

Voice and value  
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# Employee Information & Consultation: Regulation, Reform or Revolution?

Messages from a one-day conference organised jointly by the London School of Economics, Chartered Institute of Personnel and Development, and the London Metropolitan University

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# Executive Summary

A cross-section of people from academia, government agencies, employers, and the trade unions met at the London School of Economics and Political Science on 18th March 2005, to discuss the Information and Consultation of Employees Regulations 2004 that were to come in force on April 6th. Focusing the day it was asked: 'Will implementation of the Regulations cause anxiety or happiness?' 'How might employers act on the proposition that, in order to build productive work relations, they should provide their employees with information and consultation at both individual and collective level? And 'What is the research agenda to evaluate the impact?'

Department of Trade and Industry policy commitments were reported, aimed to "encourage best practice in implementing new information and consultation rights from spring 2005". Achievement of "a statistically significant increase in the number of employees that have information and consultation procedures" had been targeted for in the period to 2008. A publicity campaign was highlighted as well as development of a public sector good practice code.

In a TUC viewpoint, it was stated that the UK needed more 'high performance work places' necessarily founded on a relationship of trust between employers and the workforce. But with 47% of private sector workplaces reportedly having no system to facilitate worker participation, the big issue was the extent to which direct or indirect channels for information and consultation may be institutionalized, including how non-unionised employees fit into the Regulations.

Addressing the question 'Where to now?' advance responses to the Regulations were characterised as 'pedestrian'. There was a lack of understanding, reluctance and resistance on the part of employers and unions alike, with poor 'buy in' at the top. However, 'cathartic events' in organizations may be a catalyst for employee-led action.

An employment lawyer's perspective reminded participants of the European context in which the Regulations had been constituted, forming a reference point as the courts come to adjudicate on questions of legal compliance. The trigger mechanism for ballots, questions surrounding pre-existing agreements on information and consultation, and the issue of the confidentiality of the information for decision-making were scrutinized.

A comparative insight was offered on the different approaches to the Regulations in the UK and continental Europe. From an employer's perspective, issues of timing were underlined. Business strategy decision-taking pressures and organizational configurations could be in tension with the need to spend time informing and consulting with the workforce. The problem may be exacerbated due to differences in style between UK managers and those in continental Europe. Limited guidance in the UK Regulations and the Directive on the issue of employee representatives meant that lessons from mainland Europe might be useful; in particular, mixed experiences with Works Council 'Experts'.

Academic research was drawn on to argue that the process of consultation is as important as structures. An inadequate process for across-the-table dialogue would not realise the goal of performance improvement, and may be a source of legal challenge. The historical experience in the UK was characterised by two time extremes: either in a moment of crisis, as an 'inexperienced' response to a problem with tight, externally imposed deadlines, such as collective redundancies; or as a routine activity only loosely linked with performance improvement.

Two contrasting case studies were presented (Telewest Global, a commercial business; and Leonard Cheshire, the UK's largest charity), offering some practical insights into information and consultation in the UK. In the first case, the initiative was part of an employee relations strategy to secure 'engaged employees', branded under the acronym of 'TIME' (Telewest involving Me). In the second case, the programme was an attempt to rebuild employee trust, through a 'managerial culture change', following unavoidable worsening of employment terms and consequential workforce disillusionment. Pitfalls were reported and benefits summarized. The latter included an effective check for business 'hot spots', and reduction in the gap between senior management and other employees. Improved employee involvement, communication and trust, under the rubric of 'corporate responsibility', also featured.

A 'professorial panel' debated the issues of the day, including the 'risk assessment approach' adopted by some employers and unions alike. More positive was evidence of the level of interest that impending implementation of the Regulations had generated: in the first 15 days, more than 6,000 visitors registered on dedicated ACAS web pages. Also, reports were cited of US-headquartered IT companies having employee representatives for the first time in UK operations. However, the high stakes for continued voluntarism in UK employment relations were acknowledged should the Regulations fail to live up to expectations. Threats as well as opportunities inherent in the new terminology of 'unionised', 'non-unionised' or 'partially unionised' information and consultation arrangements may encourage trade unions to adopt a more active stance. Dramatic change among employers was unlikely, but 'average' consultation may increase to 'good' and 'good' to 'very good', as the Regulations provoke employers to rethink the way they inform and consult. Rounding-off the discussion, application of the Regulations was posited as the beginning of employer - employee dialogue, with equal opportunities and discrimination issues, only one piece in the HRM jigsaw. Levels of trade union participation notwithstanding, the impact of the Regulations in the future might usefully be evaluated in terms of improving overall welfare for employees in UK workplaces.

# Voice and Value Conference

LSE: 18th March, 2005

Opening the fifth Voice & Value event, Howard Davies (Director of the LSE) said that the conference series had had good feedback. He anticipated another rich exchange of views.

## Overview and Policy Agenda

### **“Why inform and consult?”**

Duncan Brown (CIPD Assistant Director-General) said that, after the 1970s, rhetoric had focused on the question of a migration from the structural framework of collective industrial relations, towards ‘empowerment’ of individuals in the workplace. In reality, he said, organisations aiming to build a successful relationship with their employees were working from both perspectives. ‘Information and Consultation’ held out the prospect of something distinctive – perhaps a ‘third leg’ support for employment relations? His challenge to the assembled gathering was to consider why – strategically – do we inform and consult? While organisational contingencies make copying from the competition non-productive, all interested parties could learn from the kind of reciprocal exchanges the conference was intended to promote.

### **Encouraging “best practice” ICE implementation**

Grant Fitzner (Director, Employment Market Analysis and Research at the Department of Trade and Industry) delivered a Government overview of the intentions and prospects for employee information and consultation in the UK. First, he charted the background to the Information and Consultation (‘ICE’) Regulations due to come into force on 6th April 2005. The 2002 EC Directive on Informing and Consulting had triggered a round of ‘public consultation’. The DTI had released a ‘discussion’ document in July 2002 and, in the light of a CBI – TUC ‘framework agreement’, issued a ‘consultation’ document in July 2003. The process concluded in January 2005 with the publication of DTI Guidance on the Regulations.

The public consultation had resulted in 11 key points informing the character of the regulations the Government had introduced:

- Flexibility was preferred over a 'one-size-fits-all model
- Agreements should continue the British industrial relations tradition of voluntarism
- Pre-existing consultation arrangements should not be eroded
- 'Undertakings' should be defined and allow information and consultation for 'establishments' and groups of companies
- I&C arrangements should be "driven by employee demand"
- The risk of double jeopardy should be removed, by providing for overlaps with collective redundancies and TUPE Regulations
- Trade unions should be given "no special role"
- Scope was required for employers to protect "confidential information" while complying with the spirit of information and consultation with their workforce
- Enforcement issues were surfaced:
  - \* The potential roles for CAC and/or EAT in appeals resolution
  - \* Application of penalties and fines (rather than injunctive relief)
- Clear guidance was a prerequisite (via DTI and ACAS)
- Training for the participants was needed (where institutions such as ACAS, IPA, CIPD, as well as employers themselves, had a key role to play in the successful implementation of the new regulatory environment).

DTI policy commitments emphasised by Grant included the statement in the Department's 2004 5-year plan to "Encourage best practice in implementing information and consultation rights from Spring 2005" as part of its "offer to employees". And a target in the 2005-08 DTI PSA target (10d) to achieve "a statistically significant increase in the number of employees having access to information and consultation procedures".

Future developments included a DTI awareness raising campaign, and development of a public sector Code. The impact of the Regulations would be monitored by the Government, drawing on academic research: WERS 2004 would "set the baseline", followed by longitudinal studies. Ongoing Europe-wide developments with implications for information and consultation affecting UK workforces (for example attempts to combine, restructure or 'consolidate' I&C (e.g. where European Works Councils were in existence) would be scrutinised.

## "An asteroid or damp squib?"

Sarah Veale (Head of Equality and Employee Rights, TUC) re-emphasised that both sides of industry had agreed that, with the implementation of the ICE regulations from 6th April 2005, they "had to make this work". On the other hand, many were waiting to see what happens. In some quarters of the CBI, the Regulations were regarded as a potential Trojan horse for trade unions. And some of the trade unions remained highly sceptical of the prospects for industrial relations.

Against this background, Sarah's question was simply this: "Will the new regulations be an asteroid or a damp squib?"

Sarah wanted to put the focus on how trade unions could work with employers to make a success of the new regulations. From the TUC vantage point, all parties wanted to support development of the high-performance workplace.

Accompanying this productivity-oriented point of view, high trust work places represented the complementary aspiration. One of the problems in the UK was the lack of universal workplace institutions to make the regulations work. The TUC was concerned to maintain a distinction between collective bargaining arrangements and consultation: training for workplace representatives was being undertaken, to overcome a perceived lack of clarity on this point among many of them.

The big question to be faced by the labour movement was whether or not trade unions had the resources to put workplace representatives into place where there are currently no members paying subscriptions. Another major issue relates to atypical workers. The TUC wishes to encourage employers to follow good practice and involve all employees in workplace matters. Both the CBI and TUC were agreed on the voluntary route. But some said the major question surrounded whether or not some employers might renege on pre-existing agreements. The TUC's response to this was that the position was really no different to other agreements, where dispute mechanisms were needed. However for the TUC the question of non-union workplaces was more problematic.

The regulations were not prescriptive on the subject matter for information and consultation. The TUC was keen to help employers work out what they needed to do. Sarah said an excellent source of guidance was the ACAS 'good practice' guidance. Sarah's conclusion was that if the new regulations were to be an asteroid and not a damp squib, the parties needed to do what is needed to "establish the habit of information and consultation between organisations and their workforces, at all levels and among all categories". What the TUC was terming a 'high road' approach was that an engaged, high-performance workforce was a properly informed and consulted workforce.

## Q&A – an ICE nail in the coffin of Collective Bargaining?

Clive Wright (Mercer HR Consulting) asked to what extent the new arrangements were different or the same as existing procedures for handling employee disciplinary and grievance matters. Sarah's response was that these would probably blur. People acting as representatives for workplace information and consultation arrangements were likely to want to start putting items on meeting agendas that might in the past have been regarded as a 'collective grievance'. These issues were distinct from collective bargaining but could well morph into it. Sarah's view was that "things happen: once you get systems in place, people use them". An employer view may be "We might as well use these employee volunteers to cover several functions".

Chris Brown picked up on Sarah's comments about it being neat to include information and consultation where existing collective bargaining arrangements were in place. For trade unions, did this not risk "hammering another nail into the coffin of collective bargaining?"

Did it not offer employers a channel to move from negotiating to simply informing?" Sara's view was that, although some trade union leaders might beg to differ (at least in public rhetoric), a more pragmatic assessment was that unions should make the most of opportunities where they can. Maybe this involved a move from the collective bargaining model. But it offered unions a chance to be influential in newer work places. Clearly the ideal would continue to be collective bargaining. But in reality information and consultation arrangements may be as good as it gets. And given the spread of individual contract terms in many newer workplaces, traditional collective bargaining arrangements were not feasible anyway. In short, the opportunity was not to abandon the old but for forward-thinking trade unions to go with new opportunities to make a difference for employees.

Howard Gospel (Professor, Kings College, London and LSE) said he was fascinated by the prospect of trade unions opting for consultation over collective bargaining. But evidence from the Workplace Employee Relations Survey indicated this was happening anyway. He wondered about sectoral differences, or reflections of different trade union orientations. Sarah said that a meeting held at Warwick University in the summer of 2004 had included talk around sectorally-based I&C forums – even though some employers might hold the view 'dream on'. Were there any model systems? In some parts of the public sector, developments could be observed taking place. Sarah said she would be interested to see academic research being undertaken into what is really happening.

Ben Willmott (Adviser, Employee Relations, CIPD) said that, for example, traditional industries such as the railways might be seen as the last to want to shift the boundaries between collective bargaining arrangements and information and consultation. But he was none the less aware of evidence from one rail-company at least, that had taken a new direction. South West trains were introducing what might be termed a 'single track' approach to collective bargaining and information and consultation combined, in preference to a more traditional 'dual track' approach. A response to the question of why trade unions such as Aslef and the RMT were suspicious contrasted public rhetoric with possible pragmatic reality.

While online promotion of ICE had been targeted principally towards employers, 'banners' on hotmail web pages consulted by the general public, for example, provided publicity for employees also and links to DTI online advice). Professor Keith Sisson mused on "a practical matter" that may emerge from the DTI publicity campaign. Employees who become aware of the proportion of an establishment's workforce needed to trigger an ICE ballot may ask: "Where do I go to organise this?" Do employers and/or the trade unions have the answer?

## State of Play

### **“HR challenged in getting corporate buy-in?” “Unions in a minority position on ICE councils?”**

Jock Simpson (Executive Chairman of the National Joint Council for Engineering Construction, and a seasoned corporate employment relations consultant) presented a contrasting view to Sarah Veale. Setting up arrangements for information and consultation was very different to the traditional ‘machinery’ of employment relations. In addition there was both reluctance and resistance on the part of employers to overcome. “HR directors know what they’ve got to do but the problem they face is getting corporate buy-in.” There was quite a spectrum of responses between ‘communicating’ and ‘consultation for employee engagement’. While there had been some movement towards the right along this range, the implication of UK management style was a predilection for ‘sham’ information and consultation. Management may comply with the letter rather than the spirit of the Directive and Regulations. This may be premised either on a misunderstanding or on taking a calculated risk. In practical terms, there was the issue of decision taking in a multinationals, which could be misaligned with frameworks for information and consultation as envisaged under the Regulations.

Trade unions had not been proactive in pursuit of pre-existing agreements on information and consultation – evidence for the pedestrian response Jock perceived. Trade unions also had demonstrated resistance to working with non-members. If trade unions have between 70 and 80 per cent of members in the workplace, resistance may be feasible. But if they have recognition and attendant power with only 30 per cent in membership, this may place them in a minority position under information and consultation arrangements.

Based upon conversations he had had with a range of employers, pre-existing agreements seemed to be employer-led. Trade unions appeared to want existing mechanisms guaranteed as being maintained outside information and consultation agreements. Looking to the future, trends may be employee driven – triggered by “cathartic events”. If the economy falters, leading to “shake outs” of employment, people may recognise that having had information and consultation arrangements in place would have made a difference. Such experience then they may well lead employees to press for standing I&C mechanisms with greater enthusiasm than the trade unions have done to date.

### “Valuable guidance on hand – challenges in prospect?”

The Westminster Parliament had agreed the Information and Consultation Regulations on 21 December 2004, for implementation as at 6th April 2005. Raymond Jeffers (Partners and Head of Employment Law, Linklaters) observed that it is the Regulations, rather than the EC Directive that frame the rights from now on.

However, Raymond said that it was valuable to remember the background of the directive: its origins in continental Europe, and as a source of reference for the courts. Plus, non-compliance by UK employers will be open to challenge before the European Court of Justice. Guidance on the Regulations had been produced by the DTI and by ACAS. The DTI guidance was valuable in assisting reflection on the law; the ACAS guidelines on locating information and consultation in context. There was also CIPD guidance.

The Regulations reflected a 'deal' that struck by the Government's between the two sides of industry. The Regulations were not applicable universally – tests of both geography and numbers employed had to be met. Even in 2008, when the regulations would be fully in force, it would still be necessary for 50 employees within the workplace, for the trigger to be pulled for an ICE ballot. And Raymond referred back to the earlier comments on the key role of the trigger mechanism. "Basically, employers only have to act if employees ask them to", he said.

Pre-existing agreements provided employers with exemption from the Regulations. However, pre-existing agreements may be outflanked if 40 per cent of a workforce request information and consultation arrangements that may be different to the pre-existing agreement. If between 10 and 40 per cent of employees request it, employers are required to conduct a ballot of employees over the question of whether the pre-existing agreement or new information and consultation arrangements are desired. The standard – referred to as the "default" – position applies if employers ignore the request placing an obligation on employers to establish Works Councils at undertaking level.

In Raymond's judgment, taking the theme of the day to frame his view, there would be regulation, with the opportunity to go beyond simple box ticking. There would be reform: the ICE Regulations go further than traditional 'communications' approaches. However, he was not convinced that there was a revolution in prospect. The onus was on employees to trigger action, without which employers could simply 'sit on their hands' and do nothing. On the other hand, given the fairly low level (10 per cent) triggering a ballot requirement, in the event of 'cathartic' events there was plenty of scope for significant action. Finally, with the law be successful? From a lawyer's point of view ICE would be judged in terms of avoiding litigation. Raymond saw plenty of 'spark points'. He suggested that, while the CAC and EAT were available, an alternative disputes resolution intermediary might bear consideration: mediation could be the litmus test of success, in his view.

## "Lessons from continental experience?"

Fiona Webster (a consultant with ORC Worldwide, and expert on pan-European employment regulation) echoed the perceived challenges HR specialists in the UK faced in getting management 'on-side' for I&C. There were tensions between 'the law' and how organisations structure and manage a business.

Lessons may be learned from continental Europe, in spite of 'UK exceptionalism'. Works councils were universal mechanisms across continental Europe, demanding significant amounts of management time. British management tend not to work in this way. The regulations required a review of how employers define 'consultation' – beyond a traditional accent on "dumping information and running"!

A key learning point from Europe was the role of 'Experts', who are likely to be drawn from trade union sources. The 'ICE expert' was "very likely defined" in the Directives and Regulations. The number, role, and purpose of experts were not clear. This ambiguity may represent an opportunity for trade unions to influence practice in the future. European experience illustrated the range of interventions experts from outside the organisation can make. The role of experts can range from 'sitting-in' to taking a full part in the proceedings. The use of experts represented a potentially huge challenge to management: with whom were they talking – employees or a trade union 'expert'? Lessons learned seemed to imply that much depended on the individuals concerned: reports range from experts as a disruptive influence, on one hand, to being a helpful guide, on the other.

Confidentiality was another area for potential confusion and cause for dispute: the onus was on management to define and justify what's "confidential". Fiona expressed surprise at Sarah Veale's proposition that information and consultation may be blended with discipline and grievance procedures. Fiona's advice was that management should be very clear on what's involved. Agreements need to distinguish clearly between the concepts of information, consultation, and consultation with a view to reaching agreement (as well as of course from collective bargaining). Trade union representatives may need new skill sets to handle negotiation distinct from information and consultation. A major issue would come into play where trade union and non-union constituents were involved: who would be responsible for the process of 'skilling-up' representatives? Skills development applied to managers too, who may be unused to explaining information of this kind: communication is a two-way process. Some employers have said that, for the purposes of ICE, they would "simply do the same as what they do in briefing the City". But the question was whether there would be enough detail – a possible source of challenge from employees. In continental Europe, representatives were highly trained, for example, in reading profit and loss accounts, linking back to the skills issue.

There was also the question of elections and links between Works Council representatives and the wider workforce. For example, in Germany the links between Works Council representatives and day-to-day employee representation were limited. And if the information and consultation arrangement was to be a productivity tool, the question arises of how to get messages back to employees. Managers sometimes neglected this aspect. Delegating the task solely to employee representatives could be misguided.

In conclusion, Fiona countered claims that information and consultation was “nothing new”. This was “the start of a process”. Given likely future judgments by the Employment Appeal Tribunal and Central Arbitration Committee, over time, regulation could only get tougher.

## Q&A – In pursuit of the ‘high performance’ holy grail?

In the question and answer session for this panel of three, Clive Wright asked how much were Works Councils to be regarded simply as a sub-committees of European works councils. Fiona Webster answered that while companies with EWCs may aim for alignment, there was a trap for management in terms of references-up between national works councils and European works councils. Raymond Jeffers offered an anecdote where instructions had been received from a client to convert their EWC to a pre-existing ICE agreement. However in the final text, the Regulations state such a move is not valid. The ‘trade union hand’ may be perceived in this last-minute drafting amendment. However the official HMG line is that the two sites of information and consultation are fundamentally different. At the European level the councils were trans-national and prescriptive. The Government aimed for customised ICE arrangements relevant to the conditions of the British economy.

Richard Donkin (Financial Times) asked whether a formal definition of consultation existed. Also, in terms of specifying issues to be raised, how long did employers have to work on it? Raymond Jeffers responded that in the regulations the term was defined as “an exchange of views aiming to establish dialogue”. This was different to ‘communication’, as Fiona Webster had already observed. A three-stage process was involved, defined by the Courts: information was to be provided; employees representatives were to be given the opportunity to look at it and to formulate a reply; and then employers were to respond to that ‘informed reaction’. Raymond also referred to “super consultation” – defined as structured “with a view to reaching agreement”. A recent judgment included reference to “the duty to negotiate”. When employers should begin talking to employees rather depended on the circumstances. Richard Donkin had given an example of outsourcing work to the Ukraine. At one end of the spectrum, employers needed time to formulate plans to talk to employees about. At the other end if management announce “we’re doing it tomorrow”, that would not be consistent with the Regulations.

Jock Simpson emphasised relations, respect and trust as the key issues between the parties. The parties may still have “a falling-out from time to time”. But if relations between management and employee representatives were good then the process could be organised around these – if relations were bad there was a problem anyway. In Jock’s view, managers will always debate the definition of “consultation”. Regulations may facilitate moving up a notch from communications towards arrangements trade unions might like to have in place. Ultimately, it was all about intentions to make things work. Talking with ‘a view to reaching agreement’ was a principle of longstanding. However the degree of accommodation given to this varied organisation by organisation.

David Marsden (LSE) drew attention to new forms of employment as an important issue. Would it be possible to perceive information and consultation obligations extending to organisations where people were involved in project teamwork, not necessarily as standard ‘employees’. Project teams could be easily above 150 people. High-performance mantras were as relevant to temporary as to permanent employees. Raymond Jeffers replied that a central concept of the regulations was the nature of “an undertaking”, defined in terms of being “an economic entity”. The starting point is the organisational vehicle being looked at: temporary employees were unlikely to constitute an undertaking. A practical question follows: does temporary mean temporary? ICE arrangements may be perceived as being put in place with a longer life than short-term project activity.

Howard Gospel said that, while from 6th April 2005 it may not be technically lawful to enter into a pre-existing agreement, were their points of differentiation between the legal and the practical? Sarah Veale had said that it was ‘a crime without a victim’ to have a pre-existing agreement in place after 6th April 2005. Raymond’s Jeffers said that “if the parties want it who’s going to challenge?” There were no benefits to either party to do so. The issue was about agreements that work rather than strict box-ticking compliance.

Sarah Veale had concluded that everyone was looking for the Holy Grail of high performance workplaces. It was possible to contrast this with actions by employers intended to achieve nothing more than ticking a box. The issue to monitor may be what is the predominant employer desired outcome? Jock Simpson reminded that, at the time pre-existing agreements were being entered into, representations were being made by trade unions rather than workforce members. Iteration between employer and workforce may bring about a situation very different to pre-existing agreements, when trying to preserve the status quo of the industrial relations machinery.

Fiona Webster said ICE represented an opportunity to change management behaviour along a consultation continuum. High performance work organisations were simply a label – the Government had to link the Regulations with economic activity. Works Councils offered a ‘standing body’ for raising the employee voice. This was part of a multifaceted process, not a sole approach to increasing productivity. The question was: How representative would these bodies be? Maybe this would be a start for building high-performance work places; but only a starting point.

Fines could be imposed on employers for non-compliance with the Regulations up to £75,000. There were stories of employers saying ‘...what’s £75,000?’ The more important point, for Jock Simpson, was management’s image among employees were they seen to be “ducking their accountability” under the Regulations. Managerial action impacts the scope to create a high-performance work culture, with “a willing workforce”.

## Practices and Processes

### **Strategy or sausages on the menu?**

Phil Beaumont (University of Glasgow) said there were two perspectives to comment on informed by empirical research he had undertaken with Laurie Hunter for the CIPD. First, attention might be given to ‘structural issues’, on the assumption that ‘process’ will follow. Second, process was important, but “issues across the table”, between the parties to information and consultation, were the most critical. Professor Beaumont sought the middle ground between information and consultation triggered only by crisis situations within the organisation, and those where agenda items were limited to “putting sausages on the canteen menu”.

One of the areas that had arisen in discussion between the researchers and employee representatives was the question of trying to establish “ground rules for consultation” – how could ‘effective consultation’ be assessed? Change in attitudes – perhaps through training of representatives – may be important in order to make appropriate processes work effectively.

Professor Beaumont compared notions of “passive resistance” with “strategic shocks”. Where representatives saw a management decision elsewhere in the corporate structure as inconsistent with the information and consultation ground rules, problems were likely to follow. In his view, “the course of time” would be instructive: periodically challenges would emerge which if well handled would support relationships linked to information and consultation. Handled badly, negative consequences for employment relations were likely. These longitudinal factors may usefully be tracked through academic research.

Examples were offered of early challenges. These might be a complex technical issue such as problems surrounding pensions funding. With a big issue such as this, the question was "Can the information and consultation machinery installed handle it? A second example of an early challenge might be different perceptions of the levels at which information and consultation might take place. A third challenge was potential unwillingness of the parties to move away from a 'negotiating' stance.

## TiME to consult?

Two case studies were presented by practising managers. The first was by Kieran Scott (Employee Relations Manager, Telewest). Kieran said he wished to emphasise that information and consultation was only one part of the strategy his company had adopted aimed at "employee engagement". Still a relatively new organisation, operating in a "fiercely competitive" consumer services area, earlier in its evolution (2002) Telewest had engaged MORI (the polling company). A survey identified 47 per cent of the company's workforce as "disengaged".

Kieran said top management buy-in for I&C forums (established under the acronym 'TiME' – i.e. "Telewest involving me") was established through combining emphasis on "engagement", on the one hand, with the "big stick of legislation", on the other.

Training processes for representatives had been established, covering areas such as "making an impact with top management"; understanding corporate financial indicators; and employee relations – for example, accompanying other employees in disciplinary and grievance procedures. The first Telewest Divisional Forum had met in October 2004, followed by a Group Forum in December the same year (chaired by the Chief Executive).

Cynicism among representatives had had to be addressed. Why should they be interested beyond their immediate area of engagement to take an organisation-wide view? There was also scope for potential conflict between those combining a trade union role with that of a 'TiME' representative. The Company tried to maintain a clear distinction.

Among middle managers concerns had surfaced that TiME representatives might bypass them. Employment relations training had been necessary not only for staff representatives but involving managers as well. The issue of trust had been raised earlier – in many ways Telewest was still finding out how much trust could be built up between the parties. For example, confidentiality arrangements had been put in place, covering the release of sensitive corporate information.

Kieran said that, although the arrangements were still very new, a number of successes could be reported, where problems had been openly discussed and resolution achieved. He gave an example of a company bonus plan, where employee representatives had challenged the basis on which calculations had been made. Management had responded by making changes that had "delivered an additional £5 million to employees. This and got people's attention."

Between November 2004 and March 2005, TiME progress could be summarised in the following terms:

- A 'hotspots temperature check' where management attention was needed
- A guide for mutual management- employee feedback
- Reducing the gap between Chief Executive and divisional managing directors, and employees. TiME exchanges could mean the CEO talking face-to-face to Dudley telesales staff, for example
- A means by which tangible benefits could be measured associated with new product launches (e.g. a recent "3 [products] for £30 deal"), offering instant feedback to management on the effectiveness with customers of new products.

Chris Brown asked a question, based on some experience with the Communication Workers' Union. Were there opportunities to consult in any other forum? Kieran Scott replied that consideration of union-related matters had to be left behind in the TiME forum.

## Information and consultation - a well-kept secret?

The second corporate case study was delivered by Clare Smith, HR Director, Leonard Cheshire. Clare said that this organisation was "a well-kept secret" – something of a problem for the UK's largest charity! The organisation had been in existence for over 50 years, providing services for disabled people. Given the nature of its activities, the workforce was highly dispersed.

Four years ago a staff association was set up. The trigger was that in 2000 significantly adverse changes were made affecting terms and conditions, including reductions in pay levels, holiday entitlements and other core elements of the employment package. In 52 years of existence, "Leonard Cheshire had never asked staff what they felt". Consultation arrangements had been implemented alongside the negative changes, intended to show employees that management were "listening". But despite a listening orientation, management felt it had to act anyway to force through the changes due to the adverse financial conditions in which the organisation found itself. The organisation had very limited HR support at the beginning of the change period: there were only four HR specialists for a workforce of 8000.

"We found that, in spite of the negativity associated with the changes and strictures, going round and talking with people led to a positive reaction: in short, people liked being listened to". This was a revolution as far as managers, outside the HR function, were concerned. "We'd destroyed trust and needed to rebuild it. The chief executive said he wanted a three-legged stool to avoid overbalancing employment relationships in the future".

180 staff councils were set up, meeting every four to six weeks. A regional staff association met quarterly. And a National Staff Association met three times a year. It was soon found that “bits didn’t work”: for example the three times a year meetings of the National Association were increased to four times a year. Changes had been made with experience. An executive committee of the National Council had also been set up that meets “as and when members feel like it”. Another error made in the early stages was that the 350 managers working for Leonard Cheshire had been excluded from these consultation arrangements. Staff association meetings for managers had been added as an extension to regional management team meetings, and managers were added to membership of the National Association. This did mean that the National Staff Association was now “quite big”.

An ballot had been conducted to make individual elections to the councils, prior to the first National Staff Association meeting. The ballot asked staff to vote on the form of representation they wanted? There was only a 30 per cent response rate: 10 per cent wanted a trade union; 10 per cent favoured a staff association. The final 10 per cent supported ‘no-change’. Management were disappointed at this apparent apathy. They had been told that it was important to get the ‘right people’ to serve on the forums. “We were happy to give any people.” By way of a quid pro quo, with the introduction of the new arrangements, management made certain concessions, “giving something back on terms and conditions, so that staff might feel they’d got something out of the process”.

Management thought “We’re off and running”, but (admitting perhaps naïve thinking) Clare said they found “apathy reigned supreme!” Among the problems surfaced, managers felt they were being bypassed. They had always enjoyed unitary power in the past; now people might challenge them. But, without trust, apathy continued the status quo. There was also a recruitment crisis – it was very hard to get people out of their normal work to take part, as “resources were tight”. And people “didn’t know how to be reps”. Clare said the organisation had also underestimated the importance of the role of the chair. Those concerned were full-time workers, and it was recognised how unrealistic it was to expect an active role on the part of chairs without adequate supporting them with resources, in terms of time to perform their duties. The problem had been subsequently addressed.

In spite of these problems, Clare concluded: “we’re still there four years on”. Also “when we negotiate, we make a blaze of publicity in staff communications”. Managers’ objectives now also included requirements to have “an active and successful staff association”, which Clare said had “concentrated people’s minds”. Training and support to representatives had been improved.

The cost of running the staff associations was estimated at £800,000 per annum. The main element of this cost was replacement cost of staff released to attend local staff association meetings. The benefits for management had been a sense of better involvement of staff in the organisation. Clare used the falling statistics to illustrate her claim: in a staff survey, 85 per cent said they were proud to work for Leonard Cheshire. 75 per cent said managers were good; and 60 per cent agreed that communications from management to employees were good. In summary, Claire Smith felt that the adoption of information and consultation combined corporate responsibility with legal compliance.

## The great debate

A 'professorial panel' had been assembled and tasked with briefly summarising perspectives on the day's proceedings, through the lens of panellists' expert knowledge and experience. This was organised under the rubric of 'prospects for and implications of the ICE Regulations'.

First, some emergent questions:

- What are the issues around 'establishing I&C as a habit'?
- How do both structural and intangible issues get addressed (e.g. trust)
- Is it about blending-in discipline and grievance process or breaking completely new ground?
- Is the 'high performance organisation' aim no more than a convenient label?
- What of observed trade union tardiness in taking initiatives?
- And of managements simply ticking 'compliance boxes' or reacting defensively when struck by 'cathartic events'?
- Did the case studies illustrate the two ends of the spectrum of engagement in information and consultation?
- Were there lessons to learn from Europe (e.g. 'expert's' role) despite a British exceptionalism?
- In short: would the ICE Regulations prove 'an asteroid or a damp squib'?

Mark Hall (Principal Research Fellow, Industrial Relations Research Unit, University of Warwick) said his research tended to reinforce the comments made by Jock Simpson. "Legislatively-prompted voluntarism" implied that information and consultation arrangements depended for success less on structures and more on "good industrial relations". On the ground, employers appeared to be adopting a 'risk' assessment orientation and it was mainly companies with established industrial relations arrangements who were proactively engaging with the new approach to informing and consulting – few firms were starting from scratch. And trade unions reported opposition to agreeing mechanisms for company-wide consultation involving non-union representatives.

Union recognition was the priority – there was little sign that the unions were preparing to use the ICE regulations as part of organising campaigns, however. The pronouncement was one of a slow start to implementation of the new Regulations that might be attributed to the combination of “flexible legislative design and employer/union caution”.

Professor Keith Sisson (ACAS), offered a perspective that combined ACAS evidence with personal insight. By way of a corrective to reported indications of only sluggish interest in ICE developments, the ACAS online ‘toolkit’ on involvement had received 6,000 registrations within the first 50 days. And, while evaluating take-up in terms of the number of pre-existing agreements delivered disappointing findings, a more qualitative interpretation indicated, for example, employee representatives being accredited for ICE purposes within major US IT companies for the first time ever. In Professor Sissons’ view, ICE represented the last chance for British industrial relations voluntarism. Failure to embrace the opportunities now on offer risked handing over regulation of employment relations to the lawyers. Trade unions might live to regret it if they failed to take advantage of an effectively two-tier recognition system: only 10 per cent employee mobilisation was needed to orchestrate a recognition claim. Could we rely on the ‘cock-up’ theory of management to prevail?

Building on his own earlier remarks and reflecting on the day’s iterations, Professor Phil Beaumont summarised his view in four key points:

1. It’s what and who we look at and how we do so that will be important. Expectations need to be reality checked: poor communicators will probably remain so ten years from now. But qualitative enhancements may be discernible – and beneficial.
2. The big fear is how we measure ‘asteroid’ versus ‘damp squib’ trend-lines. If the DTI is accountable to meet Treasury imposed requirements to ‘add up the numbers’, then ICE compliance boxes ticked and numbers/frequency of Works Council meetings may give the appearance of progress, if the emphasis remains exclusively ‘structural’. But gauging qualitative shifts in the sophistication of information and consultation between employers and their workforces was a “trickier” public policy monitoring challenge.
3. In cases where evidence suggested more up-beat developments, could the challenge of ‘case atypicality’ be rebutted? ‘Average’ informers and consulters might move to ‘good’ and ‘good’ to ‘very good’. If these were atypical cases, the task for academic research was to explore ‘why?’ Honest respondents indicated that the new Regulations were the catalyst for a ‘re-think’ of the status quo.

4. A safe prediction was that union complacency in the 'eye of the storm', as economic and managerially initiated changes impacted workplaces and employees was unwise. The 10 per cent ICE representation ballot trigger could impact on union/non-union organisation in unexpected ways.

Closing the day's proceedings, LSE Professor David Marsden said he felt his director's opening promise of a rich set of mutually advantageous exchanges had been fulfilled. Looking forwards conceptually, he said that the old dichotomy of union versus non-union workplace was likely to prove inadequate in shaping future research. Instead, the focus may be fruitfully directed towards the quality of employee representation, and resultant 'climate of employment relations', manifested in a mosaic of substance and process. Embracing this alternative orientation had important consequences not only for the questions to be analysed, but also for the methodological choices to be exercised in doing so.

## RESOURCES

ACAS guidance

[http://www.acas.org.uk/a\\_z/info\\_consultation.html](http://www.acas.org.uk/a_z/info_consultation.html)

CBI Information and Consultation Forum:

[www.cbi.org.uk/ndbs/Content.nsf/802737AED3E3420580256706005390AE/016EB0924DAA31DD80256E61003832A5](http://www.cbi.org.uk/ndbs/Content.nsf/802737AED3E3420580256706005390AE/016EB0924DAA31DD80256E61003832A5)

CIPD factsheet (originally issued April 2003; latest revision October 2004. It offers a business case and CIPD viewpoint, as well as an explanation of the practical implications for UK companies

<http://www.cipd.co.uk/subjects/hrpract/polproc/infocondir.htm>

DTI Guidance (January 2005): The Information and Consultation of Employees Regulations 2004

[http://www.dti.gov.uk/er/consultation/i\\_c\\_guidance\\_01.htm](http://www.dti.gov.uk/er/consultation/i_c_guidance_01.htm)

DTI response to FAQs and links to a range of useful documents on I&C:

<http://www.dti.gov.uk/er/consultation/proposal.htm>

Overview of the Regulations and ICE action flow diagram: booklet produced by Linklaters, One Silk Street, London EC2Y 8HQ. [www.linklaters.com](http://www.linklaters.com)

Personnel Today (15 February 2005)

Article may be downloaded from:

[www.personneltoday.com/Articles/2005/02/15/28010/Information+and+Consultation+Regulations.htm](http://www.personneltoday.com/Articles/2005/02/15/28010/Information+and+Consultation+Regulations.htm)

People Management (24 March 2005)

Feature on Telewest case (pp. 30-32) and a 'how to prepare for I&C' article (pp. 46-47).

Telewest feature may be downloaded from <http://www.peoplemanagement.co.uk/pm/articles/smoothtalk>

## BACKGROUND TO THE REGULATIONS

EC Directive on Informing and Consulting Employees, 2002

DTI Discussion Document, 2002

CBI-TUC Framework Agreement

DTI Consultation Document, July 2003

DTI Guidance, January 2005

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