the researcher's role to demonstrate why a particular method was chosen. The use of a semi-structured interview is useful as interviewing is time-consuming with the

researcher not always being able to predict how long the interview is going to take, but having a semi-structured approach allows an element of control over the process. Robson (1997:229) indicates two issues that can affect gathering data in interviews: "It is up to you to terminate the interview on schedule, and you have the professional responsibility of keeping this, as well as other undertakings that you make. The reverse phenomenon is not unknown: that of the interviewee so glad to have a willing ear to bend that you can't escape." In other words, the effectiveness of the interview process is very much down to the professionalism of the interviewer in controlling the interview process to obtain meaningful data. In this project, the interviewer asked probing questions and allowed the respondents plenty of time to respond. When a participant looked likely to go "off piste", the researcher managed the interview.

Interviews can generate vast quantities of data even with a small number of interviews. This can be daunting for the researcher in managing many different themes while still focusing on the research questions. King et al. (2006:21) recognise this dilemma and advise the researcher against getting lost: "a particular line of exploration, they should ask; is this adding to my understanding of the topics I set out to study? If not, is it raising new unrelated topics which are of interest?" In this study, the participants were very willing to unload their personal experience of working in human resource management and having to deal with employment regulation. The researcher had to be strict when the interviews started to give answers outside the remit of this thesis. Some areas that future research could be conducted at a later date were noted.

3.4 Analyzing data

The following sections present the use of template analysis to aid the analysis of the collected interview data. There is a brief discussion of sampling and its relevance for this research. The section finishes by discussing sampling, reliability and validity. Subsection 3.4.1 looks at how template analysis was used in relation to the research project. Subsection 3.4.2 explains how the template was constructed. Subsection 3.4.3 discusses how the template was revised. Subsection 3.4.4 looks at research sampling. Subsection 3.3.5 looks at validity and reliability in relation to the research.

3.4.1 Using Template Analysis

Template analysis is recognised as a relatively new approach to data analysis in business research. Waring and Wainright (2008:1) argue that it has "emerged from more structured approaches such as Grounded Theory and Interpretative Phenomenological Analysis (IPA)." The decision to use template analysis as a research method for this thesis was based on its flexibility. As King (2006:268) states: "the term template analysis does not describe a single, clearly delineated method; it refers rather to varied, but related group of techniques for thematically organising and analysing contextual data."

King (2006:268) also elaborates that the method is not dependent on complicated overtly structured procedures; it allows persistent qualitative research in organisations when looking at professional groups. By using template analysis, the researcher can

establish ordered relationships between the themes with more fluidity when working systematically through the data to define the conceptual themes. The researcher can match the template to the needs of the research rather than conduct that part of the research around a strict procedurally based method, such as grounded theory (Strauss and Corbin, 1990; Carrero et al, 2000) making it less time consuming. The disadvantages are less obvious. King (2006:268) argues that some templates are "too simple to allow any depth of interpretation, or (more often) too complex to be manageable."

3.4.2 Constructing the template

The template in this research was constructed using the software program NVivo (Gibbs 2002). The template assisted the coding process by the use of a computer. Waring and Wainright (2008) state: "Template Analysis bears little difference from the use of software packages such as NVivo for analysis of data and in fact the software might allow a more comprehensive approach." King (2006) recommends starting with either the interview questions or the topic guide in order to develop the initial codes. The researcher used the aims and objectives of this research to identify themes from the transcript data, in conjunction with the interview questions. There were some prior codes that stemmed from the literature review and further codes were developed once the data were explored. The research codes had a more generic application at the start of the project. The codes were revised later, down into specific themes, shortly after the initial template was established with the themes becoming more recognizable, especially in developing the hierarchical coding. The researcher organised the template according to relationships between participants' responses

relevant to noted themes, and then developed a 'hierarchical structure' (King 2006:256).

3.4.3 Revising the template

After the initial template had been devised, the researcher went through a period of modification and deletion of any codes that were not appropriate to the research. This enabled the researcher to impose more structure on the template, thus developing a clear path between theory relevant to this research and data analysis. Crabtree et al., (1999:167) discuss how the codes are developed in the construction of the template: "researchers can develop codes only after some initial exploration of the data has taken place, using an immersion/crystallization or editing organizing style. A common intermediate approach is when some initial codes are refined and modified during the analysis process." This allowed a more rigorous way of understanding the interaction of the codes and the research objectives. Furthermore, King (2006:269) acknowledges the tension between "the need to be open to the data and the need to impose some shape and structure on the analytical processes." By revising the codes continually to ensure that they are in line with the objectives is a form of "selectivity" (King 2006). Ultimately, this ensures that in the final template the codes are realistic and relevant to the research project. Some codes will need to be dispensed with if they prove not to be representative or meaningful in terms of the research questions or theory.

This is where template analysis is different from grounded theory as codes can be developed from both theory and data leaving the interpretation less restricted by the method. King (2006: 267-8) asserts that the interpretation of data should not "be seen

as a separate stage for analysis and interpretation, but rather as the continuation of it... and the use of direct quotes from participants is essential... to aid the understanding of specific points of interpretation.”

3.4.4 Sampling

Sampling is an important feature of research design for both qualitative and quantitative research. There is a tendency for qualitative studies to be less concerned with obtaining representative samples from a known population as the requirement is to obtain a depth of data from smaller samples, or single case studies (Ritchie and Lewis, 2008). In this research the sample is thirty one stakeholders from three organisations, with another two participants from another organisation who gave further context to the research. The interviews were conducted with directors on the board who confirmed the increased level of interaction the organisation had with legal professionals in employment and other contractual legal issues.

Bryman and Bell, (2008: 194) argue that when considering methods of sampling, the most common issue comes down to that "invariably decisions about sample size represent a compromise between the constraints of time and cost." Bryman and Bell (2008) further comment that where the participants are members of an organisation or company then the heterogeneity of the population variance is less. In essence this means that if there is enough depth gathered in the interviews from a small sample size then a larger sample size is not necessarily required.

Qualitative research has a tendency to rely on using non-probability sampling methods. Ritchie and Lewis (2008:78) describe this as: "units are deliberately selected to reflect particular feature of or groups within the sampled population. The sample is not intended to be statistically representative." This study chose human resource practitioners in large organisations as the focus point of the research, with a number of interviews obtained from line managers, practitioners, and some trade union representatives to gain extra exploratory insight. These job roles were selected because it was felt that individuals with these roles were most likely to be able to make relevant contributions in relation to the research questions. The sample was therefore purposive, although with individual interviewees being obtained through intermediaries. Bryman and Bell (2008:197) see non-probability sampling as "an umbrella term to capture all forms of sampling." Obviously, with this type of sampling there needs to be some type of control, otherwise the researcher could be in a position where they are interviewing participants that may not be able to provide insight into the research objectives. In this research snowball sampling (Patton, 1990) was undertaken. This is a form of convenience sample (Venter et al. 2005), which is essentially selecting cases that are relevant to the research questions and there is a realistic expectation that the cases can contribute to the research. This type of sampling process is useful for exploratory research as it allows the opportunity for the researcher to take a more flexible approach, especially where there are issues regarding time, cost and access to organisational participants.

This research uses a type of purposive sample referred to (Robson, 1997:140) as "...leaving it to the researcher using their judgment to achieve a particular purpose." Saunders et al. (2009:241) comment that this type of method is popular in qualitative

research but care must be taken about making generalizations about a population as a whole. In this research, the comments relate to interviewees within organisations, and the organisations are compared, giving more structure to the research than just taking a random survey. Robson (1997:142) sees the merit of this type of research as it allows the researcher to identify who they wish to interview in an organisation. In this study, the researcher approached the organisations and gave detailed instructions of what the research was going to entail and the respondents needed for interview.

Table 2 - Composition of Interviewees

No	Sector	Role
1	Local Government	Human Resource Director (two interviews)
2	Local Government	Human Resource Manager(senior)
3	Local Government	Human Resource Manager
4	Local Government	Human Resource Manager
5	Local Government	Line Manager
6	Local Government	Branch Secretary/ Joint Trade Union Secretary
7	Local Government	Human Resource Manager
8	Local Government	Full time trade union representative
9	Local Government	Full time trade union representative
10	Local Government	Human Resource Manager
11	Local Government	Human Resource Manager
12	Higher Education	Human Resource Manager
13	Higher Education	Human Resource Manager
14	Higher Education	Human Resource Manager
15	Higher Education	Human Resource Manager
16	Higher Education	Full time trade union representative
17	Higher Education	Trade union branch secretary
18	Higher Education	Line manager
19	Higher Education	Human Resource Director
20	Health	Human Resource Manager
21	Health	Human Resource Manager
22	Health	Human Resource Manager
23	Health	Human Resource Manager
24	Health	Human Resource Manager

25	Health	Non Human Resource Worker
26	Health	Head of Human Resource
27	Health	Human Resource Director
28	Health	Human Resource Manager
29	Health	Full time trade union representative
30	Health Authority	Human Resource Director
31	Health Authority	Board Director

There are clear technical reasons why probability sampling was not applicable to this research. Firstly, it is necessary to identify the population from which a sample is to be taken. Then it is necessary to estimate sample size for the confidence levels required. Sample size can only be calculated once there is some reasonable estimate of the occurrence of the phenomena under investigation in the population. None of these conditions could be satisfied; therefore the research must be conducted using non-probability sampling. A coincidental result of this research could be to try and generate estimates of sample size for subsequent research, but this is not a formal objective of the research.

3.4.5 Validity and reliability.

In essence, validity is concerned with research measuring what it aims to measure. Reliability is concerned with issues such as replicability. One important characteristic of qualitative research that is undertaken using non-probability sampling is that it can be used for a situation when, initially, reliability and validity are unknown and cannot be demonstrated. Conducting initial qualitative research identifies whether or not questions seem to mean the same thing to different people, hence reliability can emerge (or not, as the case may be). In the current research, reliability emerges after

an analysis of responses indicates that respondents do have a common understanding regarding the questions.

Validity

Eriksson and Kovalainan (2008:310) consider the term validity in a research project as “the degree to which a study reflects or assesses the specific concept that the researcher is attempting to measure.” One of the questions qualitative researchers need to address is whether there is a link between the collection of data, the sample size, and in the way that the research has been measured and interpreted. In other words, is there credibility and plausibility in the claims made by the researcher (Ritchie and Lewis, 2008:273) in relation to the research phenomena? In this research the link has been made between how the data has been interpreted in relation to the data size and the objectives of the research study as the research is exploratory in nature in generating rich conceptual themes.

Reliability

Ritchie and Lewis (2008:270) assert that “reliability is generally understood to concern the replicability of research findings on whether they would be repeated if another study, using the same or similar methods, was undertaken.” In other words, is the design of the study sound in how it has been applied and analyzed? Some authors such as Holstein and Gubrium (1997) do not see the need for the findings of qualitative research to be repeated in other types of method as the idea of qualitative research is that it is reliant on the context in which data are collected, relying on meanings and interpretations rather than statistical patterns. This can be compared to

Seale (1999:158), who contests that qualitative data can be precise in its application through good practice in reflexivity by “showing the audience of research studies as much as possible of the procedures that have led to a particular set of conclusions.” In this research methodology the author has outlined the various methods and procedures taken to design, collect and analyze data as a valid qualitative measurement.

3.5 Presentation

The research findings are displayed across three chapters, with each chapter presenting and discussing the results of each of the research questions. The findings can be seen to relate to the organisational case studies due to the richness of the themes developed in answering the overall research question: “how the growth of employment regulation has impacted on the role of the human resource management profession.” In each of the chapters there are sections that incorporate subsections with an overall conclusion at the end of each chapter.

CHAPTER FOUR – EMPLOYMENT REGULATION AND HUMAN RESOURCE PRACTITIONERS' IDENTITY

The theme of this chapter is the relationship between increased regulation in the workplace and the development of the human resource professional role, including whether law has become more salient by increasing legal compliance and increased procedural regularity. Section 4.1 looks at relationship between employment regulation and human resource practitioners' identity. Section 4.2 discusses how human resource professional activities interact with the work of legal professionals. 4.3 Professional, education, skills and continuing professional development. Section 4.4 is the chapter summary.

4.1 The influence of employment regulation on the development of human resource management practitioners' identity.

This section concentrates on the influence of employment regulation on the development of the human resource function's identity in public sector organisations. Each subsection looks at a different aspect associated with the growth in legal procedures and the requirement for legal knowledge in the human resource role. Subsection 4.1.1 reviews how the human resource professional's role has developed alongside a growth in employment regulation. Subsection 4.1.2 discusses human resource professionals as being legal service providers.

4.1.1 Role development alongside employment regulation

The focus of this section is on how employment regulation impacts on human resource management's individual and organisational identity from the perspective of the human resource participants. Traditionally, research has concentrated on the move from personnel management. This research focus is on trying to understand the day to day impact of employment regulation on human resource professionals' identity.

In trying to understand the influence of employment regulation on the human resource role the head of human resource management in the health organisation replied:

'Dealing with legal requirements has had a big impact on my role as head of human resource management overseeing the operational human resource team, with personal involvement in the complex or very sensitive areas impacted by regulation and the impact of tribunals.' (Interviewee 26)

The response indicates the influence of employment regulation and tribunals from the perspective of a senior manager who has the authority to make decisions regarding employing legal professionals if a case reaches the tribunal pathway. It is noted that the participants from the health organisation particularly indicated their desire to avoid tribunal appearances, giving the impression that legal activities are a significant influence on the human resource management's day-to-day operational work. This case study gave the impression of being more under pressure from employees asserting their employment rights than in the other two cases studies. There was a stronger inclination to be reactive to employee disputes through using the legal processes from both the management and the trade union side.

The human resource participant below felt that the role is now about discouraging employees and their representatives from taking formal legal action, as well as making sure that the human resource function is also protected against any implication of poor decisions. Therefore, in common with the head of the department, the human resource professional states how avoidance of employment tribunal hearings is a pressure on human resource management in their professional relationships with stakeholders. Moreover, the human resource participant clearly states that it is an automatic response on their part to consider the potential legal consequences in giving poor advice, or making poor decisions in relation to employment disputes when providing legal advice:

‘I think it is a really big role - every day you are referring to some sort of law and in every case you have got you are thinking, in the back of your head... if this goes to an employment tribunal, how do we need to make sure we have covered our own backs as it were, to make sure there isn’t a case to answer to an employment tribunal, so every situation we are in... It’s like a defence system, how do we defend ourselves against action really, so how we cover our own backs, protect ourselves’ (Interviewee 24)

The opinion given above is consistent with many responses given in all the case studies in that employment regulation has a major effect on decision-making, both in having to defend against potential litigation and by influencing stakeholder communication. The impression given during the research is that there is a strong link between human resource practice and being mindful of the regulatory requirements, especially in connection with grievance and disciplinary issues. Although this trend of

compliance seemed to go across all human resource management practices, on a practical level it was easy to observe that it made human resource professionals act like in-house legal advisors within the organisations. The human resource professional below illustrates how they felt that the human resource role has now moved into being akin to being employment legal advisors. This now appears to be an integral part of the human resource role whether one is working in recruitment or employee relations. The participant below identifies the role as going beyond just giving advice, to one of actually influencing outcomes in order to protect against any legal risk at an individual or organisational level:

'Yeah I think it [employment law] has become more of an integral part whereas before it was more of an add on to the business maybe in terms of it being an admin function, but it is more now a more essential part.' (Interviewee 4)

The response was insightful because it acknowledged how the human resource role had changed in relation to regulatory demands and employees asserting their employment rights. There was no particular role distinctiveness between the case studies on this point as all the human resource participants gave the impression that the impact of employment regulation could be seen across the board in their relationships with employees and other stakeholders. Some interviewees had worked previously in more welfare-centered personnel departments, where they had experienced less regulatory control on employment and union activity, but this did not seem to be the norm in current employment. Interestingly, whereas other human resource participants did not know any other form of human resource professional practice as they were new entrants into professional role, and practice.

'We have to give legal views and expertise at all levels and people [line managers and employees] recognize that whether they like it or not.' (Interviewee 26)

Several of the interviewees that had worked in human resource management for quite a long period commented on how the role had changed from “administration” to one of being more actively involved in decision-making with a requirement to have specialist legal knowledge. Participants were in agreement that it is about the “status and respect” human resource professionals are given by stakeholders in their capacity as legal advisors. Human resource professionals in this research see employment regulation as part of their professional skill set, but as this interviewee points out, it does not always make them popular. This can have an influence on how they are perceived by line managers:

'I think they see us as being a bit of a nuisance to be honest. You often get comments like well I suppose we ought to run this by you, or you are probably going to say no, but they think human resource role is blocking what they want to do. I think the relationship is getting better with managers, I think at first they just thought human resource was something to get in the way but I think more and more people are starting to come to us and they do on the whole accept what we say, and they are starting to learn and understand that the law does impact.'
(Interviewee 22)

Furthermore, the interviewee below highlights that human resource professional advice is sought more often in such legal areas as anti-discrimination and

harassment procedures, which was consistent with the feedback obtained from the other case studies:

‘they have got a really good understanding about law and recruitment and they understand there is a big part to play in thatnot that they necessarily understand the law around discrimination, when it comes to harassment casework, and I am not sure that they understand about constructive dismissal. (Interviewee 22).

This was particularly acknowledged in areas linked to individual employee case work such as discipline and grievance disputes, although the trend of legal compliance is recognised to cover the whole of the employment relationship. The move towards the human resource function being viewed as specialists in employment regulation, and away from generalist practices, appeared consistent across all the case study organisations.

4.1.2 Legal service providers

The focus of this subsection is to review how the participants perceived the human resource professional legal service providers as organisational experts in giving advice about complex employment regulation. The local government human resource participant sees the move as a consequence of the progression away from the human resource function being viewed as a more welfare orientated service:

'Yes I guess that is part of the move from being a more social service to a more legalistic – it comes down to people getting over paranoid about can I do this?'
(Interviewee 4)

The notion of whether the human resource management function is now an employment legal service was more fully explored by the local government director. In this instance the director was asked about legal responsibility and whether human resource professionals are now managers of the employment legal framework on behalf of the wider organisation:

'I think they probably accept that it is human resource's responsibility and are liable to give us a huge kick to put it mildly if we give wrong advice. I don't think it is fair to expect managers to keep up to date on legislation about employment, all our managers tend to be people who have a professional background they are a [professional name], or a [professional name] that's the bit they are good at, that's their training.' (Interviewee 1)

The director confirmed that if human resource management, as a function of individuals, gives incorrect legal advice, then the organisation or individuals will hold them responsible. The director acknowledges other occupations in the organisation not having accurate legal employment knowledge as they are specialists in other areas. The assumption can be made that the human resource function has willingly taken on the responsibility to provide an in-house employment legal service as part of their role to supplement the lack of perceived knowledge by other functions. Human resource management interviewees had no

problem in outlining how much employment regulation is affecting how they perform employee relations tasks. Interviewees who worked below director level found it harder to perceive how much their work had moved into an employment legal services role:

'It may be because we've got a legal service department that we would never call ourselves human resource legal services, because it would be distinctly treading on toes.' (Interviewee 26).

This interviewee highlighted the complexity of the human resource profession moving into a different entity that might overlap with other professional domains. All the organisations have legal departments, although these departments do not involve themselves in employment law. Within many public sector organisations such departments are staffed by legal professionals, for example legal executives and solicitors. Consequently, for human resource professionals to start branding themselves professionally as a legal service has the potential to bring about conflict between different professions, inside and outside of an organisation, as there would be an overlap of professional jurisdictions. Or, as the same interviewee below states, even if there is recognition of operating within a legal environment, some participants still think that expertise should originate from a legal professional:

'to a certain extent, although I would never say that I'm an expert in employment law and if someone said "I want the answer to this employment law question", and I might know if it was something basic so calling ourselves legal Services might be a bit misleading I think.' (Interviewee 26)

The interviewee below acknowledges that the human resource management function is potentially emerging as employment legal “hubs” for all employees:

‘People will come to us for legal advice on employment matters yes we are that legal hub.’ (Interviewee 4)

There is an acceptance by human resource interviewees from all case studies that employment legal advice distinguishes their operational relationships with line managers, especially in the areas of anti-discrimination policies and practices. The local government participant below highlights that being an expert in employment regulation makes their role indispensable, which ultimately has been empowering for the human resource professional role in organisations.

Yes, because it makes you indispensable. They need to come to us because they can’t do it. The managers can’t deal with the situations without our help, so I suppose we’re trying to make ourselves indispensable.’ (Interviewee 11)

The interviewee expanded further that managers are dependent on the human resource service, either because they find employment regulation too complex, or because they do not have the time to become up-to-date with the relevant employment legal requirements in areas such as discipline and recruitment. The opinion was reinforced by the higher education director who distinguished that human resource professionals are legal advisors and ultimately problem solvers for managers:

‘Line managers expect human resource to be advisers and navigate through issues and advise professionally where the needs of the business can be assisted and worked within the confines of employment law.’ (Interviewee 20)

4.2 The interaction between human resource management professional activities and the work of legal professionals.

This section concentrates on the interaction between the activities of the human resource function and the work of the legal professional in relation to employment regulation. Subsection 4.2.1 looks at the interface between the role of human resource and employment regulation. Subsection 4.2.2 investigates whether human resource professionals have become experts in employment regulation within organisations. Subsection 4.2.3 inquires whether there is now a fusion in roles between the work of human resource professionals and legal professionals.

4.2.1 The interface between human resource role and employment regulation

One theme that emerged is how regulation is seen as both a benefit and a burden for human resource professionals regarding how they manage their own working practices in public sector organisations. The higher education director below gives a view that was reflected by other interviewees in that there is a need to be legally aware, but most importantly one has to prevent cases reaching any stage of the employment tribunal system:

'Yes, you do have to become more legally aware or rather than being legally aware it is more about the effective dealing with problems before they become a legal problem, that is always a challenge in terms of the skill level of the heads of department who have [to be] able to proactively manage such situations and nip them in the bud before the need for human resource intervention, before it becomes a formal grievance or ending up in a tribunal.' (Interviewee 19)

The director further acknowledges the importance of having managers who are competent in managing disputes, as in this particular case study there is more delegation within the organisation. One of the health employees sees the issue more directly in that too much regulation has created problems on a localized level, which can make employees too quick to start formal legal proceedings such as grievances:

'Law's creating problems and conflicts in the workplace. Encourages petty behaviour, and our job role is to sort it out. Sometimes moves cases to the end result and too quick to litigate.' (Interviewee 20)

The health director, when discussing the effects of legal compliance on human resource employees, argues that it is not just about human resource professionals having the right legal knowledge but being able to seek creative solutions by being proactive in dealing with issues when they arise, often from the start of the conflict. This is an important point as knowledge is not enough on its own unless employees have the common sense to be able to find effective management solutions, rather

than taking the legal minimum as management good practice just to stop potential litigation:

'It is just not just a system and process they lack being pragmatic they tend to stick to good practice they have to be supportive it is just not about the policing role, being capable of identifying of where there is risks. Not being afraid of trying to achieve solutions off the script.' (Interviewee 27)

Legal knowledge on its own does not solve disputes but all the case studies concur that all too often it is used as a start and end point. The director above identifies that how disputes are managed goes beyond the application of knowledge, as it should include soft skills such as negotiation and mediation, which can prevent disputes escalating into tribunal cases. The interviewee below from the same case study identifies requirements for human resource professionals in the future to be more adaptive and not to be too prescriptive in using employment regulation:

'Perception of human resource professionals, it has to change this will be done in how we manage line managers and our own personal relationships. They have to know that they are getting experts' advice they must see us as human resource professionals.' (Interviewee 22)

The suggestion from the above interviewee is that the management of employment regulation needs a more pragmatic approach in order to translate complicated legislation into flexible working practices. Furthermore, there is a distinction made by the interviewee above that organisations must be aware that the function is

providing a professional service, where they must be seen to be competent in understanding employment regulation.

An aspect of the higher education case study is that human resource professionals were being used as legal consultants, due to the service being decentralized. There was a suggestion of “protectionism” by the human resource function in wanting to control legal advice in order to enhance the human resource function’s organisational position. If there is a move towards more devolution of legal responsibility to line managers, then potentially human resource professionals could lose a fundamental part of their role. These are opportunities and threats for human resource professionals, especially if they have no influence regarding whether organisations choose to decentralize management functions. The same interviewee below predicts that line managers in the future will be much more involved in legal issues, but points out that the human resource function still has a valid role in providing an employment law service:

‘become much more legalistic for line managers in the future in how they have to deal with issues but there is still a role for human resource interpreting law defusing it turning it in to some that is workable and a process that is non-threatening’ (interviewee 20)

The human resource professional below has pinpointed some of the issues involved. Firstly, line managers may not have the correct legal knowledge. Secondly, line managers may be less willing to be legally compliant, with a preference to push the legal boundaries by taking a chance in managing employees,

with this being due to not having the overall vision of what happens when something goes wrong:

‘There is always conversation that you want to have with line manager that says you want to do this but this contravenes the law for this reason and there are consequences. There is always a role for human resource in explaining what the constraints and boundaries are within it necessary to operate in to enable the line manager to get the appropriate skills. This is when case law can be a bit of nightmare so human resource has to act as a filter to make things as simple as possible.’ (Interviewee 20)

The protectionism issue of human resource professionals being the “key holders” of legal knowledge and advice was raised by the head of human resource in the same case study. The participant comments that not only is employment regulatory knowledge essential, but that it is also non-negotiable as far as all roles are concerned, including their own.

4.2.2 Human resource management’s professional legal expertise

This subsection evaluates the role human resource professionals have in providing relevant legal expertise and skills in order to provide an in-house legal service. The expectation placed on professionals can go beyond being advisors to being the decision-makers, especially if the line manager is judged to not understand the full legal repercussions. This gives a two dimensional role to the work of the human resource professional as it is expected that not only will human resource professionals

have the relevant knowledge and skills themselves in order to deal with employment regulatory issues but will also pass this knowledge onto line managers. The local government interviewee below makes a statement in common with many other human resource professionals that keeping up to date with complicated legal judgments from case law, then having to translate them in to the organisation, is an important aspect of human resource management's professional role:

'it's trying to remember what has happened previously and how it might impact, but when you're reading there's this case that has happened and this has been decided, you go well what has actually been decided?' (Interviewee 15)

Human resource professionals pointed out that often it is problematic deciding the type of or how much training to provide, as stated by the project manager, who is not a human resource professional, but is currently working in the human resource management function. The manager commented on the relevance of training in employment regulation, but made a point that if an organisation provides too little, this could prove to be as dangerous as having none at all:

'Yes, I think the legal connotations are obviously really crucial, which I wouldn't have realised had I not worked so closely with human resource people myself. To have some understanding, a little bit of understanding well it might be a bit dangerous.' (Interviewee 10)

There was a suggestion of 'protectionism' in the human resource function wanting to control legal advice in order to enhance the human resource function's

organisational position. If there is a move towards more devolution of legal responsibility to line managers, then potentially human resource professionals could lose a fundamental part of their role. This represents opportunities and threats for human resource professionals, especially if they have no influence in whether organisations choose to decentralize management functions. The same interviewee below predicts that line managers in the future will be much more involved in legal issues, but points out that the human resource function still has a valid role in providing an employment law service:

'I don't think there is any value in line managers meeting directly the law as it stands, it needs to be tuned in policy and process and easy to understand.'
(Interviewee 20)

4.2.3 Interface between human resource management and legal professionals' activities

The purpose of this subsection is to explore how much the work of the human resource professional has now crossed over into the remit of legal professionals such as legal executives and solicitors. Interviewees were asked whether they thought human resource professionals were now viewed as “semi-lawyers” in the area of employment regulation. The director from the local government case study reflected that some stakeholders may actually see some key personnel within the human resource management as lawyers, or semi-professional legal advisers:

Q. 'you think that people outside of the human resource function see you as lawyers?'

A. 'some might in human resource departments I don't think you can afford the situation where people say he's the legal expert, I don't think you want that. I suppose they could go to a lawyer if that's what they want, I think lawyers are quite good in my experience of turning round practical problems, they can give you good legal advice, but when it comes to practice that is what human resource are there for'(Interviewee 1).

Although the director did not think it would be good for the human resource profession to move into the legal professional role, it was suggested that the more pragmatic approach by the human resource function meant that they were able to offer good legal solutions. The director further qualified this by arguing that human resource professionals are more prepared to try and obtain a practical solution to employment disputes than the legal profession who are more adversarial in their approach:

'I don't think lawyers would say well why don't you try this, have you thought about doing that, have you thought about this situation or have you given a warning, I don't think they do this sort of thing I think they tend to say this is the framework of the law it is up to you to make it work, but I think it's up to human resource to make it work.' (Interviewee 1)

The same human resource director is matter-of-fact about this in that there is no such thing as a no-risk situation as with legal cases it is often down to the

individual advice that is given, irrespective of whether it is supplied by the human resource professional's function or by a firm of solicitors. The director comments that lawyers would tend not to give such practical advice as they are much more centred on the legal rights and wrongs when in reality an organisational decision has to be made:

'You know you have to take risks you know you might think right we're going to dismiss this employee, we think it's a fair dismissal but they have every right to think it isn't and they might go to tribunal, we accept that we have to resist this. It's not that we're giving the managers the no risk solution we're giving them things that we think are necessary for the business and there are risks but we're pretty sure we can resist any claim. If we do get a claim so what this person has cost you so much money due to their incompetence, or risk to service users or damage to your children's education we're going to dismiss them properly, fairly, doing it isn't an unfair dismissal but you will be challenged but we can justify this There is no such thing as no risk and no lawyer will tell you this.' (Interviewee 1)

The research found that disparity between a solicitor and the human resource professional role is blurred challenging an assumption that the work between the two sets of professionals is very different. The other issue that the human resource directors pointed out is that when solicitors or other legal professions are involved it can be more time consuming and costly for the organisation. Cost and resourcing ultimately has an influence on when advice is sought from an external legal advisor not least because it can alter the dynamics between the parties. Involving legal

professionals can potentially make relationships more adversarial, which then can have the knock on effect of making the dispute irresolvable by informal means:

'Definitely, and that does make it more time consuming. It can make it more legalistic, more defensive actually when legal practitioners write to each other they can be incredibly rude to each other, and it's that sort of scenario where you can almost create an adversarial position and interestingly whilst in the legal profession people can view this as part of the game, part of the arrangement, they don't really despise me personally, it's just the position, they are trying to make the best representation they can.' (Interviewee 1)

This particular director pointed out that when legal professionals become involved it can change the relationship for the worse between all parties involved:

'I think that can sometimes have an adverse effect on the employment relationship and it can actually inhibit situations where an employment relationship starts to become strained and people move into a defensive legal position and actually the prospects the of resolution become more remote and its more likely to fracture and become settled.' (Interviewee 1)

Similar comments were made by another human resource director who was concerned that too much advice was being taken early on in an employment dispute. This can often be down to whether autonomy has been given to individuals to make a decision. This director sees it less as a lack of legal knowledge on the part of the individuals but more one of a lack of confidence, which could be

because of limited legal knowledge, to make the decision thus resulting in the involvement of solicitors at too early a stage in the process:

'I'm also trying to cut out the amount of legal advice they are taking. I have been used to not getting the lawyers involved. As you get higher up in your career you tend not to (1) because you have more experience (2) and you have the authority to do so. Unless it is particularly complicated you don't need to involve them, but here far too much and too early. Partly a confidence and culture issue. For me every time we get a legal statement, I couldn't understand why they got a legal statement. They just seemed to use the lawyers over small matters.' (Interviewee 27)

The local government director has a different perspective in that a human resource professional's legal expertise is integral to running a good employee relations system for the organisation but one of the consequences is that line managers identify the human resource role as a legal advisor:

'They see us as legal advisors; they tell me they love me. Common sense what we say not rocket science it has an impact in terms of reassuring giving the confidence in what they do. Human resource as catalysis we set the legal framework, we would explain the legal context, then give them reasonable employer response.' (Interviewee 1)

The following interviewee makes an interesting point that human resource professionals have a parallel existence with the legal profession, but with this being

an informal professional role asset in the organisational context rather than one that would necessarily be recognised within the current legal professional groupings:

'I do think they see us in human resource as almost a step below a solicitor or barrister because you are giving legal advice on what to do but being protected by the fact that it is still fairly informal.' (Interviewee 22)

The interviewee made a further point regarding the difference caused by the representation of cases at tribunal, where the organisation engages a lawyer to defend the organisation's position.

'what you can do and cannot do in case law ... so our jobs are not so very different to solicitors, it's just that we are not standing in front of judges who are casting down judgments on what has gone on.' (Interviewee 22)

What is obvious from the interviewees is that there is a grey area between the work of the solicitor and the role of the human resource professional. Often the tasks are separated due to the financial costs and time involved in seeking legal advice from solicitors:

'Yeah it is quite blurry. But to be frank a lot of that comes down to cost, and a lot of that comes down to time. Because to get the professional legal advice it costs us because we have to pay for external legal advice.' (Interviewee 13)

When asked where the work of the legal professional starts and stops, none of the interviewees could distinguish the cut-off point. However, it may be where a problem occurs that has not been encountered before and where no one else has any preceding experience of it in the organisation's human resource management. Often if the problem is too complex then advice will be sought from a legal professional, but there are no "cut and dried" rules relating to when a lawyer is engaged:

'I'm not a legal professional. It's a very grey area that we are not sure where we stop and the lawyers start there is no clear differential. It gets very confusing all that I can say is that if I feel that it is something that I don't understand then the lawyers have to be used.' (Interviewee 21)

The relationship between the level of legal expertise and the development of the human resource profession into acting as legal advisors is demonstrated by the way human resource professionals in this research were unable distinguish between solicitors and human resource roles, outside of representing the organisation at the tribunal stage. Interestingly, a point made by several of the interviewees centred on getting advice back from legal professionals when they already knew the answer, so it was more about confirmation than gaining new perspectives into the outcome of the dispute :

'I know we have taken advice on some cases but the advice we receive back is already what we have gone through ourselves , it's already what we know, so in

effect it was a big waste of money. We only try to use them where it has gone beyond a point where it has gone beyond our area of expertise.’ (Interviewee 23)

This is particularly notable in relation to whether there is a “fusion” between human resource management’s role and a legal professional’s work. The quote below is consistent with many of the responses in that there is a fusion but it is hard to define: it is down to individual expertise and the confidence of individual human resource professionals.

‘Yeah there is [fusion between human resource management and lawyers] but as I said occasionally there is a case that will be very complex and we would look to run past the solicitors.’ (Interviewee 33)

4.3 Professional education skills and continuing professional development

This section concentrates on human resource professional legal expertise obtained through education, skills and the role of the CIPD in promoting continuing professional development to meet the requirements for professional body membership. Subsection 4.3.1 reviews how human resource professionals access legal knowledge and subsequently develop legal skills. Section 6.3.2 considers the attainment of human resource professional qualifications.

4.3.1 Development of professional legal knowledge

The importance of employment legal knowledge (expertise) is summarized by the local government human resource director who sees legal knowledge as fundamental both for operational and strategic work:

Legal knowledge is more crucial to the role and fundamental.’ (Interviewee 1)

The relevance of having up-to-date legal knowledge is also seen as going beyond the necessary skill needed in order to carry out day-to-day operational work, as the participant below notes. The participant makes the point that as a public sector organisation there are extra demands, which necessitate a good understanding of employment regulation to prevent any adverse publicity that may come from the incorrect handling of employees during employment disputes. This opinion is in line with the Equality Act 2010, which now places extensive duties on public sector organisations in managing anti-discrimination procedures as good employers:

‘As I say because we are public sector it’s important we comply you know we are role models if we get it wrong then everybody knows about it and the papers love it if we get it wrong you know so we have to make sure that the public money is well spent. Legislation has such a large impact on the recruitment process or parts of legislation it’s important to be updated and keep updated in order to make sure we are running the best service possible.’ (Interviewee 3)

The term education is used both for formal training illustrated by attending courses, and informal education, as many of the employees from all the case organisations commented on how much they read about employment regulation in their own time. This is because they need to be familiar with current case law and the effects it can have on human resource practices. The knowledge requirement underlies an ability to carry out day-to-day working practices, as indicated by the local government participant below:

‘I mean when you’re getting to a complex case and the water is getting very muddy it might be important to go and explore the case law for something similar in order to not induct a tribunal. The best reason for using case law is for not ending up in a tribunal isn’t it?’ (Interviewee 6)

This type of legal research is very time intensive as it requires a level of legal understanding which is often down to independent research of the individual human resource employee. The local government director pinpoints that self-reliance is a characteristic sought in human resource professionals in order to prevent reliance on external legal bodies due to the costs involved:

‘There is a position in terms of our own professional expertise, on that area, and trying to develop skills so that we have a level of self competence.’ (Interviewee 1)

An issue mentioned by many of the interviewees is realizing when to seek advice or knowing the limits of their own knowledge. There are many different ways to access employment law resources ranging from commissioning individual external

legal advice or using online internet suppliers such as CIPD or HR Expert. Some organisations pay to access the same resources that legal professionals use to get regular updates sent via e-mails of new legal case precedents and judgments. With so many available sources a decision must be made not just on financial costing but also on the validity of the resources. A key skill is having the right legal interpretation, and then being able to apply it to a real-life situation. This is a skill that can be developed with job experience, but as the health interviewee points out below, there are varying levels of skill within a team. Moreover, the interviewee questions whether they are being equipped with the right skills through formal education and training:

'I think it is a requirement because we have to interpret some legislation because it's woolly so it's not saying a definite yes or no, so you are interpreting it for yourself and for your organisation and as well I think you may not always have the skills whilst you are being thought of as lawyers, you are not actually being taught the skills of negotiation and how to apply it and all that kind of a thing and I think that would be beneficial.' (Interviewee 22)

There is recognition across the case studies that legal skills are fundamental in order to carry out the role, with the majority of interviewees obtaining formal qualifications via university degrees courses. Interviewees argue that not enough instruction in employment legal knowledge is provided through university courses. The problem is that very few legal queries are the same, or the law surrounding an employment query may change due to case law, or changes to statutory interventions. The diverse range of legal issues that have to be contended with

made it hard for university providers to take a blanket approach to how much knowledge is actually needed in CIPD courses. The human resource director of the higher education case study comments that a basic knowledge is enough, or a working knowledge should be sufficient, but was unable to define what this meant, but determining the role of the solicitor in relation to detailed knowledge:

‘Training on legal skills on employment law is good; you need to know the basics you don’t need to know every detail of the act that is what the solicitor is about but it helps to have a working knowledge. Operational human resource need to know statutory procedures, policies go further than the legislation, so the statute is not much help to you but it is important.’ (Interviewee 12)

4.3.2 Professional qualifications

The attainment of professional qualifications is seen as crucial, not just as a benchmark of professionalism, but also as an ongoing professional development leading to membership of the professional body (CIPD). There are many varied routes to obtaining qualifications that can lead to membership of the CIPD either by formal university and college education courses or via the CIPD's own courses. One aspect the human resource interviewees were very clear about is that it is not optional in the current climate to forgo membership of the CIPD, as it is seen as a mandatory requirement to obtain employment. There are mixed motivations displayed by human resource management participants as some see membership of the CIPD for professional advancement, and others see it as just a requirement to do the job, as explained by a higher education employee below:

'From my point of view it was a means to an end because I had been with one organisation for a very long time and I was concerned that that amount of experience within one organisation was fine but on a CV it's not particularly productive. So I felt I need the qualification to be able to say if you like this was part of my own personal development.' (Interviewee 15)

The unanimous opinion from all the case study interviewees is that employment law in the future will play even more of an important role in their professional development. All the case study organisations encouraged staff to obtain at least a diploma as part of their CIPD professional route. This is because promotion is often in part dependent on CIPD qualifications. Some interviewees, when asked about how much employment law was taught on their university courses, voiced frustration that not enough employment law instruction was provided, or at an early enough stage, as they felt it was fundamental to their development. Two of the case studies are based in the midlands with the other in southern England, but they all had similar experiences in the amount of employment law taught as part of their qualifications. Generally, they felt that not enough emphasis was placed on employment regulation and that the qualifications were too general, as illustrated below in one of the health participant's contributions:

'I felt that it was only a module like say training and development was and I thought it should have been a double module.' (Interviewee 22)

Legal skills are seen as an important part of the job and many of the interviewees linked such practices into their own professionalism and expectations of the professional body (CIPD):

‘Yes, staffs needs to have legal skills it is an important aspect of the job. Ultimately that is why you are asking for CIPD skilled people.’ (Interviewee 28)

The expectations are three-fold, based on the competency of an individual's personal development, how the work of the service needs professional staff, and meeting the membership criteria of the professional body. Membership of the CIPD has been identified by human resource participants across the case studies as paramount to developing not only skills in order to carry out their roles, but also to enhance their career opportunities. The CIPD, through its membership requirements, has an influence on who can be a member. There are several different membership levels, and being a ‘fellow’ is a membership attainment of all the case study human resource directors:

‘Benchmark - I’m a fellow most of the staff are working towards if they haven’t already obtained it though it is not necessary. Ideally would like to recruit staff with CIPD but we still recruit without as we don’t want to restrict who we recruit and would support someone with professional experience.’ (Interviewee 19)

Although the director makes the point that professional experience is still important, there will be an expectation that membership of the CIPD will be sought once the employee is in position. All the human resource directors indicated that

they are prepared to support new employees in obtaining the qualification as it is seen as a competency benchmark for professional development.

4.4 Chapter discussion

Interviewees acknowledge strongly the role employment regulation plays in defining their professional competence. Furthermore, interviewees demonstrated frustration regarding the amount of time taken with giving employment regulatory advice on a day to day basis. Participants recognised that employment regulation has brought opportunity for the profession to specialize, which in turn has raised the status of human resource professionals as well as constraining human resource activities.

There was recognition from the participants that human resource professionals are now legal advisors in the remit of organisations. As the human resource professionals are viewed as being responsible for regulation or at least “gate-keepers” of employment regulation policy and practice. Interestingly, human resource professional status has increased due to being viewed as legal advisers, yet there are negative implications for human resource professionals. Where the work of the human resource professional is viewed as stopping managers' initiatives, or when they have to remind managers of the legal ramifications of not considering the implications of employment regulation.

Interviewees, including the human resource directors, are unable to identify where the human resource role finishes and the legal professional role starts. Some

interviewees still see the legal professional as the technical adviser, but acknowledge that there is potential for fusion when legal professionals are involved in a case. One reason given was that it is down to the lack of confidence of individual human resource professionals in their own expertise as to whether too much reliance is placed on using legal professionals.

Human resource professionals felt they provide a more pragmatic and organisationally based solution, to the benefit of all parties and away from the confines of legal regulation. Notably, the difference between lawyers and human resource professionals is that the human resource function will give more practical advice that is more related to the needs of the organisation whereas lawyers are adversarial. This has consensus across the case studies as human resource professionals felt they are more able to find more practical solutions in employee disputes, for instance by using mediation techniques, whereas it was felt that lawyers are more adversarial and are not looking for a compromise, which is often not positive for all concerned. A practical in house legal advice service is seen to be where the strength of the human resource function lies.

Interviewees acknowledged the importance of keeping up to date in new developments around employment law, especially in understanding new case law (judicial decisions) emanating from tribunals and courts. Interviewees acknowledged that it is not sufficient to just understand the theoretical implications of legal judgments; as human resource professionals they must be able to interpret legal-speak into organisational policies and practices. Most importantly human resource professionals must translate complex legal judgments into legal

management practices that can be understood easily by colleagues and managers throughout the wider organisation.

The importance of obtaining legal knowledge is a fundamental criterion in developing the professional skill set in human resource employees, and is acknowledged across all the case studies. Legal expertise has developed through formal education by human resource professionals obtaining a university undergraduate or postgraduate degree that focuses on human resource management theory and practices, with some form of accreditation from the CIPD. Participants recognised limits of such courses, commenting that more emphasis should be placed on providing more in-depth knowledge of employment law, concentrating not just on the theory but also on developing legal skills.

Different areas of law such as anti-discrimination legislation and the contract of employment are recognised as being more resource intensive. Consequently, the attainment of such legal knowledge requires continual updating of skills to do the job, as well as being a requirement for CPD. The role of the CIPD as a professional body is recognised in developing the broad range of legal knowledge that moderates human resource employees' future career prospects. Several interviewees felt that obtaining membership of the CIPD is just a means to an end because employers look for membership as part of the recruitment criteria. Personal development is seen to be the responsibility of the individual, who frequently has to do research into new case law developments in their own time.

CHAPTER FIVE – HUMAN RESOURCE PROFESSIONAL PRACTICE

This chapter focuses on human resource professional practice by providing findings regarding the responsibility boundaries and the influence legal employment compliance has on human resource professional practice in relation to organisational stakeholders. The chapter looks at how employment regulation has altered relationships and subsequent practices between the human resource function's main stakeholders, including trade union representatives and line managers. Participants' responses are displayed according to the following subject areas and sections. Section 5.1 looks at the effect employment regulation has on human resource professional practice. Section 5.2 discusses who has responsibility and control in making employment (legal) decisions on behalf of the organisation. Section 5.3 is the chapter summary.

5.1 The effects of employment regulation on human resource professionals' practice in their relationships with other organisational stakeholders

This section concentrates on presenting data in relation to human resource professional formal relationships with trade union representatives in the organisational context. In the case study organisations this is important in understanding implications for communication between human resource professionals and organisational stakeholders. Subsection 5.1.1 reviews human resource relationships and practices with line managers. Subsection 5.1.2 looks at the formal and informal relationships

between human resource professionals and trade union representatives. Subsection 5.1.3 centres on new legal stakeholders' influence on human resource and trade unions. Subsection 5.1.4 is the section summary.

5.1.1 Welfare or compliance? – The line manager's perspective

The relationship between human resource professionals and line managers in relation to the issue of “welfareism” (or welfare to work), as an overarching philosophy regarding how employees are managed, was raised on several occasions. The local government participants particularly acknowledged that human resource management's activities are now more based on legal practices and compliance than on just administration regarding employees' requirements. The issue of “welfareism” (or welfare to work) as a practice was mentioned by the human resource interviewees as being an earlier philosophy which was becoming more and more difficult to align with contemporary practice. Yet there was confusion over whether having policies and practices that stem from employment regulation fitted into the perception of welfare practices such as family friendly policies.

There is no clear understanding as to whether employment regulation has an influence on making employers provide more “caring” and “welfare” practices to employees as directed by regulation, which was previously more associated with personnel management. Below, the human resource professional articulates the responsibility felt in supporting the legislation in organisations, which could be construed as welfare support for employees even if is not recognised as a welfare practice.

'I do still think they see the welfare side of it and the support role, I think what our responsibility is to make sure the legislation is supported and that managers are aware of why we are saying this is the route we are going to take and that could be because of the legislation behind it and just in general terms you know as you said earlier on society might be more aware of the law and that sort of thing so we are taking that on within our roles now.' (Interviewee 3)

Arguably is the traditional welfare image now enshrined in a set of legal rights rather than through informal personnel practices? Legal professionals have long recognised “psychological contractual” rights through the implied terms of a contract. Potentially, this could be a form of “legal welfareism” for employees. In other words, human resource professional management of the contract of employment duties and obligations, ensuring that employees (and others) are working in a safe environment away from physical and psychological harm, is an example of an interface between legal rights and welfareism.

Yes, it has moved during my career people would now associate us with the law we now talk like employment law handbooks. Welfare can be impeded by the law, hard to give welfare as traditional viewed' (Interviewee 1)

The change in human resource practices away from a perceived welfare based serviced has altered relationships between human resource professionals and line managers. This manifests itself not just in a change in philosophy but also how compliance policies are communicated and adhered to by line managers. The most

common method that the three case studies have revealed is a dedicated intranet website where updates can be posted on a regular basis with open access for all employees. This is a significant communication tool because it is a quick and relatively cheap way to inform stakeholders such as managers and employees of new changes, not just in the law, but also in organisational practices. Additionally, the higher education organisation used steering and focus groups to look at a wide range of employment legal issues to assist in the interpretation of new forms of employment regulation:

‘two steering groups, one steering group covering the whole organisation and a separate steering group covering equal pay in relation to schools.’ (Interviewee 15)

Some human resource professionals from all three case studies stated that they were involved in project teams regarding the Equality Act (2010). The higher education organisation had a dedicated project team that was involved in implementing the Equality Act (2010) throughout the organisation:

‘we are the project team, but we liaise quite closely with the operational team who are the human resource people who have relationships with a certain number of departments and so we really work quite closely with them to make sure the policies will work in practice as well as comply with legislation.’ (Interviewee 12)

The impact any new legislation may have on the organisational stakeholders will influence not only new procedures but also the training agenda. For instance, some

changes in employment law may only have a small effect on a limited number of personnel stakeholders compared to new policies on equality and disciplinary procedures that affect everyone. Who to inform and train is generally a judgment made by professionals in the human resource function, often in consultation with line managers:

‘Again a real mix depending on what it is, how many people it affects, the impact it is going to have.’ (Interviewee 12)

The importance of keeping line managers up to date in existing and new regulation is paramount to the human resource function as this is seen as an extension of good legal practice and communication with stakeholders. There is a strong awareness that blame cannot be transferred onto human resource professionals if they have made every attempt to keep managers informed. In other words, the responsibility is on them as managers to read the updates on the human resource intranet or via their emails. With regard to managers participating in workshops and training courses, the participants reflected that it can be difficult to achieve attendance, which has implications as to how well legal updates can be passed on to stakeholders. Again, this is down to how the human resources function, or individual human resource professionals, are valued in terms of their own professional status and knowledge. Sometimes it takes a senior manager to intervene and make line managers attend rather than them attending through their own initiative:

‘Therefore it is very difficult unless you can get, if you like, can get a three line whip coming from a very senior point of the organisation saying you will attend.’
(Interviewee 15)

The same interviewee also commented that the human resource function is blamed for something that could have been sorted out by line managers just by having an informal discussion when an employee had breached an employment procedure, thus changing the employee’s perspective often to the detriment of the work of human resource professional:

‘Any investigation will have a human resource person tacked on to the end of it. You are always seen on their side whereas in the past you might have spent more time with the employee. Whether it is because of the statutory procedures or what, I think it has had a bad impact on human resource and the way the function is viewed. Everything has to be documented have to have a meeting etc, much more formal. It is not good necessarily.’ (Interviewee 11)

Interestingly, the local government director below discusses the relationship that employee relations specialists have with managers on a face-to-face basis, which is more akin to being “partners” in managing the employment relationship:

‘I think they have more of a partnership with managers they are helping managers with real problems and real people as opposed to putting people through processes where as its more like a call centre, human resource is really someone on the end of a phone.’ (Interviewee 1)

There may be willingness by human resource professionals to act as partners with line managers, but there is still a strong expectation that human resource advice will be followed in preference to managers' opinions. This research found that human resource professionals share cannot guarantee that they will actually be consulted or listened to when an employment problem arises, or that they have little control over what stage in the proceedings their advice will be sought. Participants indicated that the timing of their involvement was crucial in the legal consultation process. This often comes down to the interpersonal relationship between human resource professionals and line managers as to whether their advice is sought at the beginning of a dispute or whether they are used as “trouble-shooters” at a later date:

‘I think there is more of a willingness to actually get involved with somebody in human resource, or come to them for advice rather than you know necessarily wait for things to become so critical that they are literally in the point of going in to a disciplinary or they are at the point of walking out because they can’t take things anymore.’ (Interviewee 15)

The higher education interviewee also stated that there is willingness for line managers to contact the human resource function. Notably, in this case study, human resource professionals worked in decentralized departments alongside the managers. Managers were aware that certain procedures had to be followed but often sought backup from human resource professionals, as managers did not want to assume sole responsibility for the decision, even if the line manager had the relevant legal knowledge:

‘Managers are very aware that they just can’t do those kinds of things; there are risks that come with that, there are procedures that the [organisations] has got as well as the employment law legislation as well. So they have got a very good awareness they normally know the answer before they phone me up, I’m just phoning to check I don’t think I can do this but I just want to make sure.’
(Interviewee 15)

As indicated by the interviewee above, that sometimes line managers lack confidence in decision making, so confirmation is sought from the human resource managers to ensure that they are following the correct procedures. This could be due to the lack of legal training for managers, or because the human resource professional makes it too easy to rely on advice from their service, or more likely that it is about individuals who are actually prepared to take the decision-making responsibility. Ownership of this responsibility is crucial to ensuring the correct legal outcome:

‘It takes some responsibility, it takes some ownership ...as opposed to tell me the law... if I do this how much trouble will I be in.’ (Interviewee 13)

Additionally, it was identified that the level of autonomy given to heads of department had an impact on how much the human resource function is involved in giving legal advice to managers on all levels. The crux of the matter, as noted by participants, was about gaining respect so that they could provide operational guidance not just in employment law, but also in other human resource practices, as noted by the local government participant:

‘Well we tend to give a lot of autonomy to our service units because they are their own businesses, you know they have the opportunity to run the units in the way that they feel is best for them for their particular service and they are given direction and guidance from the head of the unit and from our strategic directors who have a corporate responsibility.’ (Interviewee 3)

This arrangement is particularly observed in the local government case study as participants commented on the importance of establishing trust in interpersonal relationships early on in stakeholder relationships in order for this type of partnership to work. However, interviewees from the health organisation did not raise the issue of partnership between line managers as they appeared to have more operational concerns regarding the human resource function’s visibility in the organisation. The interviewee below outlines how outputs from the human resource function can affect how the work of the human resource function is viewed:

Where I worked before I was involved in everything, I used to do maternity calculations, reward and benefits ... So the role of human resource was more visible.’ (Interviewee 21)

There is a distinction that can be made between the health case study and the other two organisations this being in part due to the human resource function not being centrally located within the business as their remit is to cover several different departments which are scattered around a large city.

5.1.2 Formal or informal? – Trade union relationships

Human resource participants across the case studies commented that there are advantages to an organisation having more formal practices such as disciplinary codes or recruitment and selection procedures as it gives certainty and structure in organisations when dealing with trade unions. Formal relationships are not recognised across the whole sphere of negotiations with trade unions as interviewees noted that there are some situations where informal discussions are more important, especially at the start of an employee dispute. However, when an issue becomes formal, with the potential to reach an employment tribunal, then the responsibility for it moves upwards towards the human resource director, as they have more experience and authority to be able to decide whether to settle the case. This upward movement to the human resource director is not only because of the risk of employment legal repercussions, but also because they have knowledge of other areas of the organisation where there could be a potential conflict between different forms of regulation and accountability:

'More senior they have a wider appreciation of general regulatory frameworks i.e., corporate responsibility and accountability. I think in some ways that there is a collective ownership at senior levels and the restraints.' (Interviewee 18)

There are issues when a matter such a grievance becomes embroiled in a formal process; it is very difficult for either side to back down, even if they want to obtain an informal resolution, as noted by the human resource director:

'Once the formal side takes over it is very difficult to get things back from that position.' (Interviewee 26)

The importance over disputes becoming formal is articulated by the health union representative in that their hands are tied in negotiations as both sides are focusing on ensuring that outcomes are in line with the perceived legal minimum. The “rule of thumb” is that neither side is looking to be outside legal boundaries so, by default, negotiations tend to be formal, as noted by a trade union representative:

'No I would say it is very formal, I do have departments that have informal meetings and if I can see something coming out that's likely to be a problem then I would give them a ring and say should we have a coffee and just a bit of a chat, and a lot of that is very informal and off of the record type thing. It's more of I can see this becoming a problem.'

Q. Do they go straight to the formal then?

A. Very much so, it's almost like they're forced down that route.

Q. Why do you think so?

A. Well it's the only way to get rid of these people.'

(Interviewee 15)

It became apparent early on in the interview process that being perceived to follow legal procedures is not enough unless the interpersonal relationships are sufficiently robust because poor communication can determine whether an employee grievance turns into a legal dispute. Human resource interviewees noted that weak interpersonal relationships with stakeholders can determine how quickly an issue goes from being an informal problem to a formal complaint. The local government interviewee below sees it being as much about a human resource professional's individual negotiating style as it is about legal rights:

'It depends on the relationship between human resource and staff side. More [than], about the organisational policies and practices what has happened previously there is an assumption that we will act legally, we don't act illegally. Yes the trade union are more aware of the impact of employment law but it does depends on the people involved as to how much law they know... to fight cases.'
(Interviewee 22)

A further issue is that it takes a while to build up interpersonal contacts in order that there is trust between negotiating parties. Therefore, theoretical legal knowledge as a competence level is important for human resource professionals when entering a new organisation but there has to be good interpersonal relationships with stakeholders. Yet developing and controlling informal relationships is harder for a new entrant to an organisation as such relationships can be affected by previous relationships between individual human resource professionals and stakeholders.

There is acknowledgement from human resource professionals and trade union representatives alike that employment legislation has had an influence on the development of more formal human resource practices in stakeholder relationships. Yet it is not seen as the only reason behind formality. The way an employee evolves in an organisation and gains experience, not just of the employment law but also in how an organisation works in dealing with stakeholders, can affect how the human resource function and individual human resource professionals respond to employment disputes:

'you see a change in terms of union relationships as you evolve within an organisation as well and you move on to slightly different roles so you get exposures at different levels and also because you develop sort of working relationships with union officials at the same time.' (Interviewee 13)

When dealing with the union's representatives, human resource managers find it less straightforward as some areas are often not dealt with at a local level, or the human resource director is personally involved in the negotiations. Human resource managers are mainly involved in dealing with individual case work or, as many have found in the last few years, carrying out legal procedure relating to collective and individual redundancies. One health interviewee pointed out that it is about their individual relationships with union representatives because some have a preference for informal or formal resolution. Interviewees reflected that although they may undertake informal discussion at one level with the union, it cannot be assumed that once it reaches the next level that the issue does not become formal. The experience and expertise of individual union representatives is felt to be crucial in this regard, as the

representative may not want to be responsible for making the decision, leaving the decision to be passed up the line of control even when it does not warrant that response:

'I have a good relationship with the regional one, whereas the local one would be very reluctant to enter into any kind of informal discussion with human resource where everything is done on the formal setting, so I find it is very much based on the individual and I guess how secure they are in themselves and how much they trust us as well.' (Interviewee 21)

With regard to individual case work, human resource professionals noted that the trade union might not want to make it a formal response. Notwithstanding, the employee may still take this course of action, or may not be represented by a union in the first instance. The health study human resource professional argues that they are much more used to formal negotiations as the norm, as confirmed by the director who is concerned that it is an “us and them situation” between the union and the human resource professional representing the department.

There are also external stimulants that drive both sides into more informal negotiations. One area specifically mentioned by interviewees from all the organisations relates to the Employment Act 2009 and in particular the area concerning employee grievances procedures. The aforementioned Act has reformed how individual grievances are managed with the focus now on obtaining informal resolutions to grievances. Participants commented that despite the Act encouraging informal resolutions, they will still be difficult to obtain, partly because when there is

a dispute the trust between two parties is often affected leaving the employee more reluctant to seek an informal discussion with their manager:

‘We [have] had a lot of cases which went formal directly because the complainant said they did not want their manager to investigate it’ (Interviewee 21)

Moreover, employment legal interventions are often categorized into individual employee cases (employment law), for example disciplinary or collective disputes, including redundancy and pay bargaining (labour law). For instance, redundancy is both a collective and an individual legal practice in terms of the procedures that the human resource professional follows to ensure legal compliance.

The interviewees in this study displayed knowledge in all areas by giving examples of how all forms of legal intervention have shaped human resource management’s collective and individual legal practices. Not all the organisations are involved in the same type of legal interventions, as noted with the ICE (Information and Consultation of Employees) Regulations, and this affects the level of communication between stakeholders. Only the local government organisation is involved in the management and implementation of the ICE regulations. However, the human resource director below emphasizes the minimal impact that the regulations have on the human resource professional’s communication with stakeholders:

‘I would say that that [the] regulation had a very minimal impact the level of trade union membership as such within the organisation, the philosophy, of consulting and involving trade unions in decision making and trying to communicate with our

staff, really meant we only needed fine tuning to what we were probably doing previously.’ (Interviewee 1)

The relaxed attitude to the enforcement of the ICE regulations is in direct contrast to the way other forms of negotiation and communication with stakeholders are carried out in the case study organisations. As the health body interviewee below highlights, there are formal monthly joint negotiating committees where the wider organisational issues are discussed:

‘We have like a regular monthly joint negotiating consultative committee, the JCC, and that’s where obviously they will talk about bigger issues, policy review or policy that you’ve developed, and they will go through it with a fine tooth comb and put their side of the story forward, so that’s the formal setting.’ (Interviewee 22)

These types of formal collective committees, sometimes known as a joint consultative committee (JCC), are commonplace within the public sector and operate at different levels, often with the responsibility and attendance lying at the door of the director. These committees are conducted in formal settings but, as the same director comments below, there are additional meetings and communication that take place with individual union representatives that are more specific to individual employee case work:

'In addition to that there is the dialogue which takes place on a day to day basis, casework management of service, development of human resource practices.'

(Interviewee 1)

5.1.3 New stakeholder relationships

There was a concern highlighted by both human resource professionals and trade union participants over the rise of “no win no fee” lawyers. Such firms were creating litigation mine fields for human resource professionals and the trade unions alike. The local government human resource director commented on how lawyers have made them revalidate their policies and practices, yet at the same time the director had witnessed unions being hindered in their ability to enter into collective agreements due to potential legal liabilities. The emergence of a new stakeholder in employment relations is highlighted by the human resource directors and unions alike in the area of equal pay, with the increased use of no win no fee solicitors:

'areas like equal pay have a significant impact on the way we organise things, the way we present things, and again can have a disproportionate effect and again we find the situation where the trade unions themselves are acting in a way that might be different from their initial philosophy and approach, so where for example the trade unions have found legal action being taken by no win no fee solicitors, such as [Solicitor] in relation to equal pay and the [Union] have found themselves liable to financial exposure as a consequence of claims made against them supported by [Solicitor].' (Interviewee 1)

The local government director also noted the danger the union encounters when employees get represented by legal professionals as it leaves not just the human resource professionals exposed to legal challenges, but also the trade union representatives:

‘actually they weren’t as effective[trade unions] as they might have been in representing a group of employees and thus leaving them exposed to legal challenges, leads them to a defensive position.’ (Interviewee 1)

The director’s opinion is that it leaves trade union representatives mindful about entering into collective agreements as there is a possibility that they will be exposed to potential litigation costs, which is a move away from their traditional position:

‘so now the trade unions are so fearful of being sued that they are actually reluctant to enter into collective agreements, they won’t acknowledge that, but they will keep the ball up in the air waiting for the employer to take that position, so actually they don’t leave themselves exposed by signing a collective agreement and potential legal costs. Now in the past the trade unions have always worked from the position of doing collective agreements, it’s what they do, it is their business, the inhibition of doing that is a major issue for them.’ (Interviewee 1)

The controversial role of “no win no fee” solicitors was also mentioned by the local government union representative who saw the parameters of the employment relationship changing in the area of collective agreements. The official is in accord with the director from the local government case study. The official highlighted how

being “picked off” by such firms of solicitors leaves both the employer and the trade union exposed, so they have had to enter into new agreements with the employer to prevent this :

‘it actually left both the employer and the trade union side vulnerable to unprepared claims and challenges from the likes of [Solicitor] who has been obviously trying to pick off the council and the trade unions anyway.’

(Interviewee 9)

The same union official, in areas such as disciplinary and grievances, welcomed a good relationship with the human resource director in the local government organisation, where encouraging an environment of informality may stop employment disagreements escalating into legal disputes:

‘Now, I like having a good relationship with human resource for the simple reason that quite often, particularly when it comes to case work, you can actually sort of rule out that and you can talk about what is fair. Hang on minute, what’s going on here? Look, don’t you think you’re going a little bit silly here over this case, but you think that we could actually just sit down, discuss it, rather than go through the formality.’ (Interviewee 9)

The union official notes that there is inconsistency in communication, not only between organisations but also between individual human resource practices. It is also observed that in reality it comes down to individual human resource managers' interpretation of employee disputes:

‘In terms of human resource professionals that I deal with, that really is a mixed bag. And I’ll give you an example. I was so incensed when a member contacted me recently, well it was actually the representative that contacted me, to tell me that one of the members at the branch had been waiting to go into an office for a return to work meeting and when eventually she was called into the office for it, she found the human resource manager there and all of the directors and it transpired to be a suspension meeting.’ (Interviewee 9)

The perspective of the local government human resource director is that they generally have a good relationship with the union representative. In the director's opinion, the unions often quote law at them or hint that they may use it, but this director felt that threats worked very rarely and, overall, both sides try to work together in order to bring about a resolution, although the director accepts that this is not always possible:

‘they quote law at us, they hint, so I think they see that both sides use the law and we both know what it is and we both know that you want to work within thatthose things apart I really don’t think it makes that much difference to things, to the actual nitty gritty, the thing is that we do accept we have to resolve issues and we have to accept what we are really here for is to provide a public service. So I think threats rarely work. You know I don’t think they ever genuinely intend to threaten us with legal action at all.’ (Interviewee 1)

The possibility that an employee case could enter the tribunal system is generally something that both the union and the human resource function want to avoid in all the case studies and no response was given supporting a contrary view. Interestingly, human resource and trade union interviewees often sympathize with each other on the difficulties of employment regulation tying up their negotiations in legalistic red tape. The responses suggested that both human resource professionals and union representatives are operating from a position of mutual cooperation, in which both sides can have respect for each other's position. This was particularly noted in the opinion given by the human resource professionals in the higher education and local government organisations:

'quite often human resource and the trade unions have had a reasonable relationship so they sort of recognise the role that trade unions play and we kind of recognise the role that human resource play. I often have the dilemma because I quite often see that, in actual fact, human resource and the trade union side are essentially two sides of the same coin because we want the same result at the end which is secure employment and good relations.' (Interviewee 17)

5.2 Responsibility and control – who makes employment (legal) decisions on behalf of the organisation?

Responses in this subsection are around the theme of who “owns” the responsibility and control for ensuring employment legal compliance. In the case study organisations this is important in understanding implications for communication between human resource professionals and organisational stakeholders. Subsection

5.2.1 looks at how case study organisations manage employment legal compliance. Subsection 5.2.2 looks at the interface between line managers and the human resource function regarding who shoulders the responsibility for making legal decisions.

5.2.1 Organisational responsibility

The three case study organisations each have legal departments although, with the exception of the local government organisation, the departments do not involve themselves in employment legal issues. As the local government interviewee below explains, it is not a straightforward assumption that their legal services department is prepared to get involved in day-to-day employment issues. The interviewee states below that if a case is on the tribunal pathway then the legal department gets more involved and will engage a solicitor from outside to assist them on the case. There does not seem to be a mechanism for the legal services department in the local authority organisation to give direct advice to either employees or the human resource function on a regular basis as the demarcation is towards the human resource function providing this service. This is in line with the other case study organisations:

‘I think the human resource officer and the Solicitor would probably work on it together. But whether that would be an equal split I don’t know I think it would hand over more to the legal services department then, I’m sure it would advise on that, but they wouldn’t expect to be the ones who know. Say a member of staff rang up and said “I want to know the law around flexible working requests” or something, they would never go to [them] they would come to us. So whilst I’m sure they’ve got people in legal services who do know all about that legislation off

by heart, they wouldn't go to them. And quite often I think that if we ask them a question they don't give us an answer straight away, they've got to find out, so they don't just say "oh yes, I know that." (Interviewee 11)

Without exception, all the case study organisations separate their corporate governance responsibilities from their employment legal responsibilities. If the individual case looks as if it is going to tribunal then the human resource professional obtains additional help from legal professionals outside of the organisation, as highlighted by the higher education director:

'we have our deputy registrar who is responsible for governance but we do not have an employment law expertise in house we tend to deal with it ourselves up to a certain point then we take advice from a firm of solicitors . Who will give us advice or defend us in tribunal cases.' (Interviewee 19)

Interviewees from the health and local government organisations both state that ultimate responsibility lies with the human resource director to oversee any case. In the higher education case, as the function is much larger, the head of human resource is much more involved in operational legal compliance than is the human resource director. The local government director articulates the responsibility:

'I would have the prime overall ability for that area. The council clearly has a head of legal services, a statutory post, and she sets considerations of that sort, my colleagues working in a legal context but the overall responsibility in this organisation rests with me.' (Interviewee 1)

The perception of the local government human resource director is that they should be able to provide the service as it is part of the expertise expected by the wider organisation. The higher education director comments that if they are not able to deal with the situation, then they are able to commission legal professionals. This view was consistent with other human resource directors:

'Human resource is looked at having a professional competency in this area and if human resource isn't able to interpret the legislation then it seeks the appropriate advice in order to do so.' (Interviewee 19)

What has not been made apparent is whether such advice is akin to being a legal advice service just prior to engaging a solicitor, or whether now they are taking more responsibility regarding cases during the whole process. This is particularly highlighted by a higher education participant where there is a culture of more delegation of responsibility:

'Don't have legal advice on policy matters but we could have if we wanted it. Probably have more legal advice on tribunal cases. We have a system in the [organisation] whereby things are agreed [by council]. They are not experts so they are rely on me and my line manager to come up with the correct regulatory requirements so I guess the buck would stop with us if we get it wrong....' (Interviewee 12)

5.2.2 Who owns the responsibility - human resource professionals or line managers?

The interviewee below is from the local government organisation and illustrates the dilemma regarding the boundaries of responsibility in managing legal compliance. On the one hand, human resource professionals want line managers to use the human resource function as an employment service to ensure correct compliance with regulation, but on the other hand they also want managers to be able to be more self-sufficient in enacting the correct legal procedures, as noted by a divisional line manager:

'But obviously they would much prefer that people followed procedure rather than make a hash of it and find that they get themselves in to difficulty so yes they are there and we are encouraged to use them.' (Interviewee 5)

One of the criticisms leveled at human resource professionals is that they act in a legal compliance role, both in policy and practice. There is a potential tension between giving advice and having the expectation that the advice will be taken. Another tension can derive from employees and managers who are less aware of the legal requirements assuming that human resource professionals actually want to have more control:

'I suppose an example would be "I've given somebody a warning", but they haven't gone through any sort of procedure or something. You've then got to say to them "I'm sorry, but we need to actually redress that because you've done something that's illegal." So we would then be like the police in that respect, and

make them go back and change what they've done, or retract an offer that wasn't made correctly.' (Interviewee 11)

The same local government interviewee made a point about perception and how human resource professionals can be blamed by managers when it is really an organisational policy rather than just the human resource professionals being overzealous. In other it is about the status of the human resource function, which in part rests on the skill, knowledge and competence of individual human resource professional's ability in providing legal advice.

The relationship between human resource professionals and line managers is crucial to understanding where the legal responsibility lies. There is no clear boundary in decision making when considering the implications for communication between human resource professionals and organisational stakeholders. This is a quandary for the human resource professionals because too much devolution of legal responsibility to line managers with no control by the human resource professionals could potentially result in more work. Additionally, if too many individuals are involved in giving advice there is the potential for more mistakes and misunderstanding to take place. The health participant below clearly sees it as the line manager that makes the decision, but the impression given by the individual is that the human resource professional plays a strong advisory role. This was also the opinion given by interviewees from the local authority organisation:

'It's the line manager who makes the decision. My role is an advisory role so I will let them know what the legislation is, what the policy is and what my advice

therefore is or range of options depending on the specific case but its ultimately the line managers decision whether to take that advice or not so it's the line manager I would say. But if they wanted to do something that was wholly inappropriate then obviously I would need to deal with that but on the whole it's the line manager.'
(Interviewee 7)

The higher education interviewee's perspective below is that they are advisors with the ability to step in to stop the manager if the line manager decided to go down a route that could result in a legal problem. However, it would have to be documented in order that the responsibility is with the line manager and not with the human resource professional if the manager goes against human resource advice:

'I've never got to that point where a manager is going to do something that I think is completely going to expose us. If I did I would have it documented in black and white so that I'm not going to get in to any trouble, but normally I say to them if you do that the employee could do X,Y and Z and you might have to stand up at tribunal and defend yourself and that normally puts them off.' (Interviewee 15)

The responsibility lies with the human resource director to ensure that human resource professionals are up to date with new statutory interventions, case law and tribunal procedures so that they can provide up-to-date information or compile new policies and procedures through continued professional development. There is a clear expectation that line managers in the local government study should take more responsibility, but some human resource professionals recognise there is reluctance on the behalf of managers to actually accept responsibility, as it is too easy to involve

human resource professionals in the decision-making process:

'The line managers to have responsibility to manage their staff, which they don't like, because they will ring up and say "I've got a problem, will you deal with it, or take them away and give them a good [!!]" So the line managers do have the responsibility, but they do come to us for advice and we should be the ones that know the answers.' (Interviewee 11)

The distinction between the human resource professional's responsibility and the line manager's acceptance of their role in managing employment regulation can be somewhat blurred. It can also be affected by the type of legal case and how well the organisation has equipped the line manager to deal with the employment issue through training and development. Often, the human resource manager is concerned that inappropriate responses will be made so they step in and tell the managers what to do. This is highlighted by the higher education interviewee who sees the ultimate responsibility lying with the line manager but pragmatically accepts that often it is the human resource professional who shoulders the responsibility:

'In the truest sense I would say that it is the line manager's responsibility. In practical sense it tends to be us that are prompting the line managers more.' (Interviewee 14)

Interviewees commented on how employment regulation had influenced and controlled their formal interaction with line managers especially in areas of human resource practice such as recruitment and selection. This can be a double edged sword

as human resource professionals have to have trust in line managers to manage procedures correctly especially in regard to complying with employment regulation. It was suggested that not all human resource professionals are in a position to develop such stakeholder relationships, especially if the function is located off-site, so there has to be reliance on other methods such as an intranet. The local government employee below recognizes even slight amendments to existing case law or statutory regulation need to be communicated as soon as possible:

'I think there is more legislation and more amendments to legislation now and that's important for us to make sure that our service units are aware of that that there have been slight changes or they are bringing two acts together and presenting it both together so we think that it's important that we communicate that to our service units and we do that as best as we can.' (Interviewee 3)

Interviewees indicated that human resource professionals must be able to defend their stakeholder communication channels, especially if the case goes to an employment tribunal. Potentially, this could be the difference between winning and losing a legal case. In essence, line managers cannot argue about not knowing about something if the knowledge is out there, as it will then be the fault of the manager if they have failed to keep themselves informed and not the human resource function. If human resource professionals are involved, the responsibility often falls on human resource professionals to manage the situation or at the very least provide advice:

'managers that say can I just run my interview questions past you to make sure that there nothing in there that could be seen to be discriminatory or not comply with

legislation so maybe we're being a bit more careful- I'm not sure that's such a bad thing when we could have been asking inappropriate questions.' (Interviewee 3)

5.3 Chapter Discussion

The participants recognised that the human resource professional practices have changed from traditional welfare (welfare to work) practices of informally dealing with employees' comfort and improvement to one of having to comply with formal legal practices. The requirement for an organisation to be legally compliant has a large impact on human resource professional practices at all levels as an operational day-to-day activity, including when communicating with stakeholders. Interestingly, the impression given was that human resource professionals are still involved in welfare practices but these have been redefined into practices that have stemmed from legal contractual and other regulatory issues. Certainly, for professionals working in employee relations units, there is a need to be mindful of good working conditions and the psychological contract for employees was a key influence in human resource practices.

Increased employment regulation in the workplace has led to more formal relationships with stakeholders and employees, who are becoming more active in asserting their employment rights. Many of the participants identified interpersonal relationships alongside employment regulation as factors that influenced formal legal practices and communication. The interviewees also pointed out that it is often down to interpersonal (organisational) relationships between individuals regarding when or if formal legal proceeding are commenced.

In contrast with the local government case study, the other two case studies did not have a legal service department, although the local government organisation stated that the service did not provide day-to-day employment advice for employees or managers. Provision of this advice fell into the remit of the human resource function, with the human resource directors having ultimate responsibility for the decision. It is not clear regarding whether line managers or human resource professionals had the ultimate decision in action taken against employees for misconduct. Furthermore, it is also unclear how that decision was communicated amongst organisational stakeholders, yet the reality was that human resource managers often stepped in to make the decision on the manager's behalf if there was the perception of a potential for litigation.

It was apparent from the participants that the level of responsibility between both parties as to who makes the decision was not clear cut when an employee dispute arose, especially if there was a potential for it to become a formal grievance. Although there was a presumption that line managers should be able to deal with such issues, the reality was that human resource professionals are often the decision maker as well as the legal advisor. Arguably, there is an element of protectionism coming from the human resource function regarding the "owning employment legal advice" in organisations as this confers status, including by giving inroads into management decisions.

Notably, how well human resource professionals can negotiate with trade unions both in collective and individual case work can influence whether a dispute can be resolved by informal negotiation or through formal legal mechanisms. Case law, or common

law, was seen by both sides to be at the heart of negotiations as was a good knowledge of legal procedures .A prominent concern is the change in representation dynamics in organisations subsequent to the rise in “No Win No Fee” solicitors. This issue was put forward from human resource professionals and trade union representatives. The impression given was that both human resource professionals and trade union representatives do not welcome this intrusion as it makes it less easy to resolve employee disputes.

The type of formal practices that human resource are administering due to the pressures of needing to comply with employment regulation has changed their relationships with stakeholders. There are few differences between the case studies other than minor practices due to the history and the structures of the case study organisations. There might be more varied practices if it was not for the overarching demands of legal compliance making human resource more uniform in how they respond to disputes or enact policies. If anything, there is a strong similarity between organisational human resource practices, this being due to the need to comply too case law. There is little opportunity for human resource professionals to take an informal approach to dealing with staff issues outside of the boundary of legal compliance in their dealings with organisational stakeholders.

CHAPTER SIX – EMPLOYMENT REGULATION AND STRATEGIC DECISION MAKING

This chapter looks at the respondent's opinions regarding the relationship between the management of employment regulation and human resource strategic decision making, recognizing that employment regulation is often seen as part of operational practice within the human resource function. Therefore, in this chapter the research focuses on the effect employment regulation has on strategic engagement. Section 6.1 centres on how employment regulation as a strategic force influences decision making at the organisational level. Section 6.2 looks at how employment regulation has hindered strategic decision making as an opposing force within public sector organisations. Section 6.3 is the chapter summary.

6.1 How employment regulation has influenced and enhanced strategic decision making in human resource management

This section is divided into the following subsections focusing on how employment regulation interacts with strategic decision making in public sector organisations. Subsection 6.1.1 looks at how employment regulation influences human resource operational activities. Subsection 6.1.2 focuses on how employment regulation has enhanced human resource strategic decision making. Subsections 6.1.3 and 6.1.4 review the implications of employment regulation on strategic decision making within the three case studies.

6.1.1 Human resource management and operational work

This subsection focuses on whether employment regulation influences human resource strategic business decisions through operational work such as the management of the contract of employment and employee disputes. For instance, has the human resource business partner role now become a strategic business or legal partnership role due to increased employment regulation? Law is often just seen as an operational practice aligned to an employee relations context, so interviewees were asked the extent to which law had moved across from being an operational constraint, to actually influencing strategic decisions. In other words, has the human resource role moved away from being a business partner and towards being a legal advisor? The following response is from the local government human resource director:

Q. 'Is law a strategic partner, does it influence business decisions?'

'Yes the job role and contact has increased the amount of time spent with legal specialist has increased. That is my job.' (Interviewee 1)

The local government remit covered high profile public services that require sensitivity in areas such as social services, housing and public health, which could increase the implications of a badly managed employment case for the organisation. For example, the director not only saw the negative impacts on the organisation that could occur when regulation is not well integrated within the organisation, but also the benefits such as flexible working and work-life balance stemming from regulation.

Furthermore, as the director acknowledged, strategy can be altered not just by poor case management but also by how employees respond to employment disputes:

'We are operating in a legal environment as tribunals have become more complicated, and everyone has a barrister. That hasn't always helped; it doesn't help the employment relationship at the start of my career they were there for other purposes the whole environment has altered.' (Interviewee 1)

The director showed an ability throughout the interview to see the wider picture regarding the influence of legislation on strategic business outcomes, suggesting that legal compliance was inseparable from strategic decision making in the current environment. This was both in terms of how poor employee case management can influence stakeholders' relationships as well as resourcing implications in terms of human resource professional time and expertise. Planning ahead for changes in employment regulation is essential as the human resource function needs to respond in order to protect the organisation against potential litigation.

'Definitely I think there is a steer that the legislation does guide our strategic moves.' (Interviewee 1)

The director from the higher education organisation saw compliance as not negotiable, but commented that it had to be balanced against strategic objectives. As to whether the organisation will go beyond the expected legal minimum compliance, this about how far regulation can be managed against what is right for the business in relation to employee relations:

'We might do more than the legal minimum in some areas but in other areas we will go with the legal minimum it really depends on what is appropriate for our organisation.' (Interviewee 19)

One of the participants from the health case study saw the link between legal requirements and the business partnership more directly as certain things could not happen unless it was legally directed. This contrasted with the higher education director, who had higher aspirations for the development of the human resource function, which could be down to not being involved on a day-to-day basis in operational work, compared with the other directors:

'May be at times certain things could not be happening unless it was legally directed.' (Interviewee 20)

The health sector interviewee commented on how law integrates into the business, which in turn can help the human resource function strategically deal with problems, with the added bonus of raising the profile of the function:

'Legislation [that is] coming out could really helps us deal with problems.' (Interviewee 15)

The next contribution gives an example of where there was a need for employment regulation to be considered in strategic planning. This is illustrated in the area of

redundancy where the work of the human resources function can be disrupted by the process that surrounds downsizing within an organisation:

‘Strategically I would say have to say you would need to consider employment law and I think human resource needs to be part of strategic planning and the business plan.’ (Interviewee 21)

There was consensus across all the case studies that employment regulation was exerting a strong influence on operational work such as grievances and disciplinary policies but it also became apparent, especially from contributions by the local government human resource director, that employment regulation was exerting an influence on strategic decision making. Across all the case studies there was an awareness of how employment regulation was driving decision making, including redundancy planning and managing change, as regulation was driving not just compliance but also the overall direction of the function.

6.1.2 Indicators of success in the human resource function

The researcher was able to interview the three human resource directors. Although all the human resource participants were asked about how the function monitors success, the directors’ responses were particularly illuminating. The directors from all the case studies reflected on their own role in relation to having the overall responsibility for employment legal compliance and strategy within their organisations. By doing so, the directors made comments regarding human resource management’s status within their own organisations, and the implication this had for the human resource function.

The director from the health organisation did not sit on the board and was responsible to another executive who had no human resource experience. The director commented that because approval had to be sought from the board in areas such as workforce strategy, it might become imperative that the human resource function had a representative on the board. Furthermore, the director noted the role human resource can play in the local health economy:

‘Or because we need their approval, i.e. workforce strategy and I will make sure that the board are involved in that. Plus a role in the local health economy it will be about me putting stuff on the agenda.’ (Interviewee 27)

The local government director operates at board level with other service heads, so is accountable directly to the chief executive of the local authority. As this director had no concerns about not being heard at board level, the question put to the director was: “Does the role now dictate giving employment legal advice to other service heads?” The response was:

‘That is the prime part of my role, services look for from our service, I always really put it in terms of a triangle, where at the top of the triangle there is the strategic work which the management team members are looking for in terms of setting the overall human resource strategy for the organisation, which probably accounts for about 10% of the work of the service I am responsible for then there is around 30% of time which is actually quality professional human resource work, case work, training delivery work of that sort but at a professional level, and then there is around 60% of other more transitional activity, the element which we find

people most appreciates in terms of our customers, services heads, manage is probably that 30% in the middle, particularly the support in terms of casework and issues like that which clearly is where legislation sets up the framework for us.'
(Interviewee 1)

The director sees strategic work at the top of the “triangle” but does not apportion the highest percentage of management time to strategic work. Rather, operational work that revolves around contracts and employee relations has a greater claim on the director’s time. The director is certain that the appreciation from senior levels comes from how the service supports the organisation by interpretation and management of the legal (employment) framework. The local government director argues that the ability to manage employment regulation successfully is one element that can reassure other service heads that the service is able to add value to the organisation.

The education director was consistent with the local government director in worrying less about where the human resource function is positioned in terms of status, but sees it as more important that the human resource function can demonstrate added value to the organisation. The director points out that one can sit at the top table but still be of no use. It is more about how the human resource function can deliver innovative management policies and practices that engage employees so that the organisation gets the best output. Human resource as a function can add value by having the opportunity to engage in business initiatives. The director saw the role as developing people and engaging them rather than being confined by legislative requirements:

'You are not going to be able to deliver anything unless it is through the people that you employ so being able to get the best out of them, you can still be useless if you sit at the top table it is about engagement, it is still the holy grail of human resource evaluation and soft issues to being seen to be adding value.'
(Interviewee 19)

The director sees part of their role as being able to identify risk in how employment regulation impacts strategically on the organisation, so when asked how much dealing with regulation is impacting on his own personal role, the director focused on financial implications:

'It has a significant impact, that often the legal considerations, the potential financial implications arising from legal consideration have a significant consideration in the human resource work I carry out personally.' (Interviewee 1)

This is not something that the director necessarily had any choice about as the service has to react to external regulation, this being not only to government regulation but also to other stakeholders who are involved in the employment relationship that are affected by external regulation, such as legal professionals and trade unions. What the three directors had in common was the recognition of the amount of time and resources that the function had to allocate to avoid future risk and legal issues such as employee disputes.

The following subsections look specifically at responses from all human resource participants across all three case studies regarding how the human resource function monitors its work in relation to employee disputes.

6.1.3 Local government case study – performance indicators

The director in this organisation was aware of the external and internal measurements that can be used to obtain an indication of the success of the service. There are external indicators set outside of human resource control because, as a public body, they are monitored by the audit commission as well as the internal auditors. The director picks out the role of individual employees and the added value that they can give to the organisation. In particular, the director notes that the human resource function receives good feedback from within the organisation, which is based on individual conduct:

‘Bottom line what do we deliver and how is that seen? Good feedback. Changed to human resource from personnel, doesn’t matter what you are called. It what’s you do.’ (Interviewee 1)

The director further qualified the internal benchmarks by illustrating the role of providing training courses (employment law) to update managers, then using the feedback received from such courses as an indicator of success. For the director, feedback is an important indicator of the human resource professional’s performance in meeting strategic outcomes:

'Partly it's the feedback that we get from managers so we deliver the courses and part of the recruitment selection training managers can come back on the course and do a legal update.' (Interviewee 1)

The director sees the ability to deliver up-to-date sessions in new employment case law as an important indicator of the human resource function's success in delivering a legal service to the whole organisation. Avoidance of employment tribunals is a key target for this human resource function and is a key performance indicator as noted by a human resource manager:

'A Performance indicator isn't a happy word for us there are specific measurements such as the number of employment tribunals.' *'We do record tribunals actually that's a new indicator.'* (Interviewee 4)

The interviewee stated that there was a new performance indicator that specifically related to tribunal cases and the director also stated that it was a strategic objective to prevent cases reaching tribunals by having correct employment procedures. Another interviewee mentioned that when trying to measure the work of the human resource function the work was qualitative in nature so it was hard to pin down measurements of success. For instance, if they are involved in meetings with individuals and employees' representatives on an informal basis, these were not always recorded. In addition, it was hard to measure quality when dealing with employee disputes on a case-by-case basis as individuals can be affected by just being told something they don't want to hear:

'employee survey which is run every couple of years it's qualitative rather than quantitative ... Quality is much harder to measure and it's the constant debate isn't it? We probably could do that better.' (Interviewee 6)

In this instance it was apparent that cases that reached an employment tribunal or were on a pathway to reaching a tribunal were monitored as part of performance management targets. This led to the conclusion that the role of employment regulation is a strategic lever as the human resource function has to make sure that at least from their end of managing the dispute cycle they have delivered a competent service in trying to prevent cases reaching employment tribunals.

6.1.4 Health case study – performance indicators

The director in this study showed more frustration than the other two directors in trying to establish how successful the human resource function was in meeting its performance targets. It is interesting to note from the director's comments the use of the word "noise" (a term also used by the education director), which is interpreted by the researcher to mean too much reactive employment relations work:

'Have been trying to work out how effective they actually are! About the noise in the system that is around, what you are hearing is the feel of the place. A lot of cases[employment regulation] that had gone to a high formal level that never should of got there, if that is happening then something is not right if that is happening there has been poor management of this as human resource has failed to stop this happening.' (Interviewee 27)

The director is not convinced that there had been effective legal management of individual cases. Consequently, this had led to legal actions, which had affected the success of the human resource function in trying to control employee's legal actions and tribunal appearances. The director also commented on the relationship with the trade union, which seemed to be less congenial from the human resource director's perspective than in the other case studies. In the director's opinion, this had affected the function's ability to be more effective managers due to the resistance put forward by the trade union, causing an "us and them" situation:

'Trade union is not working with us then at the hearing, the union pull other things out of the bag, which we didn't know about by not talking to us before hand. There has to be good leadership in order to make changes [in order] to get away from the 'us and them' situation.' (Interviewee 27)

Similar to the situation regarding the local government case, there were quantitative measurements used to gauge success, including sickness, although the director saw that this was not the full picture because the role is about delivery of the core business services:

'Normal measures i.e. sickness etc which statistically demonstrates something, these needs to be looked at if you are not delivering over the core business.'
(Interviewee 27)

The impression given is that there was an over-concentration on employee relations and the legal context due to being too reactive to individual cases. The view of the director was also recognised by one of the human resource managers when asked about how success was measured. Employment law and tribunal appearances were seen by this interviewee as one of the “hard” indicators in performance measurement:

‘Legal management is a success indicator [and a] key performance indicator. In the way employment law is handled; also it is [about] the ownership of the managers as they are delivering the advice.’ (Interviewee 21)

The interviewee felt that the work of the human resource function in areas such as absence management and grievances relied on how line managers used the advice given by human resource professionals. One of the issues the human resource director had with regard to performance indicators is that they were very much dependent on stakeholders taking their advice. Success, according to the interviewee below, was about implementing service level agreements between line managers and other heads of departments. The success indicators were not just down to their own conduct, but also to the work of the line managers in managing employees successfully:

‘Success [is] putting checks and balances in place and gets the line manager, in line with this type of thinking.’ (Interviewee 28)

The interviewee below considered that the success of the human resource function, as with previous interviewees, depended on hard facts, such as how many tribunal appearances or how many formal employee cases were in the system. One of the main

performance indicators of success could be very flimsy as it was based on feedback from individuals who can be affected by interpersonal relationships. The work of the service is individual and often based on interpersonal relationships, which could become part of a quality assessment, as illustrated in the interview below:

‘For us we do not have anything measurable it is all based on feedback but fickle from the perspective, sometimes your only relationship is from an interpersonal communication basis and it is difficult.’ (Interviewee 22)

This case study shows how difficult it is to evaluate success through performance indicators when relations with stakeholders are more based on “us and them” and poor interpersonal relationships. On a practice level this organisation was not doing anything markedly different from the other two case studies but the fact that relations between stakeholders indicated a lack of trust it is apparent that interpersonal relationships were directing the level of employee disputes and subsequent tribunal appearances.

6.1.5 Higher education case study – performance indicators

The participants in this organisation provided similar opinions to participants from the previous two case studies. However, one particular interviewee provided insight as to why the human resource function found it hard to quantify their success in relation to employment tribunals just through statistical analysis. As with the other organisations, this organisation used standard benchmarks that were produced as monthly or quarterly reports, such as absence figures and tribunal appearances, which went out to

the wider organisation. In line with the other case studies, performance indicators were used to judge the success of the function along with how line managers were complying with policies and procedures in areas such as sickness absence:

We produce a monthly report that goes to the managers in the businesses. So we would measure things like absence figures and we would certainly see how we are managing that absence and we would look at interventions for example like reiterating the absence procedure to staff and then you can really show that there is a reduction of time that people are having off work, that obviously in terms saves the business money. We tend to be quite proactive around things like we would look at long term sickness reports and reviewing that every month.' (Interviewee 15)

In this case study there was a more cooperative relationship with trade union officials and human resource professionals as there was no indication of particular issues with regard to lack of cooperation between stakeholders. Nonetheless, in common with the other organisations, measurement of success was found to be hard to measure, including because performance indicators do not measure the exact time and methods spent on each individual employee case.

The three previous subsections looked at each organisation separately to see whether there were different aspects to performance targets. All three case studies revealed the same issues in that it is difficult to quantitatively monitor disputes as statistics only reflect the outcome, and not the events encompassed in the whole period of time that it takes to manage and resolve employee disputes, in trying to prevent a tribunal appearance. Only the health case study showed any difference, this was due to the

breakdown in interpersonal relationships between stakeholders and the human resource function.

6.2 The impact of employment regulation on strategic decision making within organisations

This section is divided into the following subsections. Subsection 6.2.1 looks at the role employment regulation plays in operational compliance. Subsection 6.2.2 displays the relationship employment regulation has with operational practices and strategic decision making. Subsection 6.2.3 reviews the implications of resourcing employment regulatory practices.

6.2.1 Operational practices versus strategic decision-making

This subsection's aims to illuminate the role of the human resource function's operational work in relation to strategic decision-making. One of the concerns when trying to define operational work is the lack of academic and practical definition of the distinction between operational and strategic work. Operational work has been categorized as day-to-day work, often procedural based, such as advising employees and line managers on legal issues such as maternity, employee relations and disciplinary procedures.

This lack of distinction is problematic when trying to understand the effects of operational decision-making on the overall strategy. The health director sees a natural progression from operational work in one's career into strategic decision-making but

was unable to give examples of when an operational decision then becomes strategic:

'If you want to move up then strategy or the grasp of it is important. It is easy in an operational role to lose sight of the business, can be insular in what you are doing -must have a wider knowledge.' (Interviewee 26)

The director was acquainted with the significance of the human resource function's operational work, but remarked that involvement in day-to-day tasks did not equip one in having a vision of how the organisation works, so the strategic response would be limited. There was an assumption made by the director that operational work alone did not provide the scope to be strategic in outlook. In this particular organisation the operational function (i.e. employee relations) is split from the strategic work of the human resource function.

The local government director stated that managing employment regulation in relation to employee disputes came under operational work whereas strategic work was more about developing future workplace planning. This is in contrast to the education organisation, as the local government director stated "we always try to keep them close" as the relationship is difficult to separate:

'I suppose the operational function is about laws and the strategic function is all about developing, work force planning it is far more strategic. Here we always try to keep them close so one may inform the other and vice versa, we are strategic and we're not doing things because we have to we're doing them because they are helping the business.' (Interviewee 1)

The director further suggested that both operational and strategic work helped the organisation by being interdependent as they both influenced each other's outcomes. The director acknowledged the importance of employment law with respect to his own strategic role in this particular organisation, which suggests that the model is a hybrid between strategic and operational human resource practices. This has relevance to the research question as their director suggested that human resource strategic decision making is tied up with operational work such as legal compliance in how employees are recruited, rather than just an alignment to the organisational strategy. The director of the education case study commented that it is not about how to separate tasks, but more about how human resource professionals respond to organisational requirements and changes:

'No two human resource organisations are constructed in the same way I think it is more about getting human resource issues being dealt with as overall business change, how you structure it or do it isn't important.' (Interviewee 19)

The director qualified this by arguing that the work of the human resource function should be aiming at higher level activities by concentrating on strategic engagement and working at developing business partnerships with stakeholders. Moreover, the director below argues that in the past there had been too much concentration on welfare and compliance rather than on business value. Yet the director notes that many contractual and employee relations transgressions still make up a large percentage of the work of the human resource function. Moreover, the director states

that the human resource profession had “cracked the strategic engagement”, which was not the opinion of the other two human resource directors:

‘I think human resource as a profession has really cracked the strategic engagement but there is still an awful lot of work. I think the more senior the greater the opportunity there is and in terms of the business partnership and the willingness to engage at more levels, and more importantly be at the front of the processes. Generally there is still a hang over’s thinking about welfare and compliance and telling people that they can’t do stuff rather than empowerment, enabling and engaging. I think as a profession we are still working through the cultural differences. I think also we can’t forget the transactional processes, as you are so judged on how effectively you can turn a contract round.’ (Interviewee 19)

The head of human resource management, who was very much involved in operational work, saw the nitty -gritty of the employment relationship as fundamental to customer satisfaction, and ultimately the strategic outcomes of the function. This individual subsequently argues that the strategic strength of human resource work lies at the door of good employment management as this was what the organisation judged the human resource function on:

‘Relationship between law and the strategy yes it does have an effect. Law traditionally comes under the operation side and strategic human resource management is forward looking. Have to be good at the procedural side (etc). Generally whatever your view is on human resource there will always be

operational human resource, that is the strength of the service and employment law is what it is about.’ (Interviewee 26)

The differing attitudes could be argued to be because the director operates at an organisational and board level with less involvement in operational practices, whereas the head of human resource is more focused on day to day human resource activities. The perspective of the head of human resource could actually be more realistic as often at this level they are in touch with customers on a day-to-day basis so are able to evaluate feedback regarding the service that the human resource function is providing. Below, the higher education interviewee makes the point that the operational work can promote the strategic work of the function:

‘A lot of the sort of phone calls you can get can be very transactional .Therefore if you can field those calls sensibly it should facilitate a greater involvement at a more strategic level for human resource.’ (Interviewee 14)

The interviewee above highlighted those activities, such as processing a contract of employment, is based on the operational side of the human resource function but there is the potential for operational work to have an upward flow into strategic decision making. Yet often the amount of time it takes to deal with operational work does not always release time for further strategic work:

‘But you do become embroiled in following the various policies, following the various procedures, dealing with the calls from the union who are involved in

terms of the legalistic queries and there is a danger that you lose sight of what is the real issue.’ (Interviewee 14)

Within the education organisation there was a dedicated team dealing with employment law as part of the operational remit. There was also a policy and project (part of the strategic remit) team assigned to evaluate new legal developments, such as anti-discrimination and grievance procedures.

6.2.2 Relationship between human resource strategy and employment regulation

Participants from the education case study commented that in the past several different approaches had been taken by the human resource function in managing employment regulation, including having human resource advisers that covered both operational and strategic project work. The next interviewee revealed that this had not worked particularly well, leading to the current separation of tasks:

‘we used to have human resource advisors who would do a mix of the reactive operational cases as they came in and some of the more pro-active projects and policy development .We found that didn’t really work’ (Interviewee 13)

The local government director made a point regarding the need to be tactically aware of the regulatory environment on the practical delivery of the service as it has an impact beyond operational work, in particular regarding how victims can emerge in the employment relationship that can create intolerable work situations, which then have implications that extend beyond the two people involved in the employment

dispute. This may subsequently have an impact on the goals, not just of the human resource function, but of the wider organisation, especially if the media get involved due to a disgruntled employee. The human resource director pointed out that there needs to be a tactical approach to the management of employment regulation, as this was part of the day to day strategic decision making surrounding employment disputes:

'Law will impact on the human resource function and it does. The legal impact is more tactical can affect the practical delivery which can sometimes result in feeling that objectives are not meeting the objectives, people management delivery. The position [of] tactics can lead to victims emerging, affect the organisational goals, and i.e. [the use of] compromise agreements. The ante can go up making an intolerable situation. It is the tactics that can lead to the negative impact.'
(Interviewee 1)

The higher education director confirmed that there is a relationship between strategy and employment law and saw the connection as a service that the human resource function must provide when operating in a legal context:

'Relationship between strategy and employment law – yes. If you think of the employment law as a service in that it advises, inputs and contextualises, as part of the service then you need to be as well informed as you can on the strategy - that you want to move forward and understanding the legal context... I don't think that employment law is a driver unless there is a compliance issue.' (Interviewee 19)

This is interesting as this human resource director suggested that a failure by the organisation to be legally correct was a bigger driver for strategy than the overall legal context. For example, the shadow effect of non-compliance motivates strategic decision making especially if the organisation fails to defend its actions at an employment tribunal. The relationship between employment regulation and strategic decision-making relies on the organisation being compliant, to which of course there is no option as organisational compliance needs to meet the minimum legal requirements. The union branch secretary from the same case study took a different perspective in that the organisation viewed employment regulation very seriously, seeing it as a priority in negotiations with the union, not just when something went wrong:

'the [organisation] have been much more tougher in the way that they negotiate there is a hell of a lot more legislation out there that everyone has to be aware of and we do see a lot more changes that comes about from outside that then spirals down in to the [Organisation] always takes the hardest line possible with any new legislation.' (Interviewee 17)

The education human resource director further extended the link between strategy and employment regulation to the type of organisational environment and what the organisation was trying to achieve. For example, employment law would not be the normal starting point but it was there in the background. This was a different perspective on human resource practices from the union official, as outlined above, who saw the role of the human resource function as legally focused, with employment regulation as the starting point:

‘Environment ... you have to start with what the organisation is trying to achieve as you wouldn’t normally start from the point of the employment law context but there is awareness.’ (Interviewee 19)

The health director was supervising over seventy human resource professional members of staff across the organisation. Prior to being in this organisation the director had worked in a number of private and public sector groups. From this experience the director had noted a shift towards the human resource function becoming more strategic in supporting business objectives, with employment compliance being part of this package. Legal compliance was noted by the director as one of the pressures on strategy, but the director did not identify exactly how compliance or non-compliance had a direct effect on human resource strategic decision-making.

The link between strategic decision making and employment regulation is not just recognised by the director. The human resource professional argues below that within strategy, legal compliance is a central component and probably has been this way for some time. As the professional appreciates, it is not necessarily that employment regulation is a new thing but it is the increase in the volume and turnover of new tribunal decisions that is having a major impact on the way organisations manage personnel:

‘in the anti-discrimination field it is almost like you are moving forward from one equality strand to another at one point..... lead you to look at things very

specifically and to deal with things in a very focused manner whereas strategically we might have wanted to look holistically - I mean the legislation does sometimes over take how you approach it if the legislation wasn't there especially anti-discrimination.' (Interviewee 13)

This participant distinguishes the area of anti-discrimination legislation, which is now part of the Equality Act 2010. The interviewee comments not just on the volume associated with anti-discrimination practices but also questioned how “strategically flexible” organisations can be. Employment regulation applies to all organisations so attitudes to managing and keeping up to date in the area of anti-discrimination legislation were similar across all the case studies.

The director from the local government organisation also qualified the issues regarding keeping employees up to date with new employment regulation alongside the complexity of anti-discrimination case law. The director further noted the increasing use of legal professionals by employees, which could further complicate the strategic process. Furthermore, the director pinpointed instances where the “shadow effect” of employment tribunals hindered negotiations between parties. This often arose once legal professionals got involved in negotiations as the issue was then more likely to move towards a formal grievance:

'I have to say lawyers and tribunals complicating what should be straight forward principals on equalities for example I mean equalities law is a nightmare in itself.' (Interviewee 1)

The human resource professional below also highlighted how strategy depends on the human resource function delivering a competent advice service irrelevant of whether there is a formal strategic plan:

'What is a key lever on the strategy – interesting not sure there is a formal strategic human resource? It is more about understanding the culture and relationships. But I think it is about human resource delivering advice that is realistic and correct to managers in a quick and timely .Employment law is about the detail of the case law there isn't a requirement for it more than just awareness but it is important in drafting policies.' (Interviewee 21)

The role of a formal strategy is illustrated below by the director working in the health organisation. Interestingly, the director was new to the organisation, although having worked previously as a director in both private and public sectors and therefore had varied experience in writing and delivering a strategy. The human resource director had inherited several problems, one of which was having no legal strategy. Secondly, a group of consultants were at that time reviewing the human resource function and looking into the strategic issues:

'What is the human resource strategy we haven't got one here! One of the keys things was doing a workforce strategy; they have already had a contract with consultants. They set up a group of staff who were told that they had to meet with me and they said that they don't want a workforce strategy but things that we would put into place to add to our recruitment and retention at all levels. I wrote one, which I thought wasn't very good several years ago.' (Interviewee 27)

The above identifies the area of recruitment and retention as an operational requirement influencing strategic decision making at an organisational level. Furthermore, the director states the importance of having a clear “direction” relating to the overall organisational business plan. This required the human resource function to be flexible in order to deal with any possible workforce reductions especially in relation to the current financial climate:

‘To me it is about having a sense of direction. We have an organisational strategic plan, as an [identifier]. They have a time limit plan for our workforce aligned to what we are trying to deliver it has to be in the broadest terms due to be public sector organisation which is subject to Government changes etc -could be u-turn at any time. Determining the current and future workforce needs, takes into account your turnover, but not the detail. How is it is going to look in the future. I haven’t written it yet!’ (Interviewee 27)

The director’s perspective centered on delivering a public service that engages with the wider community as the nature of this organisation was that it was operating at a strategic level across several different health organisations. In addition, the director came from the private sector and was used to a much more hands-on approach with less reliance on using legal professionals to solve employment disputes. Compared to the other two case study organisations, this organisation was going through more changes due to its workforce potentially being reduced alongside a restructuring of the human resource function, which at the time of the interviews was in its infancy due to the new director’s appointment and the consultant’s report:

'It is more influenced by good practice, latest thinking and regulation. It has an impact it is not the major factor it but it does underpin the workplace planning (downsizing different levels) or development under workplace planning, it is thinking about our future workforce and how it is going to look like in delivering our strategic plan, how we recruit from the community and developing skills.'
(Interviewee 27)

The local government director was clearer about how employment regulation can influence what becomes strategic and how the human resource management's strategic plan is formulated. Clearly, it is not a level playing field of influence as it depends on the type of regulation alongside how the human resource professional responds, as illustrated next:

'Law can influence what issues become strategic. Yes it is a considerable influence on the strategy it builds in to the organisation at all levels. Different areas of our strategy there would be bits where law has an influence, in the way we develop the organisational, leadership capacity, skills, and strong legal impact. Pay and reward is affected [these] are strong legal considerations that in turn affect strategic decisions.' (Interviewee 1)

In particular, the director from the local government case study recognised employment law's influence in creating the human resource professional environment, as regulation has an influence on the budget. The director indicated that there was a correlation between employment regulation and the human resource

function's strategic decision-making in the organisation. However, the point was made that a strategy that emerges directly from employment regulation may not have the depth needed to comply with organisational requirements and could be quite constraining:

'Yes I would have said, initial thoughts that you have to make your strategy to be within employment law maybe that's being a little too simplistic. But at some level when you are forming your strategy you do need to have some consideration for legislation.' (Interviewee 4)

The participant recognised the implications of human resource professional advice not being procedurally correct to line managers. In addition, the interviewee illustrates the limitations of working within a legal environment. This is evident from the way the director and his employees understand how employment regulation affects the day-to-day communication with other stakeholders. Often, line managers do not see the management of employment regulation as a strategic operation by the human resource function:

'certainly at that level they are very aware that if they are thinking of doing something there's going to be consequences and they might come to me and say right these are the blue sky ideas that we've got and if we think about going down this route what will the human resource implications be, where do we stand from a legal point of view.' (Interviewee 15)

The relationship between employee relations and being legally compliant was

recognised by the health case study participants with respect to the downsizing because the organisation had gone through a stable period, but was just about to go through a massive restructuring with mass redundancies expected:

'I'm like well there's just no way you can do that in that way we're going to have to have a rethink, I want to get rid of that person, I want to do this and give this person that job and I'm like hang on a minute that's just not going to work.'
(Interviewee 15)

The health case study interviewee's contribution above illustrates the relationship between human resource management strategic decision-making and individual employment regulation. This was also recognised by the higher education human resource professional. When asked about the relationship between employment regulation and the human resource strategy there was recognition that legal implications could not be ignored. The link is thought to be more indirect in that employment regulation is not necessarily taken into account prior to writing the strategy:

'Yes I would say there is a relationship because whatever you want to do strategically that is going to have to link in to the law and how you're going to manage that. I mean you certainly wouldn't have to need a person who is looking at and deciding on the strategy necessarily and implementing that management.'
(Interviewee 15)

6.2.3 The impact of employment regulation on resources

This section concentrates on the implications of complying with employment regulation on resourcing the human resource function. Participants mentioned the amount of time it takes human resource professionals and the human resource function to provide a legal service. The response below from a human resource manager in the local government organisation cannot single out the amount of time or staff resources needed as the legal considerations are ingrained into everyday operational practice, such that it becomes an “implicit” practice. The interviewee recognizes how regulation enhances human resource practices by acknowledging the role legal implications have on the strategic objectives of the function, although the participant did state that some areas of the function probably have higher legal resourcing implications:

‘It’s hard to say really, in terms of investment in monetary terms we obviously signed up to an online system [employment law information site] and that comes in to us and we go out to sessions as well -probably more so in the employee relations side than the recruitment side of things but I don’t think I can answer that properly.’ (Interviewee 3)

Furthermore, human resource professional found it much harder to single out the role of employment regulation from the overall remit of the function, but recognised that legal work drives human resource management’s allocation of resource:

'I'm just thinking through a typical day. I would say I would say a significant part of our job role would be legislative based... I guess it is the biggest driver.'
(Interviewee 4)

When asked which area of law is putting more pressure on the strategic outcomes, the interviewee below accredited anti-discrimination legislation as much more resource intensive, because it affected the whole workforce. The interviewee also mentioned that the online recruitment systems, also used by all three case studies, can be resource intensive to implement and that this could have implications for the strategy. The type of legal discipline, such as anti-discrimination legislation, can have an effect on the volume and resources needed to manage the legal framework in an organisation. This is indicated by a participant from the higher education case study:

'I think that in terms of finding the resource to deal both with legislative changes and deal with the implications and do other things is probably the biggest thing.... at the moment we are doing a big project on online recruitment trying to get out recruitment online you know trying to find the resource to do that and also to implement, I don't know I am trying to think of something that has recent legislative impact, let's just say the anti discrimination legislation, it's just meant that you still only have got the same number of people and obviously every time there is a change in legislation obviously there is an increased priority and the other things go lower down.' (Interviewee 13)

The same questions about the resource intensity of employment regulation on strategy and the operational work within the function were asked of the participants in the

health organisation. Many of the participants recognised that legal work is resource intensive and indicated that it was crucial to the strategic direction of the function. The director below gave examples of where resources were tied up in feeding the legal environment. The director felt that human resource professionals got fed up with the amount of contractual and anti-discrimination management they were involved with, thus illustrating how such legal enforcement prevents human resource from developing in other areas due to being bogged down in contractual tasks. The opinion given by the director in the local government case study argued that employment regulation in general could be a developmental opportunity for his staff:

‘Management of case work is crucial in the function because if it isn’t then it becomes more resource intensive and can affect the function.’ (Interviewee 27)

Understanding the required resource intensity is not just about the tasks and procedures carried out, as highlighted by the human resource professional below. It is also about making sure that the human resource function has the right legal knowledge as this can have strategic implications through cost and training. Human resource professionals need to be able to communicate their legal knowledge throughout the organisation; otherwise there will not be an alignment between the organisational strategy and the work of the human resource function. In other words, the legal training should be communicated as policies and procedures organisation-wide. This is another area of resource intensity that has an implication for strategic decision-making and planning:

'I suppose from an human resource professional perspective we would be expected to update our own knowledge and when we get flyers in about employment law updates, or whatever it may be, negotiation skills etc. it would be expected that at least somebody would attend that training. From the organisation's perspective it would be expected that human resource would be responsible for updating and training and arranging what costs and awareness sessions for our employees and managers.' (Interviewee 22)

The health director commented on other aspects of increased case work caused by being too overtly legally focused, on recognizing the strain not just on time and resources, but also on how stressful it is on human resource professionals in managing such legal cases:

'In fact staffs that are doing this all the time get fed up of it, they have great potential but this is all they do. Contract management, time consuming, and exhausting ...big resource just to employee relations, we must do more proactive stuff but they rarely get to do this.' (Interviewee 27)

6.3 Chapter discussion

Interviewees were clear that avoiding being legally incorrect in decision-making was a greater influence strategy than the overall legal context, as this has an effect on how they are viewed as a legal employment service in organisations. Notably human resource participant's responses across the case studies indicated that employees' understanding of the impact of employment compliance was not clear. Participants

acknowledged that regulation is a central component of any strategic plan, but there was concern that employment law should not be the starting point, even though the impression was given that often it was the starting point.

Some areas of employment law have more direct influences on strategic decisions, for example anti-discrimination legislation as laid down in the Equality Act 2010, because the regulation affects employees, customers, and other people who have an association with the public sector organisation in the community. Participants at all levels acknowledged that legal expertise is essential in today's environment, especially in the areas of the common law and understanding case law. The human resource function is as much influenced by the “indirect” or “shadow” of the law as the direct effects of case law or statute regulation.

Another area where there is a degree of confusion is the interface between the strategic and the operational work of the human resource function. Human resource professionals find difficulty in separating what constitutes an operational task from the overall strategic direction. In reality, both are interdependent as they are both about how human resource decision making responds to stakeholders and business partnerships in meeting the overall vision of the function. Operational practices and the strategic plan are about delivering good employment management, as both promote human resource outcomes in organisations. There is a need to be tactically aware of any legal implications arising from human resource practices and decisions in order to mitigate risk to the function and the organisation.

Where the participants had no problem in linking employment regulation and strategy was regarding the impact on resource intensity that employment regulation has had on the human resource management's functional activities. It can be observed that employment regulation "bogs down" human resource professionals in red tape and gives little room for informal practices. The issue of professionalism is brought up in relation to legal expertise as it has a big impact on the directors' and employees' status, both negative and positive. The impression given is that employment regulation, due to the nature of the expert skills required, has extended the human resource professional's portfolio. This is positive skill advancement but at the same time human resource professionals are often identified as rule book enforcers, which have had a negative effect on their status in organisations.

Employment regulation has narrowed the human resource function's role but at the same time has increased its status as there are strategic implications that arise from not being legally compliant and it is the human resource function's role to ensure that the organisation is compliant. Operational work has a strong element of legal compliance and this was recognised by participants. Yet there is much confusion as to what is actually strategic, because a lot of human resource work is operational, which it has to be as employees and stakeholders need to know that there are procedures that they refer to and also because there are no choices when dealing with rigid procedural base demanded by employment regulation. Wider strategic engagement seems limited but how can this be otherwise as legal compliance is key to the human resource role? It is hard to see how human resource in the future will be able to move any further out of the shadow of employment regulation as this is a major constraint on their strategic role.

CHAPTER SEVEN - ANALYSIS AND DISCUSSION

The main focus of this chapter is to compare the findings from the case studies with existing academic discussion in order to establish new contributions to academic knowledge and subsequent human resource practice. The chapter is divided into the following sections in order to establish the thesis research contribution to new knowledge. Section 7.1 reviews the relationship between employment regulation and human resource professional identity. Section 7.2 examines the impact of increased employment regulation on human resource professional practice. Section 7.3 asks whether employment regulation has influenced human resource management's strategic decision making at an organisational level. Section 7.4 contains the overall conclusion. Section 7.5 indicates implications for human resource practice.

7.1 The relationship between employment regulation and human resource practitioners' professional identity

This section is broken down into the following sections in order to understand the relationship between employment regulation and the human resource management practitioner's professional identity. Section 7.1.1 discusses whether the human resource professional identity is now akin to the role of the legal expert. Section 7.1.2 evaluates how the activities of the human resource function interact with the work of legal professionals.

7.1.1 Understanding the relationship between human resource practitioners' identity and legal expertise

With regard to how employment regulation is affecting human resource professional identity this thesis found that although previous academic discussion has been insightful (Harris, 2009; Dickens et al, 2009), the focus has not been on how employment regulation has altered human resource professional identity in organisations. Despite much engagement on the formalization of human resource practices (Wolf and Jenkins, 2006), there has been little discussion on how increased legalism has altered human resource activities in relation to giving legal advice.

There was recognition by many of the research participants across all the case studies that employment regulation has not only changed their working environment but has also changed human resource management's professional and organisational roles, due to a "no-choice" reality of implementing employment regulation in organisations. One area of practice that has had a critical role in developing employee relations (human resource) specialists is that of providing advice in order to avoid discrimination in the workplace through diversity policies. Dibben et al. (2011:231) found that "implementation of a diversity policy is likely to increase the role of employment specialists and the human resource department at large – a process that may be resented by line managers because it involves a reallocation of prestige and the altered relative importance of different functional areas of management."

This thesis is in broad agreement with Dibben et al. (2011:313). However, this thesis also demonstrates that there are positive and negative professional implications

surrounding employment regulation, which are dependent on the quality of interpersonal relationships that human resource professionals have with line managers, as this affects the degree of positive recognition that human resource professionals might receive. The reality is that human resource professionals are an important front line defence, working in partnership with line managers against potential litigation, but their role is dependent on how their expertise is recognised and used by line managers. This thesis concurs with Dibben et al. (2011:231) in that more formal policies and practices stemming from a legal framework have increased the status of human resource professionals in organisations. This is because the requirement for legal compliance has meant that individual line managers needed human resource help more as the latter had greater expert knowledge regarding law.

Dibben et al. (2011) ask whether human resource management actually changed from not just being known as personnel management but also in its “broad direction.” (pg.96). The research found that the distinction both in terms of the role played by human professionals and what they actually do has been limited in scope and definition in relation to personnel management. Previous discussion (Ulrich, 1997; Tyson and Fell, 1986) failed to recognise the operational nature of internal rules based on the employment legal framework with regard to professional identity and strategic decision making.

For instance, a CIPD research report (2005) recognised the role of employment regulation in generating human resource specialists, although the report failed to discuss how the work of the human resource function had moved into a legalized environment, or the future professional implications of this. Dibben et al. (2011) argue

that most organisations have not changed as the “efficacy of organisations lies entirely in the stability of their internal rules, but these allow them limited scope to respond to changes in their environment.” This thesis accepts that the human resource environment has changed in response to the role employment regulation plays in formulating “internal rules”, but it is also about how law has changed the identity of human resource practitioners. Subsequently, human resource management as a profession has become more strongly embedded in public sector organisations because of the increased need for legal compliance. This is because the level of expertise required to comply with regulation has strengthened their identity and facilitated the development of their knowledge base.

7.1.2 The relationship between activities of human resource professionals and the jurisdictions of legal professionals

This subsection reviews the relationship between human resource professionals and legal professionals and their respective professional jurisdictions. This thesis finds that there is limited understanding of the interface between the human resource profession and legal professionals (Evetts, 2012; Flood, 2011; Guest and Bryson, 2009), and that this represents a gap in current knowledge. There is an obvious professional comparison between human resource professionals and employment lawyers, the latter being a generic term for solicitors, barristers and legal executives, all with different levels of status and roles. Over the past thirty years, the passage of employment regulation has been well documented by commentators such as the CIPD (2007), with the DTI (2005) report establishing changed employee relations in organisations. Any understanding of employee relations without fully evaluating the

role of human resource professionals' expertise in managing employment regulation will be incomplete, particularly in a context of increased legal rights in workplaces.

There has been discussion, such as by Guest and Bryson (2009: 148), recognizing that personnel managers have moved towards "professionalization", but it was Harris (2005) who linked the expansion in employment regulation to an identifiable specialism that influenced professional status. Despite some fruitful discussion (Guest and Bryson 2009; Harris, 2005, 2009; Leopold and Beaumont, 1985) acknowledging the value of specialization in the work of the human resource professional, there has been little engagement regarding whether legal expertise may have moved human resource into a different professional grouping.

This research found at the root of this omission the lack of distinction between expert advice and legal practice (skills) - professional jurisdiction boundaries do not differentiate between expertise and practical skills in order to be classed as a professional. Flood (2011: 507) acknowledges this as being where the "re-landscaping of the legal profession does not see the distinction between legal knowledge and practice." Interestingly, the research participants concurred on the point that human resource has the practical skills and knowledge that are local to the organisation, whereas external lawyers are more adversarial. In other words human resource is more inclined to look for a practical solution (Harris 2009). For instance, human resource professionals have more precise knowledge on the accurate nature of relations with employees and their representatives, whereas legal professionals are more focused on the legal solutions to a problem. Yet both understand the complexity of the

employment legal relationships, although this research found that they approach it from different angles.

Despite human resource professionals often knowing the legal solution, because of being knowledgeable on the theoretical aspects of case law, they do not always have the authority to make the final decision. Financial considerations are important in understanding power, with senior managers often involved in making the final decision as to how professional legal knowledge is to be resourced. Interestingly, Bacon (2003) contends that human resource management lacks bargaining power due to being an intermediary, yet this research found that human resource does have power, which is based in legal compliance through policies and procedures. Human resource professionals may not be the final arbiter, which is notably precedent stemming from case law, and the power of the tribunals and advocacy skills of legal professionals. Yet they do have power within organisations as intermediaries that control practice and outcomes by getting stakeholders to defer to legal procedures.

The lack of such a perspective on the legal human resource role is not realized fully in current role models (Ulrich, 2005; Storey, 1992; Tyson and Fell, 1986), especially when legal conflict arises. Extrinsic demands, such as new statutory interventions, are recognised through human resource practices, but there is currently little discussion of the development of human resource professionals as legal advisors interpreting case law. This thesis research demonstrates that there needs to be more academic recognition of the relationship between employment regulation and the role of the human resource function as a legal service provider.

There is a cross over between the human resources roles of providing employment legal advice and being seen as an in-house legal service in all matters relating to employment regulation. Since the 1990s there has been academic and practitioner engagement in the understanding of business managers' or partners' roles (CIPD, 2005, Ulrich 2005,) in order to achieve strategic alignment. Yet the business partners' role model is too simplistic as it fails to address the role employment regulation plays in defining strategic objectives. This research found that the management of employment regulation is tactical and can affect the practical delivery of services.

This thesis also found that the degree of overlap between the legal and human resource professional roles is dependent on the individual human resource professional's confidence in providing legal advice. This was particularly apparent in the Health case study where the human resource director recognised that the more inexperienced human resource professional had a tendency to involve lawyers at too early a stage due to lacking power or confidence to make the decision on their own. Some research participants across all three case studies distinguished human resource professional legal boundaries by focusing on the point that lawyers work within a legal framework whereas human resource is there to provide the reasonable employer response.

This is particularly interesting as one of the key elements of professionalism is having technical knowledge and the role of education and qualifications is fundamental because they move occupations from non-technical jurisdictions into technical jurisdictions and help to develop specialism's (Abbott, 1988). Such concerns are not new for the legal profession. As Dezalay (1995) points out, the reshaping of the legal

world is wide open to new professionals as employment regulation as an expertise is accessible in the public domain.

This research also found that there is a similarity in the legal advice that both human resource and legal professionals give because operational boundaries are merging in the organisational context. This makes it more difficult to make distinctions on technical knowledge alone. However, there is a distinction in the form of professional qualifications that each profession can obtain. The importance of qualifications is recognised by the research interviewees both in terms of their own professional development and the ability to perform in the human resource role. Furthermore, this research has demonstrated that human resource professional skills link to how human resource's profile is viewed in the organisations (Leopold and Beaumont 1985).

Therefore, this thesis argues that human resource professional value to the organisation goes beyond the collective role in being a professional; it is also about using legal education to protect human resource professional status and indispensability, thereby increasing its value and power in the organisational context. In other words the standing of human resources professionals has been shaped by law, but it is different to that of lawyers in that it is organisationally relevant, based on practical outcomes through procedures and advice. Although organisations use lawyers, the human resource role is distinct in managing people as they are interpreters of regulation tailored to individual organisational environments.

Furthermore, the role the human resource function plays as a legal service provider in an organisation has not been addressed until this research. As Evetts (2012: 7) argues,

lawyers are losing “knowledge jurisdictions” to new professions such as human resource management. Whilst interviewees do not all recognise the complete transition into a semi-legal professional role, they are not clearly able to distinguish between the two roles. This research has found that the human resource profession, through the management of employment regulation, has strengthened its professional role and has grown within the structure of public sector organisations. This research found that by linking its practice to an old profession (law) its expert status has been enhanced by encroaching on another professional boundary.

Moreover, this research also found that separating lawyers and human resource professionals by arguing that human resource professionals are more organisationally based is no longer applicable as both groups are becoming closer due to both being organisationally based. The UK Legal Services Act [2007] has led law firms into “new management and organizational structures” (Flood, 2011: 508), away from just being legal technical experts, and into business management in large organisations. This creates potential tensions for human resource management as it has sought to establish itself as a new organisationally based profession.

Increased work place regulation has moved human resource professionals into the arena of organisational legal employment services, which encroaches on the jurisdiction of employment and labour lawyers. The CIPD (2011: 2) reacted strongly to the claim “that they have a vested interest in promoting red tape because employers need to hire more human resource professionals to ensure that they comply with regularity requirements.” At this point in time, individual human resource professionals do not need a license to practice, compared with solicitors who are

overseen by the professional body of The Law Society and the Solicitors Regulation Authority (SRA), the independent regulators of their profession. Human resource professionals are more lightly regulated by the CIPD through the “code of professional conduct and standards of professional behaviour” (www.cipd.co.uk/cipd-hr-profession). However, the issue of professional recognition is important to the future development of the profession and also to how the human resource profession is viewed by organisational stakeholders.

Furthermore, the thesis research identifies that there are potential tensions between the role of the human resource function and other organisational stakeholders with legal responsibility in public sector organisations, particularly those known by terms such as “legal services”, and which are staffed by legal professionals. Although this research did not specifically focus on the remit of “legal services”, the interaction between their authority and the human resource function’s decision making in employment disputes is important in evaluating human resource professional legal responsibilities.

The local authority case study gave the most insight as they had an active relationship with their legal service department, but delineated its role somewhat in that the legal service department did not involve itself in routine employment legal issues. The impression given from the other two case studies was that legal service departments are more involved in corporate governance and corporate social responsibility (CSR), with the human resource function given the responsibility to engage legal professionals and communicate with employees on a day to day basis.

An important issue arising from the use of the legal service department in the local government case study was that human resource interview participants were concerned about possible changes such as downsizing and redundancy in their domain and the possibility that legal services could take over their role in relation to employment regulation. The way organisations are governed has an effect on stakeholders and employment relations both on formal and informal levels (Dibben et al. 2011). This was a real concern as the public sector bodies were under greater scrutiny due to the prevailing economic climate, with accompanying austerity measures implying the possibility of a merger of roles (Couzins, 2013: 1). This links with a presumption that human resource professionals would be more actively involved in designing and shaping the workplace strategy in areas such as workforce reduction. This is acknowledged in this research by both the local government and the health human resource directors who saw their role extending beyond the confines of their organisations.

7.2 The impact of increased employment regulation on human resource professional practice

This section is divided into two subsections and provides discussion in relation to understanding the impact of increased employment regulation on human resource professional practice. Subsection 7.2.1 reviews why increased employment regulation has changed human resource professional practice in public sector organisations. Subsection 7.2.2 looks at how employment regulation informs practicing implications with organisational stakeholders.

7.2.1 The effect of increased employment regulation on human resource professional practice in public sector organisations

The thesis research found that the human resource function operates within a legal environment by giving legal advice that interfaces with management practice in order to try and prevent employment legal. Notably, managers' attitudes are very relevant when considering legal interventions, reflected in what Galligan (2006) argues are the "strong" or "weak" preferences organisations have towards being legally compliant. Human resource management has a core role in influencing managers' attitudes towards legal compliance in the workplace. This can be seen, for example, in how disciplinary procedures are implemented and managed by line managers.

The thesis research agrees with Dibben et al. (2011: 240) that "the use of a disciplinary procedure might mean that a problem does not go as far as an employment tribunal." Moreover, the study participants recognised that it is even more crucial to get managers to listen to their advice and recognise their expertise, as the procedure on its own is not enough to stop actions becoming legal disputes. Furthermore, if a case does reach a tribunal it is to the employer's advantage if they can show that correct organisational procedures have been enacted to solve the employment dispute (CIPD, 2010).

This research found that that there is a lack of a definitive understanding of what contemporary welfare practices consist of, as well as the role human resource professionals play in managing employee contractual issues, especially around anti-discrimination practices stemming from the Equality Act 2010. Discussion to date, although insightful, has focused on human resource procedures stimulated by

employment legal interventions (Harris, 2009; Dickens et al, 2009) rather than how employment regulation has altered human resource management's welfare practices.

There has been much academic engagement in how employment regulation is driving change on a political level (Wolf and Jenkins 2006) through the formalization of human resource practices. Yet there is little specific discussion as to whether it is a direct impact of statutory intervention, or because of the contract of employment, or case law that is drives human resource working practices.

This thesis research found that there was very little differentiation between the case studies in terms of legal practice but human resource directors from the health and local government organisations acknowledged the role the human resource function plays in the wider community through workforce strategies and responsibility to the public purse. This has resonance with the model employer concept but has extended into a new form of model employer that Bach et al. (2009) contend has a relationship to "procedural justice and employee welfare." (ibid. p324)

The thesis research found that that there is a lack of a definitive understanding of what contemporary welfare practices (Legge, 1987; Niven, 1967) consist of, as well as the role human resource professionals play in managing employee relations, especially around anti-discrimination practices as a direct result of the Equality Act 2010. For instance, the health and well-being of employees are becoming more important to management not least because of duties under health and safety legislation, or a legal duty of care through the contract of employment. Bach et al. (2009: 308) rightly argue that such changes have "encouraged the public sector to

adopt employment work life balance policies” as part of the modern approach to being a “model employer.”

The interviewees noted how difficult it was to provide workplace “welfareism” (Legge, 1987; Niven, 1967), as traditionally defined. The thesis research found that welfareism is still present in the public sector but that it is about legal contractual and statutory rights such as the duty of care and occupational health services (MacDonald, 2005). The cynical viewpoint would be to say that the employer has no choice under statutory and contractual obligations, yet this is still a form of welfareism as outlined by Watson (1977), demonstrating “caring and controlling” through human resource practices, although formalized by regulation.

The issue of human resource management retreating from welfare practices has been much discussed (Legge 2005, Torrington and Hall, 1997). Yet this research concurs with Beaumont (1984) in that welfare has not retreated from the human resource role but has been redefined in recent decades in to more formalized practices alongside the development of employment regulation.

The different strands of employment regulation, such as the common law and the role of judiciary, have not been fully evaluated in the context of employee relations. There has been limited analysis of the different sources of workplace regulation acting as a “benefit or burden” or, as Boxall and Purcell (2008: 292) state, the “requirements of labour law ought always to influence the design of human resource policy in firms.” Moreover, this research highlights that the ability to prevent an employee dispute reaching an employment tribunal can depend on the expertise human resource has in

interpreting case law and legal (tribunal) practices, combined with an ability to translate such knowledge into working practices.

7.2.2 How employment regulation informs practicing implications with organisational stakeholders

The impacts of employment regulation on human resource practice through policies and procedures and the subsequent interaction with organisational stakeholders are discussed in this section. There has been much engagement with the effects of legal interventions (Brown and Edwards, 2009; Colling, et al., 2009; Dickens, et al., 2009) on the collective and individual employment relationships, but little discussion on how the human resource practice function is affected by interpersonal relations and knowledge between different stakeholders. A notable finding from the research is that across the case studies participants commented that employees are now more willing to seek remedies through employment regulation, which has necessitated legal management of employee disputes from all sides, including human resource professionals and trade unions.

This research indentified that good interpersonal stakeholder relationships not only rest on human resource legal expertise being a source of organisational influence (Harris and Bolt, 1996) but also on how well human resource professionals are respected in negotiations with line managers and trade union representatives. The importance of this stakeholder interaction in managing employment regulation must be appreciated, as the CIPD (2005:18) found that: “51% of organizations surveyed responded that employment tribunal was a strong influence on manager’s behaviour.”

The research found that communication between human resource professionals and stakeholders in relation to employee disputes was not adversarial in the health and local government case study. The human resource professional role is to find a consensus between diverging opinions as there is expectancy by other stakeholders that human resource management will be flexible in any intervention, especially in collective disputes (Budd et al., 2009).

This thesis acknowledges the importance of working together with line managers in managing employee disputes. As Losey et al. (2011: 203) comment, it is about “collaboration” between managers and human resource professionals in order to manage employees effectively. The thesis research found that there were distinct attitudes stemming from line managers in relation to the increased effects of employment regulation. This research agrees with Harris (2009) in that there will probably be greater devolved responsibility to line managers, with the human resource role being more central, in order to attempt to stop inconsistencies arising in employment practice.

On the other hand, this view does not take into account variations in legal knowledge and interpersonal relationships between human resource professionals and line managers. As Neal et al. (2005:174) note, in order to resolve conflict together both parties must be able to “establish a person to person relationship based on mutual trust and interdependence in which the cause of conflict can be identified, avoided or removed by interpersonal interaction and by effective communication.” This research agrees with this approach as participants comment that only when both sides are able

to trust (Harris, 2009; Sheppard et al. 1992) each other can human resource managers be respected for their expertise.

One of the concerns human resource professionals in this research identified is whether line managers have the time and capability to handle the legal implications of employment issues (Harris 2009, Sheppard et al. 1992). This is particularly interesting as previous research has not evaluated the effects of poor decision making between line managers and human resource managers. This research has identified that there is lack of clarity of ownership in the decision making between the parties, which can be down to the line manager not being willing to make decisions and human resource professionals not being willing to relinquish power.

Conversely, the line manager being too reliant on human resource professionals for making a decision increases human resource working responsibilities as well as attracting the label of “enforcers” of the legal rules in organisations. The biggest issue distinguished by the human resource participants is getting line managers to contact human resource professionals at an early enough stage to prevent a dispute spreading out of control.

The research found, however, that there was an increasing expectation by the organisation that the line managers would take on legal responsibilities. It was also apparent from this research that human resource professionals had some reluctance to devolve responsibility to line managers, not just because there was concern over competency, but also because there appeared to be a form of bureaucratic protectionism, with the human resource function attempting to maintain its status,

which had been “built on complex mechanisms” (Dobbin and Sutton (1998); Kelly and Dobbin, (1999) and Sutton et al. (1994)). This is consistent with the suggestion by Heery (2012: 80) that the human resource function has been able to seize the “opportunity presented by law to carve out positions within the business based on interpreting the law and ensuring compliance” (Heery 2011:80b).

The human resource role differs from that of line managers in that the human resource function acts as a centralised hub of employment legal knowledge. However, this research also found that expertise has to be acknowledged by line managers and, more importantly, acted on when managing the employment relationship. Previous studies (Bach 2005; Harris, 2009;) recognised the importance of individual organisational experiences in generating legal expertise, but there needs to be more research on the tensions between understanding the impact of regulation and the development of human resource legal expertise (Harris, 2009).

Many of the human resource participants across all the case studies mentioned that employment tribunals (Dibben et al: 2011) had a strong influence on the management of the employment relationship. Nevertheless, it is apparent from the research that neither human resource professionals nor the trade union particularly welcomes tribunal appearances because of the time, cost, and potential repercussions on the employment relationship (Harris 2009). Whilst there are differences between the health case study and the other two case study organisations, good policies and procedures are fundamental in protecting all parties from legal repercussions.

This research found that good interpersonal relationships are fundamental in avoiding legal disputes, but this is not necessarily the norm in employee relations as highlighted in the health case study. Findings from a DTI report (DTI, 2005) illustrate that positive employee relationships relied on human resource professionals and line managers having effective communication channels. Interestingly, the health case study, as portrayed by the human resource director, does not display such good relations and is more adversarial (Boxall and Purcell 2008) when communicating with the trade union, for historical reasons, and the trade union had not been well organized, relying more on the local representatives.

Participants, especially the local government director, recognised the benefits of having productive lines of communication with the trade union, principally in individual employee disputes. Creating positive stakeholder relationships is as important in the long term as legal knowledge. The problem identified by some participants is that if the interpersonal relationships are not good the employee relations scenario becomes “defensive” (Harris, 2009: 91) despite legal expertise. However, human resource professionals and trade union participants from all case studies commented that the level of legal expertise is very important in negotiating with each other over individual employee disputes. In particular, human resource and trade union representatives commented that the need to keep up to date with case law and tribunal decisions was necessary in order to provide good representation to members, and this was the most important aspect of legal expertise.

Many of the participants defined “collective” legal actions (redundancy) and the management of “individual” legal employee cases where knowledge of labour or

employment law was required. MacLaughlin and Gourlay (1992) and Marchington and Parker (1990) distinguished some human resource practices in relation to the employment relationship with trade unions. This thesis research found that there is still a divergence between collective legal actions and contractual legal disputes, and it is rare for class actions to be accepted by employment tribunals, but it was accepted that the contract of employment had increased the work of human resource especially in understanding terms and conditions of employment (Collins, 2010). However, arguably this is starting to change with the example of the Birmingham City Council case where an equal pay dispute was won by public sector workers in 2012 (Churchard, 2012). Under the Equality Act (2010), an employment tribunal can make collective recommendations that affect an employer's whole workforce, thus giving the legal system more direct intervention into human resource strategic decision making.

The human resource participants did note the differences between individual and collective union negotiations, which were down to the seniority level of the human resource professional, with the human resource director more involved in collective negotiations compared to individual case work. This fits into what Williams et al. (2011: 358) contend is a human resource role as “an honest regulator of the employment relationship.” The voice mechanism is now becoming more influenced by employment regulation, which has necessitated the involvement of legal professionals in representing employees in disputes within organisations.

One aspect that was highlighted was that the emergence of new actors representing employees necessitated a re-evaluation of employee voice by considering the employee legal voice not only as a new form of representation for workers but also as a way to redefine stakeholder relationships. Legal professionals have become more active in the employment relationship because the operational environments for organisations have become more legalized through the use of formal procedures stemming from employment regulation, which has changed the relationships between stakeholders. Notable transformations in public sector practice will be partly due to legislation relating to equal pay claims, anti-discrimination procedures, flexible working, and gender composition, resulting in pressure towards greater compliance with such regulation.

Even though the traditional view of the voice mechanism is more based on the collective voice (Wood et al. 2004), human resource professionals in this research showed a strong awareness of the role of individualism in workers, either representing themselves or employing legal professionals. The involvement of legal professions has had an impact not just on the way the human resource function operates but also on how employees exercise their voice in public sector organisations. CIPD (2011) research observed the role of employee voice in public sector organisations, arguing that “voice” is moving away from collective trade union representation to forms of individual representation. This research argues that there has been a lack of understanding as to how the employee voice mechanism is now driven by legal concerns, which have transformed representation into a form of employee legal voice driven by employees seeking legal remedies to workplace disputes from external legal professionals.

This research is consistent with Brown and Edwards (2009) in that the employees' interaction with organisations has moved away from trade unions being the main form of representation and mechanism for communication for employees in public sector organisations. What has not been discussed is how the new voice, which has moved away from "the union-only voice" (Willman et al. 2009: 118), is constituted as new stakeholders such as legal professionals create and develop a "legal voice" as a mechanism for representing employees. There has been little research into how the concept of the individual "employee legal voice" has evolved beyond the concept of the collective "employee voice" (Freeman and Medoff 1984; Hirschman, 1970) as a consequence of increased employment regulation.

However, Freeman and Medoff (1984) recognised that "voice response interaction" goes beyond the role of existing employee mechanisms, but fell short of identifying specific stakeholder relationships, such as legal professionals. However, since their study (Freeman and Medoff 1984), which took place over 20 years ago, employee attitudes have changed with new mechanisms becoming available to exercise "voice" through other actors such as legal professionals and civil society organisations (Williams et al. 2011) .

The influence of the legal professional was highlighted by many participants as well as how they dealt with employee disputes. However, current academic literature is silent on their involvement both in voice mechanism and in the tribunal processes. Dibben et al. (2011: 177) state that "individual voice mechanism is limited and collective mechanisms have a clearer voice." This thesis finds that this does not take

into account how employee disputes are dealt with by legal professionals. One area of particular concern is the rise of the “no-win no fee” solicitors, who both the trade union representatives and human resource directors feel are chasing employees. In particular, the local government human resource director expressed frustration at the amount of time taken up dealing with legal professionals, as human resource now operates within a legal environment.

The health human resource director was more concerned with the cost and time implications involved when human resource employees consult too much with legal professionals, when the decision could be made in house, stating that this is often down to members of staff needing to have more confidence in their legal decision-making or having a lack of experience or seniority in managing legal cases. It is argued in the ACAS discussion paper ‘*Voice and Participation in the Modern Workplace: challenges and prospects*’ (Purcell and Hall, 2012:4) that “the representation gap is not just about trade unions being able to represent employees in collective bargaining. In many workplaces their role is wider, covering individual representation in grievance and disciplinary matters and dealing with work organization and training issues, seen in the work of union learning representatives.” However, there was no discussion around legal professionals representing employees as a representative voice in organisations in this ACAS document, which this research argues is an omission when trying to understand the current voice for employees in organisations.

The research also found that a better understanding is required of other organisational stakeholders that may have an influence on the employment relationship. In this research, the role of public sector “legal services” directorates was highlighted in the

local government case study, which was significant because it showed additional constraints that human resource had to deal with in providing employment advice, with the potential to affect their strategic decision making. Furthermore, public sector organisations are currently undergoing change, with the possibility of restructuring. Couzins (2013: 1) referred to a “projected 900,000 jobs due to be cut by the end of 2017.” The reduction in staffing levels could increase the interaction between the human resource function and a legal services directorate in providing employment legal advice. Arguably, with organisations becoming leaner, there is the potential for new service models to emerge, especially in local government organisations. Moreover, this could affect how human resource professionals will interact with “external providers, shared services, or in-house service human resource” (Couzins, 2013: 1).

Moreover, the thesis research found that three case studies operate as organisationally based “professional services” (Kalleberg et al. 2006), although the structure and purpose is different from professional legal services. Nonetheless, while both legal firms and the human resource function are a service, law firms' clients are externally focused compared to the internal service delivery role of human resource policies and practices. They both work in partnership with stakeholders. Boxall and Purcell (2008: 139), in reviewing public sector management, put forward the case that, despite the levels of “bureaucracy” being higher than in professional firms in the private sector, there is a positive in that there is “a high level of independent action by professionals both acting as individuals in the public sector. One in five local authority legal departments face the reality of a 20% cut in budget”, thus challenging the existence of legal services as they currently stand (www.localgovernmentlawyer.co.uk). More analysis is required on the possible competition between the in-house human resource

function and legal services if the expansion of employment regulation continues at its current rate.

Despite the regulatory environment increasing individualism in representation for employees there is still a strong focus on employee voice mechanisms being the prerogative of trade unions in representing members in collective or individual disputes in public sector organisations. This is performed via a spectrum of established mechanisms such as formal joint consultative committees (JCCs), non-union instigated committees stemming from the Information and Consultation of Employees (*ICE*) Regulations (2004), and individual legal employee representation either by legal professionals, trade union officials, or civil society organisations (Heery and Frege, 2006; Williams et al. 2011). The case studies demonstrated involvement in JCCs but only the local government case study was involved in the ICE committees, with the impact felt to be minimal. Human resource professionals and trade union representatives from the local government organisation acknowledged the role of JCCs and the ICE regulations but suggested that the persuasive influence on their work load originated from individual legal (employee) disputes.

Furthermore, this research recognizes the impact of employment regulation on human resource professionals' relationships with trade union representatives. The research notes how communication between individual human resource professionals and trade union representatives has become more formalized due to the pressure of employment regulation; this hinders voluntary agreements as both sides are concerned about the legal repercussions, such as employment tribunals. This research found that human resource professionals and trade union representatives voiced the same frustration

over employment regulation and the scope of formal processes emanating from employment regulation, making it increasingly difficult for employees to backtrack once the formal procedure had begun especially in areas of grievance and disciplinary matters. The research found that both human resource professionals and trade union representatives need a level of “internal expertise” (Harris, 2009: 86) regarding how they communicate in employee disputes. For human resource professionals a productive relationship with trade unions ranges across what Purcell (1995) calls the “game keeper role” of preventing employee litigation, or being “industrial relation experts” (Legge, 2005), to being recognised as skilled employment (legal) negotiators.

Traditionally, the relationship between trade union and human resource professionals is seen as being more contentious than this research found in any of the case studies. In this research the presence of contentious issues between the trade union and the human resource function was inconsistent. Whilst there were no contentious issues in two of the case studies, the local government and education organisations, in the health organisation the human resource director felt that it was an “us and them” situation when dealing with the trade union, perhaps akin to what Bacon (2003: 69) describes as the lack of “cross fertilization” between human resource and the union, describing their relationship as a “turf war.”

There was divergence between the health organisation and the other two cases as far as union representation were concerned. Human resource professionals gave the impression that the relationship is about stakeholders working together. Cooperation between union representatives and the human resource function was seen as a way to get the best possible result for the employee, trade union and organisation without

resorting to an employment tribunal. The research found a willingness by stakeholders initially to work together in line with what Boxall and Purcell (2008: 161) argue goes beyond “the stereotypical imagery of conflict and adversarialism.” This was most notable in the local government and the education case studies where both sides were trying to seek employment solutions within their organisations in the first instance.

7.3 Has employment regulation enhanced strategic decision making at an organisational level?

This section is divided into two subsections discussing the impact increased employment regulation has had on strategic decision making within public sector organisations. Subsection 7.3.1 reviews the relationship between employment regulation and human resource strategic decision making. Subsection 7.3.2 looks at how increased employment law has enhanced the human resource function’s decision making.

7.3.1 The relationship between employment regulation and strategic decision making in human resource management

There has been much discussion (Boxall and Purcell 2008; Legge 2005 :Kochan et al. 1986,) regarding the importance of the human resource function aligning itself with the strategic direction of the organisation, thus raising the role of the human resource professional as a strategic actor (Bacon 2003:76-77). However, this relationship has not been fully analyzed in relation to changes in “strategic choice”(Child, 1972) due to the legal employment environment. As Dibben et al. (2011:97) point out, the

strategic models assume “that strategy formulation is a straightforward process and that managers in fact have a degree of choice with which they credited.”

Sisson and Storey (1993: 72) found that the part employment regulation has played in giving a no-choice strategy or a “genuine free choice of strategic stance” has not been fully defined. This thesis research found that this is a valid criticism as the lack of evaluation of the role employment regulation plays in restricting the human resource environment and the role of the actors (human resource professionals) does not give a realistic picture of human resource strategic decision making ability. Legge (2005: 160) discusses the “naivety” of this approach in realizing the difficulties of implementing strategic change, whether it originates from the organisational level or in relation to people management. The human resource directors from the health and local government case studies also agreed that the employment legal environment placed restrictions on their own ability to make strategic decisions (choice) due to the repercussions of not giving the right legal advice, or the impact of employment tribunal cases.

The main acknowledged strategic models, “best practice” (Pfeiffer, 1998), “best fit” (Beer et al, 1994), and “resource based view” (Penrose, 1959), have limited application to how strategic models interact with the external environment or employment relations. Strategic decision making can be determined by organisations but the “direct” and “indirect” implications of poor management of redundancy, for instance, are a lever when implementing the strategic plan.

With regard to the human resource role, the demands of employment regulation were frequently mentioned by participants from all the case studies. Even so, there appeared to be a disjointed understanding by research participants as to what constitutes management practice in terms of human resource legal compliance. Furthermore, human resource professionals in this research make little distinction in terms of employment regulation between what Boxall and Purcell (2008: 74) define as the “micro and macro” best practice models. This research found that there is an absence in the debate between human resource “best practice” and “legal good practice”, leaving the potential for inconsistency between the two practices. Where is the convergence, if there is one, between legal judgments (case law) that deliver best “legal” practice guidance, and human resource strategic “best practice” models?

The main existing strategic models, in particular best practice (Pfeiffer, 1998), are silent on “employee voice” (Marchington, and Grugulis 2000), or the tensions that exist in the employment relationship (Boxall, and Purcell 2008). Peck (1996:138) argues that disputes between employers and employees are “not calculated; they are struggled over.” Hence, it is problematic to devise a strategic plan that does not take the legal context into account. This can be illustrated by organisations having to defend management decisions at employment tribunals that could potentially carry the risk of reputational damage, potential financial costs, and disruption to the workforce. Furthermore, this lack of understanding regarding employee conflict, industrial action (Edwards, 1986) and the various interactions within employee relations provides little knowledge of strategic choice beyond giving a prescriptive account of employee relations issues.

Notably, Purcell (1989) observes that human resource decision making can be categorized as “third order decisions”, and even at the lower decision making in current discussion. The role of the legal context, directly or indirectly, is not specifically factored into strategic decision making in the referred-to models (best practice, best fit and resource based view), which do not take into account the effect of employment disputes on strategic decision making (Bacon 2003:81). This thesis research found that with regard to the “strategic choice” literature there has been an omission in evaluating the wider external legal environment in which “management strategies are likely to succeed” (Dibben et al. 2011:100).

This research recognizes that strategic decision making in relation to devising a strategic plan is controlled at human resource director level. Currently, the strategic leadership role is not well defined in the current human resource models in relation to restrictive practices (Caldwell 2003; Storey, 1992; Ulrich and Brockbank 2005). Losey et al. (2005) make many valid points about the relationship between human resource professionals and stakeholders but stop short of identifying “ownership” in legal decision-making, especially in relation to human resource “service delivery” and “facilitation roles” (CIPD 2007). The thesis research found that there are differences in how human resource professionals who work at a level below the human resource director see strategic decision making by the directors, whilst they understand the importance of good day to day operational practices as essential for performing their role.

Sisson and Storey (1993: 72) recognise the difficulty in controlling internal strategic agendas because it is hard to act “independently of prevailing legal, social and

political norms.” This view is recognised within this research in that some strategic models are too rigid (Kochan et al. 1992: 1), especially when understanding the “top down” effect of employment regulation on organisational stakeholders and the human resource role. Employment regulation’s influence on strategy can operate through lower level decision-making. As such, decisions can filter up through the organisation, especially in areas such as anti-discrimination and redundancy where compliance is not just at the individual level, but where there can be implications for the whole workforce collectively.

Discussions regarding the relationship between strategy and employee relations (Kochan and Dyer. 1986, 1992) have not addressed in depth the indirect effect that employment regulation has in constraining the strategic ability of the human resource function in making decisions, as well as moving the work of the human resource profession closer to legal professionals. There is a need to understand how strategic decision making is altered by disputes in the employment relationship, particularly as participants in all three case studies noted the direct effects of employment tribunals on day to day activities (Dibben et al. 2011).

In particular, participants pointed out issues relating to resourcing implications, such as the time human resource professionals spent on updating knowledge, in negotiating with trade union representatives, and in giving advice to other stakeholders. The research found that employment regulation had an impact on human resource strategic decision making as employment regulation (Dickens, 2010) not only imposes budgetary constraints, but also affects management style and the freedom to manage employees.

In this research it is noted that there is a discrepancy between legal management practice, stemming from case law (legal practice guidance) and the best practice models associated with strategic human resource management. Moreover, human resource professionals frequently link good legal practice originating from legal judgments with best practice approaches. There needs to be research conducted on whether best practice in relation to the work of human resource owes more to the origins of a hybrid model that is a combination of legal practice and the best practice strategic model.

The implications for human resource strategic decision making was highlighted by human resource directors and the trade union as an impact on strategic activity especially in the area of anti-discrimination law. This was especially noted in cases won by “no win no fee” solicitors against another organisation where this had forced the local government organisation to review their procedures, even when there was nothing wrong with their current policies. As Dickens (2010: 7) states “generally in UK [law] is passive and individualized [more about how the] ‘victim complains’ rather than requiring employer action or agency enforcement; remedies relate to the individual.” The research participants gave examples of how they were trying to prevent something going wrong rather than proactively trying to change employee working conditions through positive compliance.

Moreover, this research contends that legal pressures stemming from employment regulation, either as a direct or indirect impact, can influence strategic decision making. As Dickens (2010:10) sums up: “regulation interacts with environment in

which it falls to be implemented.” In other words, there needs to be greater consideration given to how employment regulation interacts with “human resource strategic agility” (Guest, 1987a) and the broader legal framework, in order to influence strategic decision making. In particular, anti-discrimination legislation, the contract of employment and tribunal procedures all have an impact on how flexible the human resource function can be in delivering a strategic plan.

7.3.2 How increased employment regulation has enhanced the human resource function’s decision making

The thesis research found that there is convergence between operational and strategic outputs in relation to employment compliance. The level of intensity depends on the area of law. For example, anti-discrimination legislation has a higher level of management concentration. Dickens (2010:5) comments that it is difficult to separate “espoused policy and workplace practice” as it is difficult to “isolate law from other factors and weight its importance.” The mediating influences that allow human resource strategic influence are the interpersonal relationships between trade union representatives, the development of a specialist legal role for human resource, and the personal skills of the line manager in dealing with disputes (Dickens, 2010). This thesis research found that there is a link between employment regulation and human resource strategy mediated by human resource specialist capabilities and legal knowledge in stakeholder relationships.

Even though many of the participants talked about the role of strategy in relation to how human resource had value and status, they could not identify what they were

doing in practice that was directly strategic. Bacon (2003:79) found that it was, especially in unionized workplaces, difficult to divide specific human resource practices from the role of trade unions in relation to performance. This was noticeable throughout the case studies because apart from, most prominently, the local government human resource director, there was a lack of awareness of the extent to which regulatory pressure was influencing the future development of the human resource function.

This thesis argues that consideration should be given to promoting a more realistic strategic model that is a fusion of strategic and operational practices, because these components are difficult to separate within organisations. In addition, the “indirect” or “shadow” effects (Dickens, 2007) of employment regulatory demands on the human resource strategy have potentially more consequences than previous research has acknowledged. Dibben (et al 2011: 101) comments that seeing “employment relations as a study of the ways in which the employment relationship is regulated is a welcome departure from the “voluntaristic” overtones of human resource approaches. This research agrees with that analysis.

The research identified that different areas of employment regulation have had more direct influences on operational and strategic areas within the human resource function, which in turn affects legal expertise and resources. The head of human resource in the health case study commented that employment regulation is traditionally placed within the operational side of business. This research acknowledges the operational side (employee relations) as the core strength of the human resource profession where human resource specialists are present. Torrington

and Hall (1996: 81) state that the influence of operational and technical personnel activities must not be undermined in relation to the working of the human resource strategy.

Current academic perspectives overtly treat strategic human resource management as linking directly to the performance of the organisation. Until now, there has been limited discussion of what Thompson (2011: 365) terms “the nuts and bolts of human resource practices” because the focus has been much more on improving human resource ability to influence organisations through utilizing the various descriptive strategic models (Boxall and Purcell 2008). In spite of commentators acknowledging law as the “base line legitimacy goal” (Boxall and Purcell 2008: 18; Dickens et al. 2009; Harris, 2009), in order to prevent bad publicity with the human resource function acting as filter, there is little engagement with how strategic human resource management could consist of a hybrid role between operational practices and strategic decision-making; in other words, a convergence between strategic and operational work.

7.4 Conclusions relating to the overarching research question.

The overarching research focus is on understanding how the growth of employment regulation has impacted on the human resource professional. The research identified the interface between employment regulation and human resource professionalism on several levels, as discussed below.

This research found that welfareism is still in existence in the work of the human resource function and has not been retracted from the professional role or practices, but has been redefined through legal precedents and statute. The “red tape” associated with employment regulation in restricting managers’ and organisations’ agility has many detractors from both sides of the legal relationship. Although regulation forms the basis of welfare practices enacted through employment rights for employees, formalized through contract or statute in areas such as family friendly policies, the human resource function is still actively involved in welfare for employees. This research concludes that any distinction between personnel management and human resource management is unclear when looking at how employment regulation has formally moved employers towards providing “care and control” management practices when dealing with employees.

The human resource professional role now interfaces with employment regulation as a working practice akin to organisational legal advisers moderating potential employee litigation. There is an interface between the role of human resource professionals and legal professionals but the crux of human resource strength is that it is able to relate legal practice to organisational requirements. This research found that human resource professionals are pragmatic interpreters of law; in other words, their strength and status is based around policies and procedures. However, in order to do this, they need to be legally competent, not just to protect the organisation, but also to enhance their professional status, and to be able to work in partnership or collaboration with organisational stakeholders. This is particularly notable regarding specialist knowledge when interpreting common law in relation to tribunal cases.

The research found that the way law is interpreted can cause more issues than the actual law itself because individuals can get it wrong, which can cause disputes to escalate. An issue with regulation is that it is available to all sides of the disputes to interpret to their own advantage or disadvantage, so much is dependent on the expertise of the human resource professional, or other stakeholders, in getting it right.

The level of expertise required to understand and interpret case law against the context of organisational policies and practices can arguably make the work of the human resource professional a fusion between legal compliance and organisational practice. This is relevant to how the professional body (CIPD) develops its educational framework for the future, considering that this research found that employment regulation is likely to feature even more strongly, which could shift the professional status even more towards the legal profession.

This is of strategic importance as badly made decisions, or poor legal relations between human resource professionals and stakeholders, alters the strategic direction of the function. Human resource practices are important in trying to prevent potential litigation but can only be effective if managers actually follow them. As with leadership there must be followers in order to implement strategic decision making. This is problematic for the human resource function as its advice is not always followed, which makes it harder for employee relations strategies to be implemented by human resource professionals, especially when dealing with new stakeholders such as “no-win no-fee solicitors.”

Strategic decision making is a problematic area in employee relations as there are too many unknowns and external influences that are out of the control of the human resource function, yet the strength of the function lies in sound operational practices and not hankering after strategic recognition unless it links directly to operational practice. The relationship between operational practices and strategy needs to be fully integrated if the human resource function is to provide an organisation-wide response through practices in order to comply with increased future employment regulation.

The human resource function has the potential to be strategic but this research finds that this point has not been fully realised because of employment regulation. The human resource role has been defined by law but has also been narrowed down due to legal constraints, which in turn gives human resource less strategic ability to operate outside of regulation in the bigger organisational picture.

This research identified that there has been limited understanding as to whether employment regulation has moved the human resource professional in to being classified as “semi-legal professionals”, with the potential to change professional association groupings in the future. This research argues that human resource professionals within the employee relations environment are organisationally based pragmatic legal advisers that stop short of having the educational advantage and decision making skills required of legal professionals. Yet employment regulation has raised the expertise level in the profession, which has elevated the human resource professional’s organisational profile. Although this evolving identity is not without disadvantages, it has allowed the human resource profession to carve out a relatively secure position in public sector organisations as employment legal advisors.

7.5 Implications for human resource professional practice

There are implications for human resource professional practice and future research arising from this thesis.

There is not enough known regarding human resource legal decision making or the level of expertise required at organisational level in order to interpret case law and statute. This is an educational issue and requirement that is only being partly met by organisations, professional education providers and the professional body (CIPD). The role of professional education will need to be continually updated in the light of any future increased regulatory demands on the human resource function. Having expert knowledge in employment law is a fundamental component of human resource practice and a compulsory skill in performing the human resource role. Although many university courses are providing education in this area as part of their M.Sc. courses, which are often validated by the CIPD, participants argued that provision needed to be more extensive. For instance, courses should cover legal analysis alongside understanding case law in order that human resource professionals can go beyond just understanding the practice to have more key skills in interpreting law.

Two other areas that have been identified as essential skills are negotiation and mediation. Being good negotiators is very important in relationships with stakeholders, especially the trade unions. Developing good interpersonal relationships is crucial, but human resource professionals also need to be able to be skilled negotiators on behalf of the organisation, especially during conflict with employees.

This skill can be used as part of a structured approach to getting sides to compromise, which is particularly beneficial in assisting parties to move away from seeking legal solutions to conflict in the workplace.

Mediation is another practice that human resource professionals can use alongside knowledge of employment regulation and grievance procedures, in order to enhance their professional skills portfolio. This relatively new area of dispute resolution in the workplace has its own professional body representing internally based mediators based in public sector organisations, such as human resource practitioners. The use of mediation is becoming more relevant to the work of the human resource function as it can help solve disputes before they become formal. There is evidence that using mediation techniques can avoid lengthy drawn out disputes and tribunal claims. Any future research on the relationship between employment regulation and strategic decision making could look specifically at whether negotiation skills and mediation practices increase the human resources function's visibility and its influence in organisations to solve disputes.

The role of the human resource director in terms of operational practices is very important and has an impact in terms of decision making regarding staff development. This research did not focus on how directors' leadership styles were affected by employment regulation and risk but this is an area in the future needs to be explored

Future research needs to look at the position of legal professionals alongside human resource professionals to see how legal professionals view the human resource role. Do they see it as taking away work from their profession or do they view human

resource professionals as just intermediaries with their role as administrators? The position of the professional bodies is also important in this aspect with employment regulation having an increasing prominence in workplace relations. How do the Law Society and the CIPD view this as affecting their future positions? Will they be competing in the same jurisdiction for members if the human resource professional's role moves even closer to the practice associated with legal professionals?

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