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## **Voice and Participation in the Modern Workplace: challenges and prospects**

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Trade unions remain a strong force in British employment relations, particularly in the public sector and within large companies in key industries in the private sector. However, they can no longer claim to be the single channel of communication and representation for working people. A majority of the working population have no access to union representation at work, so what alternatives are open to them? And why is employee voice important in the workplace?

John Purcell and Mark Hall have written extensively on the issue of voice in the workplace. In this specially commissioned paper, they address the multi-faceted nature of the representation gap, and examine possible alternatives that are emerging to fill it.

The paper explores direct involvement and communications methods of employee voice; employee engagement and employee surveys; the role of consultative committees; trade union, non-union and hybrid forms of consultation; and making consultation effective in non-union companies. Purcell and Hall consider how effective these approaches are and how they might be improved in the future.

## The need for new approaches

The dominant model of trade unions, with high levels of membership, regulating employment contracts with employers through collective bargaining, much in evidence in the mid-20<sup>th</sup> century, has substantially faded in much of the private sector, and coverage in the public sector is falling. In 2010 just 17 per cent of private sector employees had their terms and conditions fixed through collective bargaining, a drop of seven percentage points in 10 years. The fall in coverage, at nine percentage points, was even higher in the public sector, but even so, two thirds of employees in that sector remain covered by collective bargaining (Achur 2011). Less than a quarter of people in employment now are trade union members, with the density of membership in the private sector down to 14 per cent, a decline of seven percentage points since 1995. The membership density in the public sector remains just above half (56 per cent) but here, too, there has been a five per cent decline in 15 years.

With still over six million members, trade unions remain a strong force in British employment relations and are vibrant and active in the public sector and within many large companies in the private sector in key industries like vehicle manufacturing, aerospace and banks. It is most likely that this will remain the position in the foreseeable future. But unions can no longer claim to be the single channel of communication and representation for working people. What this means is that public policy in employment matters is now very unlikely to be built solely around trade union representation, as it had been in much of the 20<sup>th</sup> century. Most of the three

quarters of the working population in employment who are not union members have no access to union representation at work. What alternatives are open to them? There is little evidence that union recognition legislation and new forms of organising have made much of an impact (Wright 2011). There is a large, and growing, representation gap which trade unions find it increasingly hard to fill.

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 organisation and training issues, seen in the work of union learning representatives. Whether via consultative committees or partnership agreements, unions often discuss management plans and proposals. In circumstances of collective redundancy and business transfers they have a statutory role to play, where recognised, in working with employers to search for ways of alleviating the consequences of such changes. None of this applies in the large parts of the private sector, and some of the public sector, where unions are not recognised, yet the need for what is increasingly called 'employee voice' remains. The representation gap is multi-faceted. In this discussion paper we examine possible alternatives that are emerging to fill the gap, ask how effective they are and consider ways to improve them.

This representation gap is important. Freeman et al found clear evidence, in their comparative research, that employees want some form of 'voice' at work which will help them deal with problems (Freeman, Boxall and Haynes,

2007). In particular they want 'more cooperative styles of engagement with management which help improve their firm performance and their working lives'. In Britain, while many workers viewed unions as a desirable form of worker voice, doubts were often expressed about union effectiveness (Bryson and Freeman 2007).

This search for 'voice' is not just to meet the needs of employees, important though that is. We know that the experience of involvement is closely associated with positive employee evaluations of management responsiveness (Bryson, Charlwood and Forth 2006). This feeds through into productivity. The more extensive the range of voice systems used in organisations the more likely it was that managers reported benefits from increased output to declining absenteeism (Sisson 2000). Voice systems which combine 'embedded' direct forms of involvement with indirect voice via representative bodies are strongly associated with higher levels of organisational commitment (Purcell and Georgiades 2007).

The need for discussions with management to be held in a spirit of cooperation, as favoured by employees, is reinforced by analysis of the recent European Company Survey which found that firms where managers and employee representatives made 'sincere efforts to solve common problems' had higher than average productivity and experienced increases in productivity. These firms also had, unsurprisingly, a good work climate (Cox, Higgins and Speckesser: 2011).

### **Alternatives to fill the representation gap**

Significant changes in employment relations in the last 20 years have established new methods by which employees receive regular information about their organisation and are able to have some say on management decisions while being able to raise matters which concern them. 'Voice' methods have proliferated beyond formal meetings of employers and trade union representatives. Direct communication and involvement have spread widely and it is likely that the use of social media will further extend the means by which information is disseminated and opportunity given to employees to respond, and communicate with each other. Behind this, the recent interest in employee engagement has placed emphasis on those aspects of the employment relationship, and wider leadership styles, which lead employees to become committed to, and engaged with, the organisation which employs them. Having a voice, and being listened to, is one of the most important antecedents of engagement.

There is evidence of an increasing prevalence of consultative committees, in the private sector especially, whether non-union or combining union and non-union representatives in a 'hybrid' body operating alongside direct methods of communication and involvement. Meanwhile, ever since changes in the law in the 1990s all employees, including in non-union firms, have had the right to be consulted in specific circumstances of large scale redundancies and business transfers. This relative optimism in the growth avenues for employee voice, despite union decline, must be

tempered by the realisation that the combined effects of economic adversity and the growing break-up of companies through outsourcing and contractual fragmentation (Marchington et al, 2005, Bach, 2011) limit the possibilities for employees to influence top management decisions. We need to examine each of these developments in employee voice and consider their strengths and weaknesses.

### **Direct involvement and communication methods of employee voice**

There has been a remarkable growth in the use of direct communication in the last 25 years (Forth and Millward 2002). The 2004 Workplace Employment Relations Survey (WERS) study found that 91 per cent of workplaces, with ten or more employees, used one or more types of face-to-face communication methods, compared with 85 per cent seven years earlier. Just under two fifths (38 per cent) held a meeting of all employees addressed by a senior manager 'at least on a monthly basis with ten per cent of the time made available for employee views and questions' (Kersley et al 2006). Half of employers held monthly team briefing sessions, usually led by front line managers, with, again, at least ten per cent of the time devoted to employee views and questions. The sort of items discussed in these meetings usually related to matters of immediate concern such as work organisation, production issues and employment matters with some time devoted to future plans and, less frequently, financial performance.

It is not surprising that there has been such a growth in direct methods of communication and involvement. There is clear evidence that managers prefer to use direct methods and have become more reliant on them (Kersley et al, 2006). In the 2009 European Company Survey the management respondent was asked if they agreed with the statement 'we would prefer to consult directly with our employees'. Overall, across the EU some 60 per cent agreed, and, of these, one fifth strongly agreed. In the UK the preference for direct methods was stronger with around three quarters (72 per cent) preferring direct communication methods, and a quarter saying they 'strongly agreed' (EuroFound 2010). Edwards *et al* (2007: 85) found that managers in US and UK multi-nationals 'display a strong tendency to emphasise direct channels (of communication) especially those in the non-manufacturing and service sectors'.

Given that consultative committees and union joint negotiating committees meet less frequently than team briefing sessions and workforce meetings (Kersley et al, 2006) employees may be more likely to receive timely information direct from their managers, rather than their representatives. However, the scope for meaningful dialogue, a defining characteristic of participation, in workforce meetings and briefing sessions is limited since they rarely last for longer than 15-30 minutes with only a short time for questions, and little opportunity for debate. While they can be an effective method of downward communication there are structural limits to how far they provide an avenue for upward communication or any capacity to exert influence on higher level management decisions, especially those

taken away from the workplace in head offices. This is also an area where there is often a big difference between what is intended by senior management and what is often delivered by line managers: this is the well known gap between espoused and enacted policies (Purcell and Hutchinson 2007).

The advent of social media may change the way employers communicate with staff and open up new opportunities for employees to link with each other and express their views to senior management. As Smith and Harwood (2011) recognise, the full potential for using social media to improve employee voice practices has yet to be realised. They suggest that 'social media tools allow rapid sharing of data across organisational hierarchies and this opening up of organisational data flow is perhaps one of the most fundamental impacts upon organisations'. In particular, they suggest two areas likely to be influenced by social media: the potential for managers to share information and consult employees, and for employees to gain a stronger collective voice. The latter may stem from employees being able to respond rapidly to items discussed in consultative committees and representatives may equally be able to gain closer relationships with their constituents. Although not identified by Smith and Harwood, it is also possible that consultative committees could become eclipsed by social network forms of direct communication.

### **Employee engagement and employee surveys**

Employee engagement is not, in itself, a form of employee voice but a desirable outcome of good leadership

and employment practices, including the extensive use of voice systems. Essentially, employee engagement can be said to exist where a sizable majority of employees are committed to their work, their colleagues, management and, overall to the organisation, and this is reflected in positive behaviour, sometimes called 'organisational citizenship behaviour' (Organ 1988). MacLeod and Clarke (2009) suggest that one of the four drivers of engagement is employee voice, the others being leadership, engaging managers and integrity. On employee voice they say this means:

An effective and empowered employee voice – employees' views are sought out; they are listened to and see that their opinions count and make a difference. They speak out and challenge where appropriate. A strong listening and responsiveness permeates the organisation, enabled by effective communication.

The authors quote with approval the joint statement in 2001 by the TUC and CBI that 'optimal results are achieved where there is a mix of direct employee involvement and indirect participation through a trade union or works council'.

Increasingly employers use attitude surveys on a regular basis to assess the level of employee engagement, identify barriers and the factors leading to its formation. While the survey can be seen as a weak form of employee voice, it is too often used in isolation rather than as a check on progress and a diagnostic tool. Some managers are slow in reporting back the results of the survey, especially where they are critical

of management. Employee surveys can never be an effective means for employees to express their views and be consulted, useful although they can be in capturing employee opinions.

### **Consultative committees**

A good definition of consultation, drawn from wider European experience, is '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). This requires the establishment of a consultative committee where representatives of employees, drawn from recognised trade unions or directly elected by employees, or both, meet with senior managers to discuss planned business and HR changes as well as issues raised by employees.

Consultative committees have a long, if not very distinguished, history in British employment relations. Trade unions have always shown some ambivalence since they prefer collective bargaining and fear that some employers would use consultative committees as substitutes for unions. There are plenty of examples of employers doing just that. Employers, for their part, have often favoured forms of employee involvement but object to legal enforcement of consultative committees especially where these appear to limit their prerogatives.

The latest picture we have is from the 2004 WERS. This showed that in workplaces with ten or more employees 14 per cent had a consultative committee on site and a further 25 per cent had one higher up in multi-site companies, like banks. This low figure of just 14 per cent is a bit misleading since in

small workplaces informal relationships between employees and the top manager can take the place of formal institutions for consultation. However, as the size of the workplace increases the probability of having a consultative body grows. Only around a quarter of workplaces with 200 or more employees did not have a consultative committee either on site or at a higher level. What is particularly interesting is that two thirds of these consultative committees were non-union and only 11 per cent organised exclusively by the recognised union. Around one in five (22 per cent) had a mixture of union and non-union representatives working alongside each other. These are generally called 'hybrids' (Hall et al 2010). The use of hybrid consultative committees is particularly noteworthy. In workplaces where there is a union representative hybrids now constitute around half of all consultative committees showing how union and non-union representatives can work together. As we will note later, this may be a pattern for future growth.

Not all consultative committees are the same. While it is common for work organisation, future plans and employment issues to be discussed, the crucial difference is how management tables items for discussion, if at all. There is clear evidence that where managers look to the committee to consider policy options they will judge the committee to be influential. In contrast, where managers have already taken a decision before discussing it at the consultative committee, the scope for influence is considerably less (Kersley et al, 2006).

This was confirmed by Hall et al, (2010) in their longitudinal research

in 25 organisations<sup>1</sup>. Two main types of consultative committees were evident. The 'active consulters' were organisations where management took a pro-active approach to consultation and put proposed business decisions, like restructuring, on the agenda. Often this needed special meetings to be called and for information to be given in confidence prior to a public announcement. For there to be a meaningful discussion the employee representatives had to be organised as a coherent body. This was recognised by management which often took steps to encourage training and allow representatives to meet by themselves to work through how to respond to the proposals.

In contrast, in other companies management saw the role of the consultative committee to be a communication body. The 'communicators' rarely placed business decisions on the agenda, and where this did happen, it was usually after the event. Most of the topics discussed were raised by employee representatives but these tended to be housekeeping matters, sometimes lapsing into 'tea and toilets' issues. It was rare for there to be an effective body of employee representatives since all they had to do was to attend the meetings a few times a year. While both the 'active consulters' and the 'communicators' used direct communication and involvement methods with the workforce, in the latter's case this tended to 'crowd-out' the consultative committee since it had little opportunity to contribute anything distinctive.

Management is always the dominant partner in consultation since it is they who are setting the key parameters to the agenda. The 'communicators'

saw consultation as a means of communication between senior managers and employees. The emphasis was on the creation of harmonious relationships, integration and building engagement. The active consulters had much the same aims but saw these being achieved through employee representatives becoming involved in the management of change and the achievement of consensus, especially over the implementation of decisions.

In 2008 the Information and Consultation of Employees Regulations (ICE for short) came fully into force for undertakings with 50 or more employees. The intriguing question was whether this would give a substantial boost to the formation of consultative committees. The EU sees the provision of information and the practice of consultation as a 'fundamental right' in the same way as there is a fundamental right not to suffer from discrimination in employment. The way the regulations are drawn up in the UK gives considerable freedom to choose the form and frequency of consultation. The need to take steps to set up a consultative body is only 'triggered' when ten per cent or more of the employees ask for one. What evidence we have suggests that very few employees have organised themselves to exercise this right (Hall et al:2012). The Secretary of State, Vince Cable, admitted as much when he told the House of Commons that 'this potentially powerful mechanism for employees has been underutilised to date'<sup>2</sup>.

There is nothing to stop an employer from setting up a consultative committee without an employee request. There is technical advantage in doing so, from the employer's perspective, as the committee

can be established as a so-called 'pre-existing agreement' (PEA), provided a majority of employees in a ballot have backed it or all employee representatives have endorsed it. The advantage of a PEA from an employer's perspective is that the procedures and topics of consultation are not pre-determined and can be designed to suit the organisation. Unlike where a committee results from an employee request under the regulations, a PEA does not provide employee representatives with the right to complain to the Central Arbitration Committee (CAC), nor any right to time off or training. Some companies have responded to the regulations by setting up a consultative committee but many have not, and the 'do nothing' option is clearly available in the absence of a request from employees.

We will not have definitive evidence on the take up of ICE based consultative committees until the results of the 2011 WERS survey are published, but some earlier surveys have shown a growth (see Hall et al forthcoming), for example in large, multinational companies (Marginson et al 2010). We would expect the growth to be mainly in the private sector. We knew before the ICE Regulations that around half of workplace employee representatives were non-union with over 80 per cent of them found in the private sector (DTI 2007). What this means is that the potential for forms of collective employee voice is greater than the bald figures on trade union membership and the coverage of collective bargaining suggest.

## **Trade unions and non-union and hybrid forms of consultation**

The obvious questions are whether there is a degree of equivalence between non-union consultative committees and union workplace collective bargaining, and what impact the growth of non-union employee representation will have on employee voice? Looking at non-union consultative committees, on the positive side there is evidence that managers often discuss a wider range of issues with their committee and take their views seriously. A careful analysis of survey data led Bryson (2004) to conclude that 'it is the combination of direct voice with non-union representative voice that is particularly beneficial and it is the voice regime which performs better than "no voice"'.

This confirms the importance of dual voice arrangements. The positive view of non-union staff councils is not, however, widely shared. Much will depend on what managers seek to achieve in setting up a consultative body. In many cases 'managers ... devise their own options for employee involvement that are soft on power sharing without offering any form of effective consultation in return' (Dundon et al 2006). This is typical of the 'communicators'. It is important to recognise that non-union representatives, for the most part, have a more restricted role than their union counterparts since their only function is to attend consultative committees.

The comparison with collective bargaining over terms and conditions of employment is, in any case, not a valid one since consultation is a very different process. It does not, for one thing, rely on gaining agreement since the purpose is to discuss management plans and allow employees to raise matters of

concern. Where unions engage in both collective bargaining and consultation the processes are often complementary. The resultant pattern of relationship is usually referred to as a 'partnership'. Partnership agreements received much attention a decade ago with mixed results (see Oxenbridge and Brown 2004).

More recently it is clear that such agreements continue to be made, especially in the NHS, although the benefits would appear to flow more to management than employees (Samuel and Bacon 2010, Evans, Harvey and Turnbull 2012). A particularly good example, on a very large scale, comes from Scotland where there is a country-wide 'Labour-Management Partnership' (Bacon and Samuel 2011). Partnerships require strong trade unions, with high levels of membership, working with managers who support union involvement in strategic and workforce governance issues. As such they are unlikely to become the organising model for the future.

What is clear is that trade unions could do more to promote consultation by organising to trigger the regulation's procedures through a formal request from ten per cent of employees, as they did in one of the early cases that came to the CAC (Amicus and Macmillan Publishers). In 1996 Hyman was of the view that 'a statutory system of employee representation is ... the least worst option for British unions'. More recently Heery (2010) has suggested that 'worker representation can and should assume a hybrid form'. The emerging coalition of statutory consultative committees and trade unions 'is likely to be central to the necessary task of revitalising unions'.

In the hybrid councils studied by Hall et al (2010), trade unions maintained their collective bargaining role but took part with non-union representatives in the consultative committee. There was no evidence of employers using the consultative committees as a means of bypassing or minimising the role of recognised unions. Unions often saw advantages in meeting senior management on a regular basis and being engaged in discussions on a wider range of issues. Unions can play an important role in working with non-union representatives in hybrid staff councils. The evidence from continental Europe is that union involvement in works councils, either directly or indirectly, helps improve the councils' effectiveness (Hall and Purcell 2011). There is likely to be a further growth in hybrid consultative committees, especially if unions put aside their ambivalence about consultation and work with non-union representatives.

### **Making consultation effective in non-union companies**

The dilemma often faced by non-union employee representatives embarking on consultation for the first time, and meeting with senior managers, is how to create an effective representative body. If management wants to consult seriously, it must have an authoritative body to talk with, one that can carry the workforce with them and know how and what to communicate. An added problem is that, if consultation is on proposed or contemplated business strategies the information will usually have to be given in confidence. This requires the members of the consultative committee to be 'representatives' rather than 'delegates'. A delegate always reports back and takes advice from constituents. A

representative has to be able to act more independently based on a confident understanding of what is best for those affected in the circumstances, and has to be able to keep confidential information under wraps until an agreed time later. All this points to the acute difficulty non-union employee representatives have in learning to develop a collective voice with little, or no, access to external advice and resources. Management support is especially necessary during the formative period while representatives find their feet and develop self confidence in the role.

This difficulty can be especially pronounced where the consultation is focussed on a single issue, like large scale redundancies or business transfers. There is a legal requirement for consultation with employee representatives to take place on these issues when proposals are still in the formative stage. This is where trade union experience and training is a key advantage. There are some good examples of specially created non-union consultative bodies dealing effectively with these topic specific, and short-lived, consultations, but not many (for an example see Podro and Suff, 2008).

Collective consultation in union and non-union organisations has the capacity to provide a meaningful forum where employees have access to senior managers and are able to express their opinion on major decisions which have implications for the workforce. Where it is combined with direct forms of involvement, giving employees some voice avenues on the shop or office floor, the outcome effects are often positive, both for employees' well-being and organisational effectiveness. There is

usually a period of learning, for both the managers and employee representatives involved, for the processes of consultation to be established and practiced. Empirical evidence suggests six necessary requirements for active consultation to be developed (Hall and Purcell 2012).

1. Management must be prepared to share information on plans and options for major changes in time for employee representatives to consider what questions to ask and how to respond. They need to be given the opportunity to express an opinion, and potentially to exert some influence, and management must take representatives' views and ideas seriously.
2. A wide range of issues should be discussed including financial performance, strategic plans and HR policies, with an opportunity for employees to raise issues. In some consultative committees social matters also form a regular part of the agenda. There also needs to be procedures in place where certain items can be filtered out, for example individual grievances or items best resolved directly by line managers. The need is to avoid the committee being clogged up with minor 'tea and toilet' issues.
3. Senior managers need to be regular attendees at consultative committee meetings, drawn from line as well HR positions. It will often be the case that other senior managers will attend for specific agenda items, for example from finance or specialist technical areas such as IT or marketing.

4. Employee representatives need to be able to develop a collective voice which adequately reflects the views of employees but can provide leadership in dealing with big issues. Paid time off, training and facilities are basic necessities. Pre-meetings, where representatives meet among themselves without managers being present, are essential since it is here that views and differences can be discussed and preparation for meetings of the consultative committee be undertaken. In some cases, representatives can ask for external advice, paid for by the company
5. The link between the work of the consultative committee and direct forms of communication and involvement need to be understood. In some cases representatives use team briefing sessions to report back on committee discussions and management use all available communication methods to reinforce the work and utility of the consultative committee. Employee representatives need a distinctive voice and visibility to be effective.
6. Consultation has to be supported by a culture of mutual cooperation and trust. It will often be the case that there will be informal contact between a senior employee representative and the HR manager where emerging issues can be explored and progress on items checked.

### **The need for effective regulation**

The law plays an important part in getting institutions established and good practice embedded especially in the area of consultation. As Gollan (2010) has observed 'regulatory rules and laws encourage or force certain behaviours that otherwise would not have taken place'. The adequacy of the ICE Regulations has been questioned (Hall 2010) and it was noted above that Pre Existing Agreements give no rights of redress to employee representatives. It may be that the current review of the EU Directive and its application in member states will lead to proposals for changes. A review took place recently on the operation of similar regulations concerning European Works Councils and amendments became law in 2011. The 'recast' EWC Directive contains stronger provisions to help representatives create an effective employee 'side'. EWC representatives have rights to obtain the financial and material resources needed to carry out their duties, call special meetings, hold pre-meetings, seek external advice and now to undertake training.

If similar provisions were built into the ICE Regulations, and if recognised trade unions had rights to representation, as they currently do in statutory consultation over collective redundancies and business transfers, it may encourage unions to be much more active in promoting consultation, often in association with non-union representatives. Non-union consultative bodies, if established under the regulations, would have a better chance of becoming an effective employee voice than they currently have. At present, with the exception of the relatively few that were established under the

procedures of the regulations, they are dependent on employer goodwill.

The recent award of £67.8 million compensation to many ex-Woolworths' employees for a failure by the administrators to consult the union properly over the redundancies<sup>3</sup> brings into sharp focus the weakness of the ICE Regulations where the maximum fine is £75,000 and this is paid to the Treasury and not to the employees affected.

## Conclusions

Large parts of the private sector, and a much smaller part of the public sector, seem now to be beyond the reach of trade unions through the traditional route of collective bargaining. Alternative means for employees to have a voice in company affairs have, to a limited degree, emerged. These include direct means of communication and involvement through workforce meetings and team briefings, and now via social media. A growing number of employers use attitude surveys to capture employee views, often linked to a desire to build employee engagement.

These are all valuable and not just restricted to non-union businesses. Research shows that they are usually valued by most employees and help forge a positive relationship between the individual worker and the line manager, even when doubts remain about the commitment of senior managers to participation and voice. But these voice methods provide only very limited means for employees to discuss planned policies and changes with senior managers. It depends on management goodwill, and given the low level of trust in senior

managers, as revealed in the 2011 CIPD survey, these structural weaknesses are compounded. In any case, front line managers, who conduct team briefings, are often as much in the dark, when it comes to strategic decisions, as the team members they are meant to be briefing.

To a degree, it can be suggested that the growth in non-union consultative committees, encouraged by the ICE Regulations, has filled some of the gap left by the decline in collective bargaining. The two processes are not equivalent but, at least, consultation gives access to senior managers and can allow for dialogue over management strategic plans which affect employment.

This type of consultation can be a more advanced form of collective voice than collective bargaining if that only takes place once a year to agree revisions, if any, to terms and conditions of employment. This is why some union officers agree to take part in hybrid staff councils since they get better access, and a wider range of items to discuss, than achieved via collective bargaining. This is the logic, too, behind union partnership agreements. When combined with direct methods of communication and involvement, as favoured jointly by the CBI and TUC, the outcomes for both employees and their firms, can exceed any other forms of voice and participation.

There are particular inhibitions to a widespread adoption of consultative committees. First, and most important, is reluctance by some managers to engage in meaningful consultation, preferring direct methods of communication. Some fear incursions into their prerogatives, or having to explain their decisions. This

reluctance is sometimes justified for fear that vital decisions will be delayed or confidential information leaked, but these are rarely persuasive excuses. Active consultation requires pro-active employers, willing to engage in dialogue on proposed measures.

Second, trade unions have, with a few exceptions, been reluctant to embrace the opportunities of the ICE Regulations to push for the adoption of consultative committees, preferring to focus on collective bargaining and the maintenance of the single channel of communication. While this may be a valid response in those declining number of companies where they are still recognised, it does nothing to spread union influence or search for new methods of representation among non-members.

The third limitation is the confused state of legal regulation. There is no common base line for representatives to have time off with pay to carry out their duties, receive training or have access to facilities. The ICE Regulations give substantial latitude to employers, either to do nothing, or to design a consultative arrangement in whatever way they want. There is little in the regulations to provide advice and assistance to representatives to create an effective, collective, employee voice. The 'recast' EWC regulations provide a useful benchmark to what could be applied in ICE, as do the collective redundancy and transfer of undertakings provisions.

It may be, in a prolonged period of austerity, that a growing number of employers will recognise the value of consulting with employee representatives alongside extensive use of direct methods

of communication and involvement, including social media. This is because there will be more tough decisions to take that affect the workforce. Employers will recognise how important it is for employees to understand the basis and logic of these decisions and work jointly in exploring ways to alleviate some of the consequences. Some will appreciate, too, that this is one of the best ways to seek to gain employee engagement in difficult times.

It is possible that the current EU review of the ICE Directive, and the way it has been applied in member states, will lead to proposals for change. Governments have often backed moves to encourage consultation since the purpose is to enhance cooperation and contribute to the effective management of change. They may do so again at a time when largely cost-free innovations are at a premium. This, in turn, may persuade trade unions to help establish consultative bodies in organisations where they are not recognised.

It is always possible that none of this will come to pass and innovations in employment relations remain stalled, the representation gap grows ever bigger and employees become increasingly disillusioned with senior management. This would be to miss an opportunity to make a modest contribution to reframing the practice of employment relations to achieve cooperation and consent at time when they are most required.

## Notes

1. The research was funded by BIS, Acas and the CIPD.
2. <http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120123/debtext/120123-0001.htm#120123000594>
3. <http://www.bbc.co.uk/news/business-16662636>

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