

Assessing the impact of the UK's new regulatory framework for employee consultation

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INTRODUCTION

In response to European Union requirements, recent legislation in the UK has introduced for the first time a general regulatory framework promoting employee consultation. The 2002 EU employee consultation Directive reflected the predominant European model of universal, workforce-wide consultation rights and had particularly significant implications for UK law and practice, given the 'voluntarist' traditions of UK industrial relations and the historical primacy of trade union-based employee representation. The resulting Information and Consultation of Employees (ICE) Regulations 2004 constitute a highly flexible, light-touch regulatory approach to implementing the new consultation rights in the UK context.

The aim of this paper is to assess to what extent employee information and consultation (I&C) bodies established in the light of the ICE Regulations provide a vehicle for effective consultation. Using empirical data from a major research project involving longitudinal case studies of I&C arrangements in 25 organizations, it is intended to contribute to our understanding of the impact of the Directive in EU member states without a tradition of statutory works councils or similar bodies, and the implications of using a 'reflexive' regulatory approach.

SIGNIFICANCE OF THE UK'S LEGISLATIVE APPROACH

At both EU and UK level, there has been a trend towards more flexible regulatory approaches in the industrial relations sphere. In response to EU enlargement and wider industrial relations diversity among member states, EU employment Directives now promote broadly-framed minimum standards rather than 'upward harmonisation' and provide considerable scope for agreed derogations. This has influenced and facilitated the increasing use of 'light regulation' (Davies and Freedland 2007: 241) by the UK's recent 'new Labour' governments, designed to encourage the flexible application of statutory rights through such techniques as enabling agreed processes that may depart from statutory standards or relying on employees to request or trigger the implementation of their rights.

Such an approach is consistent with the concept of 'reflexive' employment law whereby 'the preferred mode of intervention is for the law to underpin and encourage autonomous processes of adjustment' by the parties to the employment relationship (Barnard and Deakin 2000: 341). Under reflexive law, legal regulation provides a procedural framework rather than specifying substantive outcomes (Rogowski and Wilthagen 1994). The Directive and the ICE Regulations are a prime example, offering considerable flexibility of response. Under the ICE Regulations, employers need take no action unless 10% of their employees trigger statutory procedures intended to lead to negotiated I&C agreements. Voluntary 'pre-existing agreements' can pre-empt the use of the Regulations' procedures. Under either category of agreement, there is considerable latitude to agree organization-specific I&C arrangements. Only where the Regulations' procedures are triggered but no agreement is reached are default 'standard

information and consultation provisions' enforceable, and even these are minimally prescriptive – essentially employers would need to arrange for the election of employee representatives and inform and consult them on broadly-defined business, employment and restructuring issues.

The high degree of flexibility provided by the UK approach (and mirrored to a large extent by the I&C legislation in Ireland) contrasts starkly with the regulated institutional models of workplace representation underpinned by detailed legislation in countries such as Germany, the Netherlands and France. It effectively gives employers a largely free hand to develop their own organization-specific (and, in the case of PEAs, privately regulated) I&C arrangements, either through negotiations – in which the balance of power is likely to be firmly weighted towards management – or unilaterally, even though the EU formally recognises information and consultation as a 'fundamental' social right for all workers (Ales 2009). A key question, therefore, particularly in the context of the 'uncoordinated decentralisation' of British industrial relations (Gumbrell-McCormick and Hyman 2006: 488), concerns the efficacy of this reflexive regulatory approach in terms of promoting effective consultation.

IMPACT OF THE ICE REGULATIONS

After almost five years in operation, there is a widespread view that the UK legislation has been something of a 'damp squib'. The available evidence, summarized in Hall (forthcoming), suggests that the ICE Regulations have prompted considerable voluntary activity in terms of introducing, reviewing and modifying consultative arrangements but that this has been largely employer-led. Beyond the relative handful of cases referred to the Central Arbitration Committee¹ (31 cases in 19 organizations over the five-year period 2005-9), there have been very few reported instances of the trigger mechanism being utilized by employees or – indirectly – by unions.

Trade union ambivalence towards the Regulations is a key factor (Terry *et al.* 2009). Despite the Trades Union Congress's support for the Directive and involvement in the UK Regulations' design, unions have mostly adopted a defensive attitude to the legislation, reflecting continuing adherence to 'single channel' trade union representation and concerns that the introduction of universal, workforce-wide I&C arrangements could undermine or marginalise union recognition. Moreover, with some exceptions (notably in the printing/paper and information technology sectors), unions have not generally sought to use the Regulations to establish I&C bodies with a view to strengthening their influence in workplaces where they are not recognised. This union avoidance of the Regulations, and with only very few examples of employees 'triggering' the 10% support threshold to set up I&C bodies, has effectively given management the freedom to determine the structure and process of consultation, or, as in many cases, to do nothing.

Consequently, initial expectations that the main result of the ICE Regulations would be a form of 'legislatively-prompted voluntarism' (Hall and Terry 2004: 226), with the new legislation driving the diffusion of agreed, organization-specific I&C arrangements, have given way to a more pessimistic assessment. In a previous paper from our research project, presented at the IIRA's Sydney World Congress (Terry *et al.* 2009), the research team argued that the outcome has been more one of 'legislatively-prompted unilateralism', enabling management to shape the I&C arrangements introduced with little employee input.

But another dimension – and the focus of the present paper – concerns the *quality* of consultation in organizations that have introduced or reformed I&C bodies in the light of the Regulations. Drawing on a research project that examined organizational responses to the ICE Regulations in 25 organizations, this paper seeks to analyze and account for the marked

¹ The Central Arbitration Committee (CAC) is an independent tribunal with statutory powers whose role includes resolving disputes under the ICE Regulations.

variation in the nature and extent of their I&C practice, highlighting the main factors influencing developments.

METHODOLOGY

Reflecting the phased implementation of the ICE Regulations, the research involved three waves of longitudinal case studies. Case studies begun in 2006 in 13 private and voluntary sector organizations with over 150 employees were completed in late 2008/early 2009. A second wave of case studies began in 2007 in eight organizations with 100-150 employees, and a third and final wave of four case studies started during 2008 in organizations with 50-100 employees. These were concluded in late 2009/early 2010. Brief details of the case study organizations are given in Table 1.

Developments in 'wave 1' and 'wave 2' organizations were tracked over a two-year period. An initial research visit was made to each organization and repeated two years later, with telephone updates in the interim. In-depth semi-structured interviews were held with managers, employee representatives and trade unions (where present) at each stage, supplemented by documentary analysis (agreements/ constitutions underpinning I&C bodies, minutes of meetings etc) and an employee survey conducted at the beginning and the end of the research period. For the 'wave 3' case study organizations, a shorter, two-stage research program was undertaken: the initial research visit was followed by a final update one year later, with an employee survey conducted after both these stages.

I&C IN PRACTICE: A MIXED PICTURE

The nature, extent and impact of the consultation process varied markedly between our case study organizations. The three-way categorisation presented below is based on the research team's assessment of the longitudinal evidence from each completed wave 1 case study (analysis of the longitudinal evidence from our wave 2 and wave 3 cases is currently under way). It takes account of a variety of indicators including:

- the nature of the I&C body's agenda (strategic issues v housekeeping);
- the extent of the I&C process (consultation v communication); and
- its influence, if any, on management decision-making.

Our criteria for making this assessment are informed by the provisions of the ICE Regulations. Although in legal terms the Regulations' default I&C provisions apply only where an employer fails to initiate negotiations following a valid employee request under the Regulations, or where the parties fail to reach a negotiated agreement within six months, they nonetheless provide a public policy benchmark, reflecting the requirements of EU law, against which to assess organizations' I&C practice.

Reflecting the EU Directive, the default I&C provisions envisage that the subject matter of consultation is business decisions and the management of change. This is very much in line with the established tradition of consultation found in earlier EU Directives (on collective redundancies and business transfers) and in national works council systems in, for example, Germany and the Netherlands under which 'consultation is generally regarded as a right to be informed of planned measures in advance and to have an opportunity to express an opinion prior to implementation' (Budd and Zagelmeyer 2010: 492).

Substantively, the Regulations' default statutory provisions' specify I&C (to varying extents) on:

- the development of the undertaking's activities and economic situation;

TABLE 1: KEY CHARACTERISTICS OF THE CASE STUDY ORGANIZATIONS AND THEIR I&C ARRANGEMENTS

Case study wave	Organization/ sector	Workforce size (at start of fieldwork)	Union recognition	Date I&C arrangement set up	Type of I&C arrangement			Basis/status of I&C arrangements			
					I&C bodies elected by all employees	'Hybrid' I&C bodies (involving both union and non-union reps)	I&C via trade unions	Voluntary agreement/PEA	Negotiated agreement under the Regulations	Introduced unilaterally by management	Union recognition agreement
1	Engineering company	4,500	✓	2005		✓			✓ (draft)		
1	Infrastructure contractor*	2,500	✓	2005		✓		✓			
1	Electronics company*	620		2005	✓			✓			
1	News agency	1,700		2003	✓			✓			
1	Urban housing association	750	✓	2006		✓				✓	
1	Rural housing association	275	✓	2004		✓				✓	
1	Seaside housing association	240		2003	✓					✓	
1	Mobile phone company	6,200		2003	✓			✓			
1	National charity	3,500		2005 (relaunch)	✓			✓			
1	Care services company	500	✓	2006		✓		✓			
1	Cosmetics company**	1,300	✓ (at one of two sites)	2006 (relaunch)	✓ (non-union site)		✓ (unionized site)			✓ (non-union site)	✓ (unionized site)
1	Financial processing company	2,000	✓	2005	✓			✓			
1	Diversified technology company	3,500	✓ (at some sites)	2003-4	✓ (at two sites researched)	✓ (at one site researched)		✓			
2	Bathroom manufacturer**	160 (plus 20 sub-contract workers)	✓	2003		✓				✓	
2	Hospice	150		2007 (relaunch)	✓					✓	
2	Law firm	130		2007	✓			✓			
2	Northern housing association	170	✓	2007			✓				✓
2	Pharmaceuticals company**	160 (on site researched. Two further	✓ (for consultation purposes)	2006 (relaunch)		✓				✓ (but employee input to	

		sites acquired subsequently)								redraft of constitution)	
2	Professional association	150	✓	2007		✓ (but union seat left vacant)		✓ (but no detailed constitution)			
2	Regional airport	125	✓	2005		✓		✓		✓	
2	Regional charity	100		2006	✓			✓			
3	Theatre	60 (+ 150 casual staff)	✓	2006		✓				✓	
3	Safety company	40		2000/1	✓					✓	
3	Snacks company	100		2007	✓			✓			
3	Marine services**	70		2007	✓ (employee members of employee benefit trust)					✓	

* I&C body now defunct.

** Dropped out of research after initial phase.

- employment developments, including any measures envisaged in relation to prospective job losses; and
- ‘decisions likely to lead to substantial changes in work organization or in contractual relations’, including collective redundancies and transfers of undertakings.

Procedurally, the meaning of ‘consultation’ is defined in fairly broad terms by the ICE Regulations and the Directive as ‘the exchange of views and establishment of dialogue’ between management and employee representatives. However, the Regulations’/Directive’s default provisions set out a more specific, phased consultation procedure: employee representatives must have the opportunity to meet with management at the appropriate level and be given a reasoned response to any opinion they may express to management. On decisions likely to lead to substantial changes in work organization or in contractual relations, consultation should be ‘with a view to reaching agreement’.

More generally, in UK industrial relations terms, consultation has traditionally been defined as managers seeking and taking account of employees’ views before making a decision (Acas, 2005; CIPD, 2004), although, as we note below, the extent to which this takes place in practice is limited. Case law reinforces this definition: consultation should occur at a point when proposals are still at a formative stage, giving those consulted a fair and proper opportunity to understand fully the matters about which they are being consulted and to express their views, which would then be given genuine and conscientious consideration by management.

With these considerations in mind, the I&C arrangements at the 12 surviving wave 1 case study organizations² can be grouped into three categories:

- **Group A – ‘active consulters’:** This group is made up of those case study organizations where there was I&C on ‘strategic’ organizational issues (e.g. restructuring) as envisaged by the ICE Regulations’ default provisions, a proactive approach in this respect by management and a degree of employee influence over outcomes, in some cases extending to consultation ‘with a view to reaching agreement’. A minority (five) of our case study organizations were ‘active consulters’. This category included two cases organizations – the mobile phone company and the diversified technology company (at the unionised site researched) where management was proactive in discussing strategic organizational issues with the I&C body and engaged in consultation leading to agreed outcomes. It also included three others where consultation practice was less developed, involving a degree of I&C on strategic decisions but with more limited evidence of employee views being influential. This was the case at the care services company, financial processing company and news agency.
- **Group B – ‘communicators’:** Elsewhere, management used I&C bodies essentially for ‘communications’ purposes rather than consultation as such. ‘Strategic’ issues rarely featured on the agenda, and then only after decisions had been taken by management: representatives were expected to communicate the decision to employees and feed back their views. Otherwise, I&C bodies were primarily a forum for progressing staff-raised issues, typically HR policies, ‘housekeeping’ matters and social activities. The six case study organizations falling into this category were: the engineering company, urban housing association, rural housing association, seaside housing association, national charity and diversified technology company (two non-union sites researched).
- **Group C – I&C bodies defunct:** In two organizations – the electronics company and the infrastructure contractor – the I&C bodies became defunct after only two years.

² One organization went into administration after the first research visit.

Brief details of the I&C practice of each case study organizations are provided in the box below. Fuller contextual information is given in Hall *et al.* (2009).

BOX: PATTERNS OF I&C IN THE CASE STUDY ORGANIZATIONS

Groups A and B are broad categories, each encompassing a range of I&C practice.

Group A – ‘active consulters’

Within group A, management at the **mobile phone company** initiated consultation and sought agreement with the national or local employee councils on the business case for, and implementation of, restructuring programs, redundancies, outsourcing and staff transfers. Management routinely engaged with employee representatives on such issues at an early stage, sometimes under a non-disclosure agreement, and the employee councils usually put forward counter-proposals. On each issue, management’s objective was an ‘agreed outcome’. Few management proposals went through completely unmodified and in some cases quite major changes were agreed. Senior management described this approach as ‘effectively negotiation’, and the lead employee representative agreed that the employee councils had the ‘ability to influence’ management decision-making.

A second organization – the **diversified technology company** – also engaged in extensive and detailed consultation with the joint works council (a ‘hybrid’ body in which union representatives predominated but non-union staff were also represented) at one of the plants researched, but employee forums at two further, non-union plants covered by the research were reported to have a much more limited and less effective role (and are therefore included in group B). At the unionised plant, monthly meetings of the joint works council covered a wide range of issues. Union/employee representatives reported that management was ‘always up front with us’ and ‘do take things on board’. During 2008, major proposed redundancies at the site were the subject of an intensive consultation exercise involving both union and non-union representatives via a sub-committee of the joint works council. Again, this amounted to negotiation rather than consultation and a package of measures was agreed which substantially reduced the number of eventual redundancies while introducing new lean and flexible work organization arrangements.

At none of the other three case study organizations in group A – the care services company, financial processing company and news agency – had consultation practice developed to such an extent.

At the **financial processing company**, the communication forum, which had previously dealt with a mixture of HR and housekeeping issues, had reportedly been faced with more meaningful issues following the company’s takeover by a private equity group and a change in business volumes. At a series of special meetings, the company kept the forum informed of developments such as management changes, job losses and the redeployment of staff, with discussion of such items being treated as confidential, while simultaneously entering into separate consultations over redundancies with the recognised union. Employee representatives also reported that an increasing number of issues were the subject of consultation, rather than simply information, with working parties typically being set up to make recommendations to the forum, including on some HR and reward issues.

At the **news agency** too, restructuring issues were dealt with by the works councils, albeit to a limited extent. In 2008, the possible sale of one of its divisions prompted questions from employee representatives. Management responded to the extent they felt able to do so at that stage, and also said that the company would schedule works council meetings immediately before or after the sale if it proceeded. The news agency also used the works councils to update staff representatives and answer questions about the employment and operational implications of the launch of a new video service. While management tended to emphasise the councils’ information rather than consultation role, the councils did successfully press for amendments to the news agency’s bonus scheme – described by management as ‘their biggest coup with the most impact’ – as well as influencing the outcome of a review of the company’s employee benefits package.

At the **care services company**, the ‘hybrid’ employee representation body integrating the information and consultation committee (ICC) with the union-based joint negotiating committee (JNC) was informed about key strategic developments and consulted about changes to staffing structure. Special consultation meetings were held on care and support management restructuring proposals, the formation of an in-house staff bank and the annual cost-of-living pay increase. The ICC/JNC was also asked to approve new HR policies and procedures. Managers reported that the special meeting on restructuring care and support management had produced ‘lots of views’ and suggestions, but that representatives’ input was not generally ‘challenging’. The representatives themselves were unable to cite changes made as a direct consequence of the consultation process.

Group B – ‘communicators’

Similarly, group B spans a range of patterns and experiences of I&C.

At the **engineering company**, the twice-yearly national I&C meetings rarely dealt with either strategic corporate issues or with issues related directly to employment and contractual issues. The former were dealt with by the company's European Works Council; the latter by individual locations via their collective bargaining machinery. Instead, the national meeting's focus was on emerging corporate HR policy issues and the promotion of good HR practice across locations.

At the **rural housing association**, the employee forum had a predominantly communications role, with representatives acting as the conduit to the workforce for information about, for example, a planned amalgamation that eventually failed to happen. A staff survey to gauge support for social and sporting events resulted in a calendar of social activities coordinated by the forum.

At the **urban housing association**, the agenda of the forum was dominated by housekeeping issues raised by representatives, with items tabled by management for downward communication (e.g. the relocation of the head office) becoming increasingly rare. Advanced plans for a merger with another housing association were not raised with the I&C body. Efforts to revitalise the forum included the discussion of issues such as sickness policy and the employee 'well-being' agenda.

At the **national charity**, the primary emphasis of the national employee forum (three lower-level business-line forums having been wound up) was on 'two-way communication' (reflected in a shift in its full-time facilitator's reporting line from HR to communications). Issues appearing on the agenda included restructuring, reorganizations and pay review guidelines. A diverse range of issues were dealt with by sub-committees but with a high level of informality.

At the **diversified technology company**, employee forums at two non-union plants covered by the research had a much less developed role than the joint works council at the unionised plant included in group A above and were not considered by management to be robust enough to handle major changes. The main topics discussed were housekeeping matters. I&C over redundancies occurred only after individual discussion with those affected.

At the **seaside housing association**, the staff council's agenda included organizational performance issues such as tenders won and lost but was dominated by HR issues. Agendas and the extent of involvement were determined by management. There was some evidence of consultation, but its outcome was limited to minor changes in HR policies and procedures. Management viewed the council's effectiveness as fairly low. Management proposals to withdraw from nationally-negotiated pay rates – potentially the most significant issue dealt with by the council – were scheduled for discussion at the time the research ended.

Group C – I&C bodies defunct

Finally, at the two group C organizations, the I&C bodies fairly quickly became defunct, but in differing circumstances.

At the **electronics company**, the I&C forum's early agenda focussed on the company's expansion plans and the impact of cancelled orders on planned increases of production. However, it soon became perceived as ineffective by both management and employee representatives and ceased to meet. In management's view, the employee representatives were insufficiently active in driving the forum's agenda. Employee representatives felt the forum's agenda was controlled by management and were disappointed that employee concerns they had raised were rejected by management as falling outside the forum's 'strategic' remit. Key announcements were made directly to the workforce, not via the I&C body, reflecting senior management's traditional reliance for direct communications.

At the **infrastructure contractor**, the initial experience of its transport forum was reported to be broadly positive, having encouraged greater dialogue on issues such as business strategy and restructuring, including acquisitions, outsourcing and redundancies. Extensive restructuring involving both acquisitions and divestments resulted in a decision to split the original forum, covering both road and rail activities, into two. However, only one meeting of each new forum was held. Restructuring continued with a radical reduction of the rail workforce and the (fragmented) expansion of road activity, but with no reported pressure from either trade unions or non-union representatives for further forum meetings to be convened.

EXPLAINING THE VARIATION IN THE EXPERIENCE OF I&C BODIES

The key factors whose interplay shaped the differing developmental trajectories of the I&C bodies in our case study organizations are summarised in Table 2 and discussed further below.

Economic/business context

The economic and business conditions facing the case study organizations varied widely but in each case changes affecting the organization had been a contributory factor in management's decision to establish (or relaunch) I&C arrangements (Hall *et al.* 2007). In some cases, relative business stability during the initial phases of the research meant that there were few developments such as substantial redundancies or organizational changes to test the

TABLE 2: FACTORS SHAPING THE EXPERIENCE/DEVELOPMENT/SUSTAINABILITY OF I&C BODIES IN 'WAVE 1' CASE STUDY ORGANIZATIONS*

Category	Company/organization	Economic/business context**	Management commitment and approach to consultation	Management support for I&C body	Organization of employee representatives	Trade union engagement with I&C body
Group A: active consulters	Mobile phone	Highly competitive; extensive restructuring	Proactive; seeking agreement	Top managers attend; training	Strong	Indirect
	Diversified technology (at one site researched)	Tough; offshoring leading to major redundancies	Proactive; seeking agreement	Site managers attend***; training	Strong; union-based	Strong
	Care services	Rapidly changing sector; expansion and internal reorganization	Active; after decision taken	Top managers attend; training	Developing	Influential
	Financial processing	Highly competitive; takeover and restructuring	Active; after decision taken	Top managers attend; training	Limited	None, despite union recognition
	News agency	Some restructuring	Active; information sharing	Top managers attend; training	Limited	N/A
Group B: communicators	Engineering	Stable; growth	Limited remit; active consultation in other forums	HR attends	Strong, union based	Strong
	Urban housing	Stable; no change	Communication bridge with staff	Top managers attend; renewal	Individualized	None, despite union recognition
	Rural housing	Some loss of funding and internal reorganization	Communication bridge with staff	Top managers attend; training; renewal	Limited	Active
	Seaside housing	Loss of some contracts; senior management changes	Communication bridge with staff	Top managers attend; training; renewal	Weak	N/A
	National charity	Internal restructuring	Informal; information sharing	Top managers attend; training	Weak	N/A
	Diversified technology (at two sites researched)	Redundancies at both sites	Extensive information sharing	Site managers attend***; training; renewal	Weak; individualized	N/A
Group C: I&C body defunct	Electronics	Growth until onset of recession	Minimalist then avoidance	Top managers attended; withdrawn	Weak	N/A
	Infrastructure	Extensive restructuring	Minimalist then avoidance	Top managers attended; withdrawn	Weak	Weak

* Cosmetics company excluded as only initial phase of research was carried out before the company dropped out of the project.

** Final research interviews took place between June 2008 and January 2009, in a number of cases before the full implications of the onset of recession had become apparent.

*** Top managers attend meetings of the company's overarching national employee forum.

consultation process. But by end of our fieldwork in the surviving wave 1 organizations all 12 had faced major strategic issues that could potentially be the subject of I&C (even though in a number of cases our final research interviews took place before the full implications of the onset of recession had become apparent).

Management commitment and approach to the consultation process

The contrasting ways in which such major business changes were handled by the case study organizations' I&C bodies were determined first and foremost by senior management's commitment and approach to the consultation process.

Among the 'active consulters', management in two cases were 'proactive' in consulting their I&C bodies in advance of major business changes, adopting an advanced form of consultation predicated on seeking agreement. This approach was rooted in contrasting industrial relations contexts. At the mobile phone company, it initially reflected management's determination to show consultation could succeed as part of a strategy to fend off pressure for union recognition, but this 'negative' motive laid the basis for positive managerial commitment to a strong form of consultation and the development of high-trust relationships with employee representatives. At the unionised plant of the diversified technology company, where established union-based 'partnership' arrangements were extended to include elected non-union representatives in a 'hybrid' I&C body, this 'proactive' approach reflected a broader corporate commitment to employee involvement to help manage corporate change and augment performance, as well as a high level of trust between key management and union actors. The three other 'active consulters' undertook an active form of consultation that did not go as far as it did in these two cases. At the care services company, financial processing company and news agency, management chose to consult, or respond to employee representatives' questions, after key decisions had been taken. Business decisions were discussed in the I&C bodies in these three companies, often on a confidential basis and before they were announced more widely, but there was little scope for alternative approaches to be explored.

Among the 'communicators', management had very different aims and objectives. The three housing associations in particular sought to use their I&C bodies as a communication bridge between senior management and employees, seeing the role of employee representatives primarily in terms of passing information to staff and collecting feedback. At the national charity too management's emphasis was on (increasingly informal) two-way communication, while at the two non-unionised plants of the diversified technology company management provided extensive business information but felt that the employee representatives lacked the capacity of their counterparts at the unionised site to engage in more developed dialogue. At the engineering company, a strong union role in site-level collective bargaining and the fact that strategic business decisions were taken at European-level and discussed via the European Works Council (EWC) left the national I&C body with an essentially information-sharing role focussing on HR policy and practice.

At the two companies where the I&C bodies became defunct, initial management commitment to consultation waned, but for different reasons. At the infrastructure contractor, sustained restructuring appeared to undermine the organizational logic – and management support – for the company's (already restructured) I&C bodies. At the electronics company, the lack of a shared understanding between management and employee representatives of the role and remit of the I&C body and management's preference for making major announcements directly to the workforce, by-passing the I&C body, contributed to management's decision to let the I&C body lapse.

Management support for the I&C body

There were few differences in the levels of management support provided between the 'active consulters' and the 'communicators'. Across most cases it was common to find top operations managers (often including the managing director or CEO) attending meetings with the I&C body alongside HR managers, the provision of paid time off work and facilities for employee representatives, the provision of training for representatives and the use of multiple communications media to publicise the work of the I&C body.

At the diversified technology company, the I&C bodies researched were plant-based and the senior manager on site chaired the meetings, though top national managers attended meetings of the company's overarching national employee forum. At the engineering company, given the limited role of the national I&C body relative to plant-based bargaining arrangements and the EWC, management was represented by 'HR leaders'.

Employee representatives rarely reported problems in getting paid time off to undertake their duties. In part this was because, in many cases, there was relatively little formal activity outside the scheduled meetings of the I&C body (see below). Induction training for employee representatives was widely provided at the time of the establishment/relaunch of the I&C bodies but training for subsequently elected representatives was less systematic. Refresher training and/or more broadly-based development programs for existing representatives were evident in some companies, notably among the 'active consulters'. Significantly, apart from the engineering company, where assessment of training needs was awaiting final approval of the I&C agreement, the only organization where representatives undertook no training at all was the electronics company, despite being provided for in the now defunct I&C agreement.

In some cases, particularly among the 'communicators' group, management took steps to revitalise the I&C body, reflecting concerns about the effectiveness of the representatives and the I&C process.

Organization of employee representatives

The levels of organization among employee representatives predominantly reflected management's approach to I&C, reinforced in certain cases by the engagement in the I&C process of pre-existing trade union representatives (see next sub-section). A more active approach to consultation on the part of management required and drove the development of employee representatives' competence and cohesion, whereas the 'communications' approach promoted little employee-side interaction.

Among the 'active consulters', the organization of the employee side was notably strong at the mobile phone company and the unionized site of the diversified technology company. At the latter, the 'hybrid' I&C body was based on strong and longstanding trade union recognition arrangements but with the increasingly effective integration of representatives of non-union employees. At the mobile phone company, where trade unions were not recognized for collective bargaining (only for individual representation), the largely non-union representatives on the company's employee council structure had developed into a well coordinated and resourced network, operating their own formal rules of procedure. In both cases, a full-time employee representative – the union branch chairman at the diversified technology company and the (non-union) lead representative of the national employee council at the mobile phone company – were central figures in the I&C process at local, national and EWC levels.

The employee sides at the three other active consulters were less well developed but were still able to act as relatively effective agents in I&C. At the care services company, pre-meetings (for union representatives) were introduced ahead of the joint meetings between the union-based JNC and the non-union ICC and management, and a union full-time official emerged as a key

actor in the development of the I&C process, reflecting an effective working relationship with senior management. At the news agency and the financial processing company employee-side networking was patchy. There was evidence of informal contact between representatives at the former while pre-meetings had reportedly become rarer at the latter. But a factor in both cases appeared to be growing confidence among representatives in their ability to participate as they became more familiar with the I&C process.

In contrast, among the 'communicators' (with the exception of the engineering company, where strong trade unions prioritized representation at other levels), employee-side organization tended to be weak. One consequence of the restricted, communications role of the I&C body was that employee representatives felt less need to meet or engage in networking between meetings with management. For example, pre-meetings of employee representatives were rare, despite provision for these in a number of agreements/constitutions. Representatives tended to approach I&C meetings as interested individuals: they had little experience of collective endeavor and scant opportunity to develop it. High turnover among representatives was also typical among these group B organizations, with difficulty often experienced in getting nominations for replacements, further inhibiting employee side cohesion.

Similar factors applied to the electronics company's now defunct I&C body, whereas at the infrastructure contractor weak employee side coordination reflected high turnover among representatives and an apparent lack of union interest in the I&C bodies.

Union engagement with the I&C body

No clear patterns emerged from the research in respect of the extent and practical consequences of trade union engagement (or lack of engagement) with the I&C bodies in our case study organizations – seemingly exemplifying the wider ambivalence exhibited by UK trade unions towards involvement in universal, workforce-wide I&C arrangements and towards the ICE Regulations themselves.

None of the unions recognised in eight wave 1 case study organizations had sought the establishment of I&C bodies, and most reacted cautiously to management initiatives to introduce them, reflecting concern that an I&C body could potentially undermine or marginalise union recognition. However, for the most part unions adapted pragmatically to the existence and operation of the 'hybrid' I&C bodies involving union representatives and elected representatives of non-union employees that were introduced by the great majority of wave 1 case study organizations with recognised unions.

Among the active consulters, the local union leadership's positive engagement with – and union dominance of – the hybrid I&C body at the diversified technology company's unionised site, and its roots in the longer-term 'partnership' arrangements at the site, were key factors in its emergence as a forum for robust consultation. At the care services company, the growing influence of the union representing a minority of staff reflected the strong working relationship its full-time official developed with managers. The union supported the de facto merging of I&C and the union-based negotiating activities and, given continuing difficulties with the recruitment and input of non-union representatives, was central to the consultation process. At the financial services company, in contrast, there was no union involvement in the I&C body – direct or indirect – and I&C and collective bargaining were completely distinct activities. For example, following a takeover of the company, management discussed organizational changes with the I&C body while consulting the recognised union over related redundancies, as it was required to do under the collective redundancies legislation.

Although the mobile phone company did not recognise unions for collective representation, two unions that had unsuccessfully sought recognition were able to secure the election of a number of union members to the I&C bodies – a 'colonisation' strategy that resulted in indirect union

representation and influence in the I&C process. By the end of the research, however, outside one particular area of union strength, the proportion of employee representatives who were union members had reportedly fallen substantially, reflecting not only restructuring but also a decline in union membership attributed by management and the lead employee representative to the effectiveness of the I&C bodies.

There were contrasting union approaches at the two organizations in the 'communicators' group that recognised unions – the urban and rural housing associations. In both cases the unions concerned had relatively low membership but were given a 'reserved' seat on the I&C body alongside elected employee representatives. At rural housing, the union representative felt that involvement in the I&C body had provided better information about key issues and improved working relationships with both management and the non-union employee representatives. At urban housing, the union discontinued sending a representative to meetings of the I&C body, seeing it as irrelevant.

Finally, at the infrastructure contractor, where union attitudes towards the now defunct the I&C arrangements had in any event been cautious, union presence was substantially weakened by extensive restructuring of the rail business and there was little if any union pressure for their continuation.

There is evidence from our employee surveys that in those cases where unions had some influence, whether directly (as at the care services company) or indirectly (mobile phone company), employees were more knowledgeable about the work of the I&C bodies and the role of representatives compared with non-union organizations. They were also more satisfied with their level of involvement and management's approach to participation.

THE IMPACT OF REGULATORY DESIGN

Critically, the statutory framework had only very limited influence on I&C practice in the case study organizations.

In all our case study organizations, the initiative to establish or relaunch the I&C body was management's (Hall *et al.* 2007, 2008, 2009a). In no case was the 'trigger mechanism' utilised by employees – nor was this considered by management to be a realistic possibility – and there was no evidence of employee/union pressure for new I&C arrangements more generally. Relatedly, in most cases management's decision to introduce or relaunch the I&C body could not be described as compliance-driven either. The Regulations were seen by management as having a 'critical' or 'significant' impact in only four of the 25 organizations. Most other organizations saw the Regulations more as a 'catalyst' – that is to say management already felt the need, for a variety of organization-specific reasons, to introduce or relaunch I&C and the Regulations helped shape the initiative or provide external validation (e.g. providing the basis for gaining top management commitment to act). In the remaining cases the Regulations were said to be of 'background' importance at most.

Turning to the status of the I&C arrangements introduced (see Table 1), eight wave 1 organizations had obtained the written agreement of employee representatives. In some cases management regarded the agreement explicitly as a 'pre-existing agreement' under the terms of the ICE Regulations – though few of these organizations placed a particularly strong emphasis on meeting the statutory criteria for PEAs. In four other wave 1 cases, the I&C arrangements had been introduced unilaterally by management. The smaller wave 2 and wave 3 organizations sought the agreement of employee representatives in only a minority of cases, and in none was the agreement seen by management as having PEA status. Crucially therefore, in all but one of our cases, the I&C arrangements introduced remained outside the statutory framework providing for the legal enforceability of I&C rights. The exception was the engineering company where the

I&C agreement intended to have the status of a 'negotiated agreement' under the Regulations. This was insisted on by national-level union officials to ensure its enforceability.

One area where the Regulations did appear to have an influence was the provisions and wording of the agreements or constitutions underpinning the I&C bodies, particularly among the wave 1 cases. This was most notable in terms of the subject matter identified for I&C, but less clear cut in terms of the nature and extent of the consultation process (see Hall *et al.* 2007: 43-48). In practice, however, in most cases the nature of the I&C process was much less extensive and formal than implied by the terms of the agreement/constitution. Among the wave 2 and wave 3 organizations, the influence of the Regulations on the terms of agreements/constitutions, though discernible in some cases, was less extensive than in the larger organizations.

Beyond this, there was little evidence from the completed wave 1 case studies that the Regulations had shaped managerial approaches to I&C, nor that the Regulations had been widely used as a point of reference by employee representatives. Only at the mobile phone company had the Regulations been cited in a legal dispute over 'consultation failures'. On that occasion, multiple union-coordinated employment tribunal claims relating to disputed changes to customer services staff's pay and reward arrangements were eventually withdrawn in the context of an agreement between management and the company-level I&C body on the formalisation of the consultation procedures that had developed within the organization. More generally, the procedure used by the mobile phone company for consultation on restructuring proposals and other substantial changes in work organization routinely corresponded to the phased consultation process specified in the Regulations' default provisions and consultation was explicitly undertaken with a view to reaching agreement. Even so (and outside specific instances of redundancies and transfers of undertakings where separate statutory requirements needed to be met), the mobile phone company's management reported that this had been motivated less by the provisions of the ICE Regulations than by internal industrial relations objectives, including the need to demonstrate that the company's non-union employee representation arrangements were an effective alternative to union recognition.

This finding – of the limited 'normative' influence of the Regulations – can be seen as being consistent with the Regulations' policy of maximizing the flexibility of response available to organizations, and with the weak definition of consultation embodied in the legislation. The more stringent consultation requirements contained in the Regulations' default provisions become enforceable only where the initiation of the Regulations' procedures fails to result in an agreed outcome. Their indirect influence on I&C practice, among our case study organizations and probably more generally, appears to have been negligible.

Perhaps unsurprisingly, the aspects of the law that did impinge upon I&C practice were the (directly enforceable) provisions requiring consultation over impending redundancies and transfers of undertakings. In particular, the redundancy consultation legislation provided the framework for handling major job losses via the I&C bodies at the mobile phone and diversified technology companies. Similarly I&C bodies were involved to varying extents in I&C concerning the inward or outward transfer of employees at the care services, financial processing and mobile phone companies.

CONCLUSION

The EU Directive was widely seen as having far-reaching implications for I&C in the UK,³ but the reflexive design of the UK Regulations transposing the Directive appears to have limited its impact in terms of promoting effective employee consultation. Employees' rights to I&C under

³ The impact assessment produced by the then Department of Trade and Industry, the government department responsible for drafting the ICE Regulations, suggested that there would be 'substantial economic and social benefits from the legislation over time . . . We estimate that the benefits are in the magnitude of hundreds of millions of pounds over a ten year period' (DTI 2002: 2).

the Regulations do not apply automatically and depend on employees (or management) taking the necessary steps to trigger the statutory procedures intended to lead either to agreed I&C arrangements or to the enforcement of the default provisions. As employees or trade unions have only rarely sought to do so, the scope for unilateral management action – or for management doing nothing – has remained wide. Even where management in our case study organizations sought the formal agreement of employee representatives for I&C arrangements intended to qualify as ‘pre-existing agreements’ under the terms of the Regulations, the effect is to take the I&C arrangements outside the ambit of the Regulations’ procedures for legal enforceability.

Against this background, internal organizational dynamics, not the legal framework, have determined the trajectory of the I&C arrangements in our case study organizations. This paper has shown that management is the dominant player and the nature, extent and impact of I&C largely reflects its preferences. In particular, management determines whether consultation is in practice ‘active’ or largely limited to ‘communication’. With the exception of the two cases where the I&C body is now defunct due to the loss of management support, senior management attendance at, and organizational support for, the I&C body was generally strong whatever their conception of the I&C process. This reinforces the conclusion that differences in the practice of consultation emanate from active managerial preferences concerning the role of I&C rather than from inactivity and decline through neglect.

Management’s approach to I&C – whether ‘active’ or confined to ‘communication’ – strongly influences the degree of organization among employee representatives, with an active approach to consultation requiring the development of representatives’ competence and cohesion, creating a virtuous circle and providing the scope for informal or ‘offline’ contact with leading representatives to facilitate the formal consultation process. In contrast, among the ‘communicators’, there is no imperative for a coordinated body of employee representatives and, as a result, there is little opportunity for representatives to develop the necessary cohesion to press for effective consultation.

Active union engagement too can make a vital contribution to the development of effective consultation, as illustrated by the role of full-time officers at two of the ‘active consulters’. Equally, if a strong trade union has no interest in developing a significant role for the I&C body, as at the engineering company, it is unlikely to happen. Generally, however, union concerns that the operation of I&C bodies weaken their position do not in general appear to have been realised.

The wide range of I&C practice found among our case study organizations can be seen as consistent with the legislation’s emphasis on flexibility and the scope it provides for organization-specific I&C arrangements. The fact remains, however, that only a minority of the wave 1 case study organizations analyzed can be regarded as ‘active consulters’ and of those just two adopted an approach to I&C that involved detailed and extensive consultation on strategic issues, with a view to reaching agreement, similar to that envisaged by the Regulations’ default provisions.⁴ Despite the ICE Regulations, little appears to have changed from the extensive case research conducted by Marchington *et al.* (1992) which found that ‘employee involvement was typically management initiated with the intention of improving communication and enhancing employee commitment but had nothing to do with increasing employee influence’ (Delbridge and Whitfield 2001: 475). Given the Directive’s emphasis on agreed I&C arrangements or adherence to regulated minimum standards, the high degree of management unilateralism in shaping the I&C arrangements introduced and the dominant role of management

⁴ Other case study research in six major unionised companies (Taylor *et al.* 2009) suggested that restructuring initiatives and/or redundancies were in each case presented as a *fait accompli*, despite the establishment of I&C bodies in four of the companies.

in determining the nature and extent of I&C in practice should be a further cause for concern on the part of policymakers.

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