

Submission to DTI review of workplace representatives' facilities and facility time

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Introduction

This note draws on initial findings from a research project, co-sponsored by the DTI, Acas and the CIPD, investigating organisational responses to the Information and Consultation of Employees (ICE) Regulations. It summarises data on the time off, training and facilities provided to employee representatives involved in information and consultation arrangements established by 13 private sector organisations with 150+ employees that have been the subject of a first wave of case studies carried out in 2006 as part of the project.

The case studies involve interviews with senior management and employee representatives, and trade union representatives if present, as well as an employee survey conducted in each participating organisation. The data summarised here derive from case reports based on the interviews carried out to date and from documentation (such as the agreements and/or constitutions underpinning the information and consultation arrangements) made available by the respondents.

The 13 case study organisations were identified through leads provided by Acas, the CIPD and the IPA and from the researchers' own contacts. As shown in table 1, they come from a range of sectors and span both smaller organisations as well as large, complex companies. They also reflect a range of employment relations cultures. Eight of the case study organisations recognise trade unions and five do not.

As regards the nature and status of our case study organisations' information and consultation arrangements, each of the organisations concerned have introduced either consultation bodies that are elected by all employees or 'hybrid' consultation bodies involving both union and non-union representatives. The diversified technology company uses a mixture of hybrid consultation bodies and bodies elected by all employees. At the cosmetics company, there is an elected consultation body in one (non-union) plant but the company informs and consults via the trade union it recognises at its other plant.

In terms of the basis of these arrangements, the case studies are fairly evenly divided between organisations which consider they have 'pre-existing agreements' within the meaning of the ICE Regulations (seven cases) and those whose arrangements are management initiatives (five). In only one case – the engineering company – is there a (draft) 'negotiated agreement' as defined by the ICE Regulations. This is in line with experience under the ICE Regulations more generally, with very few 'negotiated agreements' being reported.

Table 1: Characteristics of case study organisations/I&C arrangements

Organisation	Workforce size	Union recognition	Type of I&C arrangement	Basis of I&C arrangement
Engineering company	4500	Yes	Hybrid consultation body (involving both union and non-union reps)	Negotiated agreement under ICE Regs
Infrastructure contractor	2500	Yes	Hybrid consultation body (involving both union and non-union reps)	Pre-existing/voluntary agreement
Electronics company	620	No	Consultation body elected by all employees	Pre-existing/voluntary agreement
News agency	1700	No	Consultation bodies elected by all employees	Pre-existing/voluntary agreement
Urban housing association	700	Yes	Hybrid consultation body (involving both union and non-union reps)	Management initiative
Rural housing association	275	Yes	Hybrid consultation body (involving both union and non-union reps)	Management initiative
Seaside housing association	240	No	Consultation body elected by all employees	Management initiative
Mobile phone company	6200	No	Consultation bodies elected by all employees	Pre-existing/voluntary agreement
Charity	3500	No	Consultation bodies elected by all employees	Pre-existing/voluntary agreement
Care services company	500	Yes	Hybrid consultation body (involving both union and non-union reps)	Management initiative
Cosmetics company	1300	Yes	Consultation body elected by all employees (at one site) Information and consultation via trade union (at a second site)	Management initiative Included in trade union recognition agreement
Financial processing company	2000	Yes	Consultation body elected by all employees	Pre-existing/voluntary agreement
Diversified technology company	3500	Yes	Hybrid consultation bodies (involving both union and non-union reps) at national-level and some sites Consultation bodies elected by all employees at other sites	Pre-existing/voluntary agreement

Legislative background

The ICE Regulations provide the right to reasonable paid time off for information and consultation representatives elected or appointed under the terms of a 'negotiated agreement' or elected under the terms of the Regulations' 'standard information and consultation provisions'. This statutory right does not apply to employee representatives operating under the terms of a 'pre-existing agreement' as defined by the Regulations or any other voluntary arrangement.

The Regulations make no provision for time off for training, nor for access to facilities.

This pattern of rights mirrors that of the Transnational Information and Consultation of Employees Regulations, but differs from the collective redundancies and transfers of undertakings legislation which does provide rights to paid time off for training and to accommodation and other appropriate facilities.

Facilities for employee representatives: Written provisions in I&C agreements/constitutions

This section discusses the formal written provisions on facilities for employee representatives that are included in agreements or constitutions setting out the organisation's information and consultation arrangements. Such agreements/constitutions were available for 12 of our 13 case study organisations, the cosmetics company being the exception.

The incidence of written provisions on paid time off, training and office/communication facilities is indicated in table 2.

Table 2: Written provisions in I&C agreements/constitutions

Organisation/sector	Paid time off	Training	Office/communication facilities	Comments/additional information
Engineering company	Yes	Yes	Yes	Agreement permits employee reps 'a reasonable amount of time during working hours to carry out their role', enables them to communicate with their constituencies, including via the company's internal communications tools, and offers training. Expenses paid for agreed costs incurred in I&C process.
Infrastructure contractor	Yes			Entitlement to reasonable time off to prepare for meetings and report back to constituents. Reimbursement of reasonable expenses incurred by reps. Candidates for election are entitled to reasonable time off for canvassing. Facilities will be provided for producing election campaign literature.
Electronics company	Yes	Yes	Yes	Employee reps permitted reasonable time to hold a pre-meeting prior to meetings of I&C body.
News agency	Yes	Yes	Yes	Detailed facilities agreement. Time off includes sufficient time for reps to prepare for meetings and communicate with staff either verbally or via email, to obtain expert advice and to hold staff briefing meetings. Reps given 'adequate and reasonable time' for pre-meetings. Specifies use of meeting rooms, designated notice board, and telephone, photocopying facilities, postal services and email.
Urban housing association	Yes	Yes		Time off for reps specified as: up to two hours per week for activities related to the forum; attendance at forum meetings and pre-meetings; up to nine open meetings with employees per year; and any training sessions organised for the forum.

Rural housing association		Yes		Employee reps can meet for an hour before the main I&C meeting, if necessary.
Seaside housing association	Yes	Yes		Source: staff council handbook. Time off provision includes preparation for meetings, seeking views of constituents and informing them of progress/outcomes. Identifies specific topics for training.
Mobile phone company	Yes			Guidelines on time off for employee reps under discussion at end of 2006. 'Terms of reference' silent on training and facilities for employee reps but extensive provision in practice.
Charity				Draft constitution includes general commitment that organisation 'will provide reasonable facilities to enable staff representatives to fulfil their roles'. It also 'undertakes to provide all the reasonable support necessary to ensure that they can successfully fulfil this role'.
Care services company	Yes	Yes	Yes	Specifies agreed induction programme for reps, agreed training plus IT skills assessment and training as required. Employee and trade union reps are granted an agreed amount of paid time off to carry out their duties (including training) to a budget of £500 per rep.
Cosmetics company				Agreement/constitution unavailable. I&C body's remit and guidelines on functions/operation under review at time of research.
Financial processing company	Yes	Yes	Yes	'Employee representative agreement' specifies: right to reasonable time off to perform duties as employee rep; paid time off from normal duties to deal with questions arising from I&C forum; use of telephone/fax with due regard to privacy where possible; use of the company's internal mail and distribution services; reasonable provision to attend I&C forum and related training; and use of company email to communicate with other employee reps and HR.
Diversified technology company	Yes	Yes		National-level employee forum agreement includes 'adequate time' for reps to consult constituents. Costs of attending meetings, travelling etc fully reimbursed by company.

Paid time off work

The great majority of the agreements or constitutions we analysed, irrespective of their legal status, entitle employee representatives on information and consultation bodies to take paid time off work to carry out their duties. At the charity and rural housing, where the agreement/constitution does not specify such a provision, employee representatives are in practice permitted to attend meetings and undertake associated activities during working hours without loss of pay (although taking time off beyond I&C meetings is implicitly discouraged at rural housing – see below).

Some agreements/constitutions include greater detail on the types of activity for which employee representatives are permitted to take time off, e.g. preparation for meetings, consulting experts, attendance at 'pre-meetings' of employee representatives, and meeting and reporting back to constituents. In a number of cases, e.g. the news agency, the diversified technology company and the infrastructure contractor, the agreement or constitution specifies that management permission is required before employee representatives take time off during working hours.

Training

Provision for training is almost as extensive. Again, in practice, training for employee representatives involved in I&C bodies has been provided in all but one of the three organisations which have not made a formal commitment to this in their I&C agreements or constitutions – the charity being the exception (see below).

Office/communication facilities

A minority of I&C agreements/constitutions include explicit provisions concerning access to office/communication facilities but this aspect of facilities for employee representatives seems largely to be taken as read. As set out below, access to email and/or other office/communication facilities is widespread in practice.

Availability and use of facilities in practice

Interviews with management and employee representatives at each of our case study organisations yielded further data on the availability and use of facilities for employee representatives in practice.

Paid time off work

Although the provision of at least some paid time off work for employee representatives involved in I&C arrangements is universal in our case study organisations, restrictive attitudes to time off, particularly for I&C-associated activity outside formal meetings with management, was reported in some cases.

At rural housing, employee representatives reported that 'pressures of work' mean that they have little time to prepare for meetings or meet other representatives beforehand, and that whilst in theory paid time off work for this is allowed, it is implicitly discouraged. Management believe that if time off became an issue it would cut across the prevailing organisational culture of commitment to the job. At urban housing, there was some suggestion that employee representatives had difficulty getting time off to attend meetings but this does not appear to be widespread. Employee reps at the diversified technology company also reported some time pressures from having to juggle their normal workload with I&C responsibilities. Similarly, at the cosmetics and diversified technology companies, while reps may take time off work for I&C duties, leaving work stations can cause problems in particular areas (e.g. production), and some reps have to attend I&C meetings which fall outside their shift hours.

At seaside housing, in contrast, employee representatives felt they were given reasonable paid time off within normal working hours for I&C duties, training and preparation. The staff council handbook also suggests possible options for balancing their role as representatives with normal work duties (e.g. sharing job responsibilities with colleagues) and representatives' managers are instructed to make allowances for their engagement in I&C activities.

At the charity, although there are no formal time off arrangements, representatives indicated that there are no financial penalties involved in attending meetings and undertaking associated work which for many does not involve more than a couple of hours per week on average. In practice, significant support and back-up for the employee representatives is provided by two seconded full-time I&C 'facilitators'.

At the mobile phone company, there has been some variation between different parts of the business in terms of time off allowances for employee reps, though company-wide guidelines were under discussion at the end of 2006. In one location, representatives on the local I&C body were allowed on average one day per month off work to carry out their responsibilities, whereas reps on another local I&C body could attend meetings in work time but were given no additional time off for preparation, meeting with constituents etc. There is some pressure from employee reps for 'more time from our day jobs'. At national level, the lead representative and the deputy lead representative are allocated 1.5 days each per week (plus time spent in meetings) to carry out the necessary work, though with his I&C responsibilities at local, national and European levels the former is effectively a full-time employee representative.

The research found little evidence of organisations providing systematic cover for employee representatives whilst they are absent from their normal work and engaged in I&C activity, though this was reported to have happened in some instances at one site in the diversified technology company.

A number of I&C agreements/constitutions make specific provision for 'pre-meetings' of employee reps to take place ahead of bilateral I&C meetings with management. In some cases, however, whether because of workload pressures or the failure of employee representatives to take the initiative, it is apparent that such provisions are not being utilised. This is the case at the electronics company, urban housing and rural housing. At the engineering company, though not specified in the draft I&C agreement, there is informal provision for reps-only and then union-only meetings following national I&C meetings with management. In some companies (e.g. at one site in the diversified technology company), employee representatives indicated that they would like to be able to hold pre-meetings.

Training

Most case study organisations report having organised training events for employee representatives involved in I&C bodies, sometimes on a joint basis with management participants. Such training has been both internally and externally provided, in the latter case typically by Acas.

For example, the mobile phone company has invested considerable resources in training for both employee reps and management involved with in its I&C arrangements, with company-run development events held each year. Acas-provided joint training sessions for management and employee reps held in 2006 were particularly warmly received by participants. These focused on information and consultation processes, consensus decision-making, helpful and unhelpful behaviours in meetings, communications strategies and effective team working. According to employee reps, this training had been invaluable and had significantly improved relations with managers and the operation of the I&C arrangements.

Elsewhere, a half-day team bonding exercise for members of the I&C forum at urban housing was followed by more formal Acas-provided training. At seaside housing, there has been an employment law training day, IPA-facilitated workshop for employee reps and managers, in-house induction training for new reps, and in-house training on other matters, some involving management as well as employee reps. The care services company has an extensive in-house induction and training programme for I&C reps. Acas has also provided joint I&C training at rural housing, the cosmetics company, the diversified technology company and the infrastructure contractor.

However, at the electronics company, there were reportedly 'no takers' among employee reps for proposed training on handling financial information and on communication skills. Management also asked for suggestions from the reps about other training needs but again there was no follow-up. The absence of training for what is a relatively inexperienced group of

employee reps is seen by the HR manager as one reason why the I&C forum has not yet 'found its feet'.

At the charity, there has been well-received training by Acas and others on handling individual casework but no systematic training for participants in the recently re-launched consultation forum structure. Again, this may partly reflect the influential role played by the two full-time facilitators.

At the engineering company, none of the training needs identified for employee representatives has yet been addressed. Although national I&C meetings have taken place informally, the draft agreement has yet to be ratified.

Office/communication facilities

Although a majority of the I&C agreements/constitutions at our case study organisations do not specify what office facilities or information technology employee representatives can access to carry out their duties, in practice such facilities were widely available and few problems were reported in this area.

Thus, at the infrastructure contractor, employee representatives in the I&C body have access to meeting rooms, email, the intranet and other office facilities to help them perform their role. At rural housing, the nature of the work throughout the company means that the majority of representatives have access both to office facilities and to internet and intranet sources of information. Similarly, at the charity, I&C representatives all have the necessary facilities provided to them as employees.

At the cosmetics company and at one site of the diversified technology company, representatives reported differential access to facilities and technology to help them perform their role. Shopfloor/production employees tended to have less access to e-mail and relied more on communication by phone and/or face-to-face interaction.

Finally, at the mobile phone company, while the lead employee representative and the deputy lead representative have access to office facilities, employee reps commented that ensuring confidentiality was sometimes a problem in open-plan offices and that they had concerns over the security of their email communications when using the company system.

Commentary

The relevance of these initial research findings for the DTI's review of workplace facilities and facility time lies in the fact that employee information and consultation is a relatively recent subject of legal regulation – the ICE Regulations took effect in relation to undertakings with 150+ employees in April 2005 – and practice is less well documented than in some other areas.

It will be apparent from this note that, in terms of formal provision and/or practice, the information and consultation arrangements put into place by our case study companies, or modified/revamped in the light of the changed regulatory environment, go well beyond the Regulations' limited statutory provisions in the area of facilities for representatives.

The ICE Regulations' requirements on paid time off are limited to situations where negotiated agreements or the standard information and consultation provisions apply, but appear to have indirectly influenced the provisions of the pre-existing/voluntary agreements or management initiatives in 12 of our 13 case study organisations. Moreover, while the Regulations are silent on the issues of time off for training and access to office/communication facilities, the I&C arrangements in virtually all our case study organisations include the provision of training and facilities to employee representatives – in practice even if not formally specified in the I&C agreement or constitution.

These employers have well gone beyond their legal obligations in these respects – and clearly regard it as good practice to do so. This may be a reflection of the general thrust of the law in related areas such as redundancy consultation or of established employment relations practice more generally. But it is also consistent with the emphasis placed on the importance of training, time off and resources for employee representatives in Acas’s good practice guidance on information and consultation and in similar advice from bodies such as the CIPD, and with the broad approach of the Acas code of practice on time off for trade union duties and activities.