Abstract
This paper contains evidence submitted on the DTI green paper 'High Performance Workplaces: The Role of Employee Involvement in a Modern Economy: A Discussion Paper'. This follows on the EU Directive establishing a General Framework for Informing and Consulting Employees. The comments proceed as follows. The first section places the development of representative systems in Britain in a broad historical perspective, arguing that there have been a number of missed opportunities in the past in this area. The second section then maps the current situation - it deals with what British workers obtain by way of representation in general and information and consultation in particular. This is compared broadly in the third section with arrangements in three other major countries, the US, Germany, and France, where we suggest there are important lessons to be learnt. The fourth then deals with what British workers say they want. In the fifth section, we speculate about various scenarios and likely future developments. In the final section, answers are provided to some of the specific questions posed in the consultative document.

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High Performance Workplaces: the Role of Employee Involvement in a Modern Economy

Evidence on the EU Directive Establishing a General Framework for Informing and Consulting Employees

Howard Gospel and Paul Willman

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Introduction

Our evidence is presented in three parts. Section 1 of this paper gives our summary responses to the questions on which comments are invited in the discussion paper. Section 2, the longest, contains the arguments which underpin these answers. We look in turn at the historical background in the UK, the current pattern of representation and lessons to be learned from other countries. We then turn to the available evidence on employee's demands for consultation, concluding with an assessment of some likely consequences of implementation of the Directive. An Appendix to the paper contains a number of detailed comments on the current text of the discussion paper.

1. Responses to Questions

We have responded to six of the eight questions posed. Question four is directed at those responsible for information and consultation within undertakings. We have nothing specific to say about question eight, concerning small firms which fall outside the scope of the Directive

- What do you see as important contributors to high performance workplaces?

There is a voluminous literature linking human resource practices to workplace performance. However, we were surprised to find this the opening question in a discussion paper on the Directive. If one's objective were to maximise workplace performance one would not necessarily begin with a discussion of the consultative rights of employees, so to do the reverse is at least curious. There is no unequivocal link between levels of or improvements in information to or consultation with employees and performance at the firm or establishment level.

A feature of the current draft is that there is occasional confusion between managerially-initiated techniques of employee involvement directly intended to boost performance and the representative structures for employees required by the Directive. A danger here is that legislation directed at performance enhancement rather than information and consultation might not satisfy the requirements of the Directive.

- What do you think employees want from their place of work?

Our evidence shows that employees overwhelmingly want voice – influence over their place of work - and that they identify this with a combination of measures in which consultative opportunities hold a position of importance. This leads us to conclude that the implementation of the Directive will be welcome to many employees

- What benefits do you see in employees being informed and consulted about their company or organisation?

We see benefits to employees in a greater sense of involvement and knowledge of their workplace, perhaps leading to a reduction in uncertainty. The benefits to firms will arise primarily where adoption of the Directive's requirements is part of a broader approach to employee voice.

- What issues do you think employees should be informed and consulted about? How and when do you think this should happen?

We address the premise of the question. One legislative approach is to specify events which trigger consultation and information. This is uncomfortably close to the "one size fits all" approach rejected in the text of the draft. Another approach is to design a process of consultation and information sharing which, while perhaps specifying a minimum set of triggers, allows managers and employee representatives to drive their agreed agenda.

A key issue is the level at which consultation and information sharing occur. Some issues are workplace-specific. Some affect many establishments in large companies. In both cases, it is essential that enough time be allowed for employee representatives to assimilate information and respond, but these time scales may differ. We stress the need for multi-level information disclosure and consultation within large enterprises, with perhaps different issues and time scales at different levels. Perhaps where one focuses on information disclosure and consultation primarily as a performance enhancing technique, one tends to ignore the importance of higher level consultation.

- Do you have any experience of information and consultation arrangements overseas that you think might be relevant to the UK?

We have presented such information for France, Germany and USA in the body of the text. The European examples, we believe, show two things. First, implementation of the Directive is compatible with high productivity. Second, there is a need to map implementation onto the strengths of the pre-existing institutional framework for employee representation and involvement. We think the prime lesson to be drawn from the USA is one for trade unions who would shun information-seeking and consultation in their preference for bargaining; this preference has not led to organising success in USA.

- What should be the key features of domestic legislation to implement the Information and Consultation Directive?

We identify two principles. First, the need for adaptation to institutional structures which in the UK we interpret primarily as framing legislation to provide as much scope as is compatible with the requirements of the Directive for employers and employees to drive the development of their own information and consultation processes. Second, integration; we see the implementation of the Directive as an opportunity to "clean up" and integrate the current UK legal requirements to inform and consult particularly in terms of processes and penalties for failure. Integration would have two benefits. First, it would alleviate any burdens of compliance on firms by rationalising existing requirements. Second, it would provide greater clarity to employees and their representatives about rights at work.

2. Argument

2.1 Introduction

This evidence focuses on the mechanisms by which workers, unionized and non-unionized, are represented at work and through which they obtain varying degrees of voice in employer decision-making. It highlights the mechanisms of information sharing, joint consultation, and

collective bargaining. An understanding of the interaction of these representative mechanisms is important for an appreciation of the present and likely future patterns of worker representation in the UK. Specifically, we suggest that forms of mixed forms of representation may in future prove more popular voice mechanisms – with both employers and employees – than they have in the past.

Forms of representation may be viewed in a number of ways. A basic perspective sees systems in terms of direct and indirect representation: the former occurs where the individual worker or group of workers is directly involved in decision-making, often around work tasks; the latter occurs where there is some sort of body through which employees express voice through representatives. Indirect forms of representation (the main focus of this evidence) may include collective bargaining through a union negotiating body or joint consultation through works committees or both. In these cases, representation can be exclusive or inclusive: in the former case, the representative body acts only on behalf of certain employees, for example union members; in the latter case, the representative body acts for all employees. Another perspective sees systems of representation as rungs on a ladder: the first rung is where a worker might be represented by a fellow worker on an individual matter; the second rung is where there is provision of information and consultation for employee representatives covering a group of workers or the whole workforce; the third rung is where workers are represented by a trade union which bargains on their behalf (Ewing 1990: 212; McCarthy 2000). A similar perspective sees representation in terms of a rising hierarchy of forms, from information (where workers are informed by their managers), to consultation (where there is an exchange of views, albeit with management ultimately deciding), and to negotiation (where there is a measure of contestation and joint decision making). The latter two perspectives imply both discrete representative categories and a hierarchy of their importance. We argue that both are increasingly questionable.

Further conceptual considerations need to be stated. Representation may exist on different types of issues, ranging from those which affect workers' immediate jobs (task-based) to those that are broader and more business related (policy-based). Moreover, representation may be seen as either events-driven or process-driven. Where it is events-driven, it is triggered by a specific, usually employer-initiated, event, such as a reorganization of work or a plant closure; where it is process-driven, representation is part of an on-going process in which the representative body is more likely to be permanent and to have an agenda which is pro-active. There may be single or multiple channels of representation. Finally, of course, systems may be voluntary or statutory.

In the latter two cases, the question arises whether these processes are likely to complement or conflict with one another.

The focus of our comments is on workers and their representation, largely concentrating on the private sector. The data are drawn from various sources, in particular from the Workplace Industrial Relations and Employment Relations Surveys (WIRS 1980, 1984, and 1990 and WERS 1998) and the British Workplace Representation and Participation Survey (BWRPS), as designed by staff at the Centre for Economic Performance (CEP) (Diamond and Freeman, 2001).

The comments proceed as follows. The first section places the development of representative systems in Britain in a broad historical perspective, arguing that there have been a number of missed opportunities in this area. The second section then maps the current situation - it deals with what British workers obtain by way of representation in general and information and consultation in particular. This is compared broadly in the third section with arrangements in three other major countries, the US, Germany, and France, where we suggest there are important lessons to be learnt. The fourth then deals with what British workers say they want. In the fifth section, we speculate about various scenarios and likely future developments.

2.2 Historical background and missed opportunities

Historically, employers unilaterally made most decisions on work matters. In some instances, usually on job-related issues, skilled or strategically placed workers could unilaterally regulate certain aspects of their working lives. In stages, from the late nineteenth century onwards, collective bargaining developed. In some situations, to ward off collective bargaining, a minority of employers established joint consultative arrangements of various kinds (Gospel, 1992: 79-84, 99). However, unions were opposed to, or at least suspicious of, consultative committees which they considered likely to undermine their appeal to workers and their ability to represent members.

During the First World War, both collective bargaining and joint consultation developed significantly at national and workplace levels. The Whitley Committee recommended that both should be further elaborated, with the former concentrated on pay and conditions, in particular outside the firm, and with the latter on other matters, especially at the workplace (Whitley, 1918). At the time, strong unions showed little interest in consultation; weaker unions accepted the proposals on multi-employer bargaining but again showed little interest in joint consultation without collective bargaining. Equally, most employers were reluctant to accept workplace level

representation either by shop stewards or other worker representatives. It was in Germany, at the time, in part drawing on British ideas, that a system of combined collective bargaining and joint consultation was introduced by legislation (Feldman, 1992). During the interwar depression, in Britain, collective bargaining narrowed and formal joint consultation contracted. Subsequently, both expanded for a second time, from the mid 1930s onwards and during the Second World War, with government support (Milner, 1995: 79-87). However, at the end of the war, again neither employers nor unions were sufficiently committed to sustain the joint production committees which had been established (Hinton, 1994).

In the thirty years after the war, unions saw their membership and power grow and demanded collective bargaining in preference to joint consultation. This contrasted with the situation in continental Europe where statutorily-based employee consultation was firmly established in Germany, France, and other countries and operated alongside collective negotiations. In the late 1960s, the Donovan Royal Commission advocated exclusively collective bargaining for Britain. 'Collective bargaining is the most effective means of giving workers the right to representation in decisions affecting their working lives'. Approvingly, it quoted McCarthy as saying consultative committees 'cannot survive the development of effective shopfloor organization: either they must change their character and become essentially negotiating committees… or they will be boycotted by shop stewards and fall into disuse' (Donovan, 1968: 27, 54; McCarthy, 1967: 33). When, a decade later, the Bullock Royal Commission reported on industrial democracy, it recommended union-based representation on company boards alongside collective bargaining. Bullock briefly mentioned, only to dismiss, German works councils (even though they arguably were a more important part of the German system than board level representation [Bullock, 1977: 42-43, 48, 126]). Union support for 'free' collective bargaining, hostility to joint consultation, and opposition to non-union channels of representation prevailed.

A number of conclusions may be drawn from this broad historical survey. First, the paradox of the voluntaristic system of 'free' collective bargaining was that it relied heavily on a framework of legal immunities and state support. It provided neither much of a ceiling on union aspirations, in favourable times, nor much of a floor in unfavourable ones. Second, in Wedderburn's terms, collective bargaining and joint consultation grew up in an interrelated and complex 'double helix' type relationship (Wedderburn, 1997: 30). At times, they complemented each other; at other times, the one subsumed the other. Third, in retrospect, unions and employers missed a number of opportunities to build a system of employee representation based on interlocking collective bargaining and joint consultation. In the case of

the unions, in the early 1970s, they missed the opportunity to secure positive legal rights when they were strong. When, from the late 1970s onwards, the legal framework for the voluntaristic system eroded, the coverage of collective bargaining quickly shrank.

From the 1970s, a number of factors shaped representation in Britain. First, legal intervention steadily increased. Some of this was initially auxiliary to collective bargaining, such as the provisions for union recognition and for information disclosure introduced in the early 1970s. Some mandated forms of representation on specific issues, such as health and safety and, consequent on EU membership, collective redundancies and transfer of undertakings. These procedures initially gave legal priority to union representatives, but, in their absence, allowed for non-union representation (Gospel and Lockwood, 1999). Second, the political and legal context which favoured unions changed with the election of the Thatcher government in 1979. Through subsequent years, immunities were removed and restrictions were placed on unions and their collective bargaining activities. Third, union membership and the coverage of collective bargaining began to shrink. Undoubtedly this was in part the result of an increasingly hostile legal and political environment (Freeman and Pelletier, 1990). Fourth, from the 1980s onwards, employers increasingly looked to alternative voice mechanisms, based in part on indirect representation via joint consultation, but based more on direct communication and participation via direct workforce meetings, briefing groups, and problem-solving circles (Forth and Millward, 2002: 3-7). In these circumstances, unions faced a dilemma about acceptance of new forms of consultation established by employers or introduced under EU directives. Slowly and unevenly, they began to reconcile themselves to events-driven and multi-channel representation (TUC, 1995). However, union conversion is still not complete.

The election of a Labour government in 1997 led to the re-introduction of law on union recognition and the reformulation of law deriving from European directives on representation in collective redundancies and transfer of undertakings. In the latter areas, priority in the choice of representatives is now vested in a descending order of first union stewards, followed by representatives of standing consultative committees, and last by representatives chosen *ad hoc* for the specific purpose. In the case of multinational corporations, the government also implemented the European Works Councils Directive. This set two precedents. First, it established legally-based, standing, general consultative arrangements in Britain, albeit for a particular group of employees - those in transnational firms. Second, it treated representation as inclusive rather than exclusive, giving priority in the choice of representatives to the entire workforce and not to union members. Finally, from late 2001, the government has accepted the

EU Directive on Information and Consultation rights in national level undertakings. Thus, in terms of the law and practice, Britain has moved decisively down a multi-channel road, but has been left with a fragmented system of information, consultation, and representation (Gospel, Lockwood and Willman, 2003).

2.3 The present context of representation, information, and consultation at work

In this section, we use successive WIRS surveys for two purposes: first, to look at the state of employee representation in 1998, the date of the last survey; second, to assess patterns of change over the period from 1980 to 1998. Overall, we identify a story of reduction in coverage of indirect representation. However, the pattern of change is complex.

We turn first to the pattern in 1998. In that year unions were recognized in 42 per cent of all workplaces, with a presence, i.e. membership but no recognition, in 11 per cent. In other words around half of all workplaces had no union presence. In the private sector, unions were recognized in only 24 per cent of workplaces. Within the private-sector, the highest proportions of workplaces with union recognition were in recently privatized industries, such as utilities, transport, and communications. Both organizational and workplace size are positively associated with union recognition (Cully *et al.*, 1999: 92).

However, recognition is not representation. In 1998, 22 per cent of workplaces had union representatives, 10 per cent had non-union representatives, and 5 per cent had both. In the private sector, these figures were 15, 10, and 2 per cent respectively. On the whole, non-union representatives were slightly more likely to be found in workplaces where there was a union presence but no recognition than in any other situation. Also, where they were found, there was a slightly higher number of non-union rather than union representatives per workplace (a mean number of 4.7 as opposed to 3.7) (Cully *et al.*: 1999, 96). Of course, overall it should be kept in mind that a majority of workplaces had no representatives of any kind.

In 1998, the coverage of joint consultative committees was not very different from that of collective bargaining in that 29 per cent of all workplaces had a workplace-level consultative committee. In the private sector, this figure was 26 per cent of all workplaces. However, in both cases, a slightly lower percentage had a functioning committee, i.e. one which met at least three times a year (23 and 20 per cent respectively). But the counterpart of this is that there is a decline in the scope of collective bargaining (Millward *et al.*, 2000: 138-183). Consultative committees can exist at various levels. Thus, in the private sector, 16 per cent of workplaces had

a committee at workplace level and 18 per cent at a higher level, but only 8 per cent had both. Size effects here are complicated. Workplace size is positively associated with the existence of a workplace committee, but negatively associated with the use only of a higher level committee. Organizational size is negatively associated with workplace committees, but positively associated with higher level committees or a combination of the two (Cully *et al.,* 1999: 99; Millward *et al.,* 2000: 109).

Union recognition and consultative committees appear to be associated, in each size band. Thus, overall, 38 per cent of workplaces with a recognized union had a committee, compared to 20 per cent of those where there was no union presence. In the private sector, these figures are 32 and 20 per cent respectively. On the basis of this, Cully *et al.,* (1999: 100) conclude that 'union representation and indirect employee participation go hand in hand rather than being substitutes'. However, they also suggest that, in non-recognized workplaces where there is union presence, consultative arrangements do not appear to be a springboard for recognition (Cully *et al.,* 1999: 101).

Overall, the *scope* of joint regulation by any methods is modest. Table 1, which is for both private and public sectors, shows the balance of negotiation, consultation, and information sharing by issue in the minority of workplaces where there is on-site representation. In workplaces where there are union representatives, bargaining is clearly dominated by pay and to a lesser extent by grievance handling. In these workplaces, aside from these two matters, consultation and information sharing is the dominant joint process. The largest category overall is no joint regulation. In workplaces where there are non-union representatives and no union recognition, information and consultation are the dominant processes, but a surprising amount of negotiation is reported on health and safety and on pay and conditions. Again unilateral management regulation is a large category, but less so in workplaces where there are union representatives. The average number of issues over which negotiation occurred was similar at 1.1 for union representatives and 0.9 for non-union representatives. The average number of issues on which consultation occurred was 2.9 for union representatives and 3.7 for non-union representatives. Generally, the topics which score highest in terms of some sort of joint regulation are health and safety and grievance handling, both of course underpinned by statutory requirements (Cully *et al.,* 1999: 104-5).

In the private sector at least, the main form of workplace communication and participation is of the direct kind. Thus, 35 per cent of workplaces have problem-solving groups, 35 per cent regular workplace meetings, and 43 per cent team briefing groups. Taking these three practices

(problem solving groups, workforce meetings, briefing groups), 75 per cent of all workplaces and 72 per cent of private-sector workplaces had one or more of these; the average workplace had 1.2 and the average private-sector workplace had 1.1 (Cully *et al.*, 1999: 64-69 and WERS98).

Turning to change in indirect representation over time, the main points to draw from Table 2 and from the survey of all the WIRS surveys (Millward *et al.*, 2000) are as follows. First, there is a major decline in union density and presence, in particular in the private-sector, where also recognition halves across the period. The proportion of workplaces where collective bargaining was the dominant form of pay determination fell overall from 60 to 29 per cent between 1984 and 1998. In private manufacturing it fell from 50 to 23 per cent and in private services from 36 to 14 per cent.

Second, the pattern of change in consultation is different. Overall, the decline is less marked than for the union-related variables. It is true that the relative proportion of workplaces with non-functioning consultative committees grows, but, as stated, there was also a 'hollowing out' of collective bargaining institutions. The overall and private-sector trends on consultation coverage are not as divergent as those on union variables; in fact, it will be noted that there is a rise in private-sector consultation coverage between 1990 and 1998. Third, the percentage of private sector workplaces with a union representative fell from 41 to 17 per cent between 1980 and 1998, whereas those with a non-union representative (where no union representative) increased from 21 to 50 per cent. Both where there is union recognition and presence, the incidence of union representatives has fallen, especially in the latter case. Non-union representative numbers have risen in all cases. However, overall, fewer workplaces have any form of employee representative in 1998 because the decline in union representation has not been fully offset by the increase in non-union representation (Millward *et al.*, 2000: 115).

Third, we observe the growth of direct voice arrangements. Thus, regular meetings between senior managers and the workforce, problem-solving groups, and briefing groups increased significantly in the private sector. Between 1984 and 1998, the proportion of workplaces where there was union-only voice fell from 24 to 9 per cent; the proportion where there was both indirect voice (union and non-union) and direct voice fell from 45 to 39; but those where managers relied solely on direct arrangements rose from 11 to 30 per cent (Millward *et al.*, 2000: 127). In the case of briefing groups, in 1998, the increase was confined to workplaces without a union and those without a consultative committee. In the case of regular meetings and problem-solving groups, these were more common where there was union representation and where there

was joint consultation. Overall, according to Millward *et al.* (2002: 22-3), direct communication practices do not seem to have been used to supplant indirect representation via trade unions, but there is some weak evidence that they may be used to exclude unions.

Finally, on the survival rate of arrangements, 85 per cent of private sector workplaces recognizing unions in 1990 still had them in 1998. By contrast, the proportion of functioning committees to survive over the period was 63 per cent. The figure was a little lower for workplace-wide meetings (58 per cent), problem-solving groups (56 per cent), and briefing groups (42 per cent). Overall, therefore, despite its decline, union voice would seem to be more durable than non-union; but, of course, it has also been less likely to be established in new workplaces. A key point to close on is that the majority of establishments enduringly prefers voice to no voice. Willman *et al.*, (2002) show that the proportion of all establishments covered by WIRS and choosing voice remains stable over time. In 1984, 84 per cent of establishments had some form of employee voice. Although the voice mechanisms changed, 82 per cent of establishments in 1998 continued to have voice mechanisms

2.4 International comparisons

As part of the analysis of present and possible future UK patterns, it is useful to examine briefly forms of representation in three other major countries, the US, Germany, and France, chosen for lessons they may have for Britain. As the discussion paper notes, all have, on various measures, higher productivity than UK.

The US provides a useful comparison, given a common inheritance of a reliance on collective bargaining as the key form of employee voice. Historically, US unions sought joint regulation with employers through collective bargaining, though with limited success. On the other hand, a leading set of large employers established employer-dominated unions and non-union representative committees (Jacoby, 1985: 187-189; Jacoby, 1997: 20-34). With the New Deal, the 1935 Wagner Act outlawed the latter arrangements, and, to the present date, indirect representation without unions risks illegality. As a result, employers have been constrained in operating consultative committees which are not union-based. Unions have sought exclusively to bargain and have not pushed for voluntary consultative committees or councils. The outcome is that collective bargaining coverage has shrunk, indirect forms of worker participation have not developed, while direct forms of employee involvement have grown.

Under the Clinton administration, the unions hoped to achieve changes in the legal framework that governs recognition for collective bargaining. Some of the research for the resulting Dunlop Commission touched on the possible desire on the part of US workers for joint consultative arrangements; however, proposals for legislative changes focused on the framework of recognition and collective bargaining law. As a counter, a group of employers promoted the so-called Team Bill which would have promoted direct forms of participation. Neither set of proposals was passed into law. Thus, US unions remain dependent on organising for collective bargaining. Union density in the US has fallen to 9 per cent of the private-sector labour force and on one prediction could fall to 3 per cent by 2010 (Freeman, 1995: 533).

Germany has provided a significant contrast with the UK for practioners and students of industrial relations. Unlike Britain, Germany went down the road of multi-channel representation - collective bargaining outside the firm, alongside legally-based joint consultation at the workplace and company levels, and representation on the supervisory board of companies. Our analysis of information disclosure and consultation in Germany (Gospel and Willman, 2002) shows German unions have benefited from their relationship with works councils and vice versa. Works councillors tend to be union members, the union provides advice to the council, and this in turn gives the union influence. In law and practice, employees through their works councils receive more information and experience more consultation than their British counterparts. However, in recent years, works councils have in some instances superseded unions, with more being discussed through the consultation process and with more deviations from nationally bargained agreements. For unions, this has presented the challenge and opportunity of developing new coordinating and servicing roles (Turner, 1991; Thelen, 1991; Mitbestimmung Kommission, 1998; Frick and Lehmann, 2001).

The German story is therefore usually seen as positive for union representation where, on the whole, joint consultation and collective bargaining have complemented one another. From 1980 to 1999, union membership has fallen from around 38 in West Germany to 29 per cent for the whole of Germany; the coverage and scope of collective bargaining and joint consultation remain high, though with some shift towards decentralized dealings with works councils.

By contrast, the French story may be seen as a more negative one for unions. Historically, France also went down the road of multi-channel representation, with legally-based joint consultation alongside collective bargaining. Periodically, French governments have intervened in industrial relations to support consultative arrangements. Since 1945, the law has mandated the election of a *comité d'enterprise*. As further amended by the Auroux legislation in the early

1980s, the purpose of the *comité d'enterprise* is to ensure expression of the views of employees and to allow their interests to be taken into account in decisions. French employers are legally obliged to inform and consult employees over a wide range of matters (Gospel and Willman, 2002).

However, periodically French governments have needed to intervene to reinforce the system. In part, the more limited success of the French system is because *comité d'enterprise* have less extensive rights and are more employer-led than German works councils. In larger part, it is because French unions are more fragmented, have less presence at the workplace, and consequently have been less able to use the law and institutions. Union membership has fallen from 18 per cent to 9 per cent over the last ten years and the scope of collective bargaining at workplace level is narrow. One might draw the following conclusions. On the one hand, there is evidence that joint consultation and collective bargaining have not complemented one another in France and the former has often come to substitute for the latter. On the other hand, French workers would undoubtedly obtain less in the absence of the *comité d'enterprise* and arguably French unions have been able to maintain a foothold in many firms largely because of the role they play in these arrangements (Howell, 1992: 100-102).

National systems are of course deeply embedded in national histories and cannot be easily replicated. So, are there any lessons for British unions in these different national patterns? We would argue as follows. If British unions follow those in the US, they may become ghettoized within the ever-shrinking perimeter of collective bargaining. On the other hand, there is a possibility that they could take advantage of works council-type arrangements, as in Germany. However, the French case shows this is no automatic route to success if they are unable to take advantage of such arrangements. Drawing on Germany and France, an obvious question is whether European-style representational arrangements can be successfully transferred to the UK. We have seen that there have been changes in UK practice towards mixed systems; joint consultation is of some interest to employers and of increasing interest to unions. A key question is: would British workers be interested in a move towards joint consultative arrangement and mixed systems of representation on European lines? We address this in the next section.

2.5 What do British workers want?

There are substantial difficulties involved in ascertaining what representation workers want. Workers may say they want one thing in everyday circumstances, but may want something else

in more exceptional circumstances when confronted with a major change in contractual arrangements or when there are major redundancies. Here we draw on the BWRPS survey, which is more likely to reflect what workers want on an everyday basis.

As is often the case in such surveys, a majority of British workers report reasonably high levels of satisfaction in their jobs and of commitment to their employing organization. However, they are often critical of management - more so than suggested in a comparable US survey (Freeman and Rogers, 1999) and a majority desire more say in decisions about work tasks, pay levels, and organisational governance. In total, 38 per cent identify current problems with unfair and arbitrary treatment in areas such as rewards and discipline and report favouritism and bullying. Despite this, 50 per cent of all workers reported that they do not go to anyone for help with work difficulties. This fairly high flow of problems in British workplaces is confirmed by the rapid increase in recent years in enquiries to the Advisory Conciliation and Arbitration Service and Citizens Advice Bureaus and cases to Industrial Tribunals.

There would also appear to be a related representation gap. Table 3 suggests that most workers would prefer to deal with problems collectively rather than individually. The only area where there is a clear preference for individual remedies is promotion. However, in most cases the preference is for dealing with issues via a group of fellow workers rather than a trade union or staff association representative. Perhaps not surprisingly, union members show a stronger preference for collective solutions and prefer union representation rather than working through a group of fellow workers. The exceptions are again on matters of promotion and training, where union members would look more to a group of fellow workers. Non-union employees prefer fellow workers to unions as the method of collective action on all issues. It is notable that workers in situations where there is a recognized union and where there is both a union presence and a consultative committee would seem to have the highest preference for collective solutions.

Table 4 explores this further showing that a majority (72 per cent) of employees think their workplaces would be better with some form of collective representation. This breaks down as 92 per cent of union members and 61 per cent of non-union members. However, in the case of union members, it is striking that only 11 per cent favour a union on its own, whereas 74 per cent favour both a union and a joint consultative committee/works council. Non-members wishes are more dispersed: 34 per cent want no form of representation, 29 per cent favour a joint consultative committee on its own, 27 per cent favour a joint consultative committee and a trade union, but only 5 per cent favour a union on its own. Workers in situations where there is already a union and a consultative committee are the most in favour of dual-channel

representation (72 per cent), but it is also striking that workers in situations where there is a recognized union or a union presence are also well disposed to dual representation. There is little preference for a consultative committee on its own, except where this already exists. All this suggests that many union and non-union members see the various institutions as potentially complementary.

Moreover, the survey shows that 82 per cent of workers would be in favour of legislation which required management to meet with employee representatives. Overall, union members are more favourably inclined to statutory works councils than non-members (89 as opposed to 77 per cent). However, the belief in legislation is strongest (92 per cent) where there are already dual channels. In addition, there is a strong feeling that works councils should be elected by workers (72 per cent), have legal protections from possible discrimination by employers (75 per cent), and meet on a regular basis and not just at management discretion (89 per cent). But, the proportions favouring confidential information for employee representatives is relatively low (40 per cent in the case of union members and 33 per cent in the case of non-members).

Joint representation by a trade union and a consultative committee / works council would seem to have some pay-off in terms of satisfaction with information disclosure. Table 5 suggests that most workers feel very or quite well informed, with lowest levels of satisfaction about future employment and staffing plans. There is no clear difference between union and non-union members, except the former have an advantage in knowing what other people doing their job were earning, reflecting the union role in wage bargaining. Generally, workers in a situation where there was only a consultative committee / works council felt the best informed. This was followed closely by situations where there was both a consultative committee / works council and a trade union. Workers felt least well informed where there were no representative arrangements, but close to this were situations where there was exclusively a trade union. There are various reasons why union members may feel they receive less information – they may have higher aspirations which are unmet; management may feel more constrained to give information; and union representative may not pass on information to members. However, it is significant that, where there is both a union and a consultative committee / works council, there is a high level of satisfaction with information disclosure.

In summary, there is a demand for more indirect representation and voice among British workers. However, both among non-members and members, there is not a strong demand for union voice alone. Consultative committees / works councils, especially legally-based, are

clearly very attractive to both non-members and members and are viewed as complementary to trade unions.

2.6 'A New Era in Employment Relations'?

Finally, we turn to what representation British workers are likely to get. On union recognition, the present legal procedures will have a small direct effect and a somewhat larger indirect effect. However, the overall impact will be limited. On union membership, over the last few years, there has been some increase in numbers, but no increase in density, and it will be an up-hill struggle for unions to maintain or increase momentum in recruitment. Even if recognition and density were to stabilize or increase, there seems little likelihood that the decline in the coverage of collective bargaining will be reversed in the short term, especially in the private-sector, where employers' and employees' preferences are for forms of representation and participation other than collective bargaining (Millward *et al.*, 2000: 197-199). By contrast, on recent trends, direct forms of information sharing and employee participation are likely to continue to increase.

So, what of indirect representation via joint consultation and its intersection with collective bargaining? Here, the recent passage of the EU Directive on Information and Consultation (2002/14/EC) is likely to play an important part in shaping future developments.

The Directive will affect large enterprises (over 150 employees) by early 2005 and eventually cover all undertakings with more than 50 employees by 2008. This means it will cover three quarters of the UK labour force. Undoubtedly, the Directive will start to have an immediate impact as management and unions plan for its implementation. In the Directive, consultation is defined as an 'exchange of views and the establishment of dialogue' (Article 2) - implying an ongoing process. Article 4 (2) outlines the substantive areas: (a) there is an obligation to provide information on the general business situation of the undertaking; (b) there is an obligation to inform and consult on the likely development of employment and on 'anticipatory measures' which might threaten employment; and (c) there is an enhanced obligation to inform and consult on decisions likely to lead to substantial changes in work organization or in contractual relations. These are minimum mandatory topics but other topics are permitted to be covered. Consultation must take place at an 'appropriate' time and so as to enable employee representatives to study the information and to prepare for consultation. It shall also be 'at the relevant level of management and representation depending on the subject under discussion' - implying that there should be different levels of representation and consultation

within an undertaking. On item (c), the consultation shall be 'with a view to reaching an agreement' (Article 4) - implying an ongoing process of give-and-take. In all cases, management is obliged to provide a reasoned response to representatives' opinions. Representatives are also to be given adequate 'protection and guarantees' to enable them to perform their duties (Article 7). On matters of confidentiality, the employer may withhold information which it considers would seriously damage the undertaking, and representatives and 'any experts who assist them' may be made subject to an obligation of confidentiality. Sanctions for failure to comply shall be 'effective, proportionate, and dissuasive' (Article 8). Employers and employee representatives may negotiate different arrangements before and after transposition - but these would have to respect the principles of the Directive (Article 5).

The transposition of the Directive into UK law will depend on political circumstances, and the debate will be along a spectrum of what Wedderburn has described as 'soft' and 'strong' rights (Wedderburn, 1997: 34). However, some outcomes are reasonably certain. For example, forms of direct participation will not qualify. Equally, *ad hoc* and issue-specific arrangements will not qualify - given that the Directive talks about a 'permanent' and 'general' system of consultation (Article 10). Many existing systems of consultation will not qualify - such as where representatives are appointed by management. Trade union collective bargaining will qualify - subject to non-members not being disenfranchised. Moreover, from the wording, it seems likely that arrangements will have to be created at multiple levels within enterprises. At the time of writing, other outcomes are more problematic. The following are particularly unclear. How, in the absence of an employer initiative, will a request for a council or committee be instigated? Will there be a process of balloting? Who will be deemed to be representatives and how will such persons emerge? What will be the exact nature of sanctions? Whatever the legislation, as with all EU-derived law, the transposition will be subject to interpretation by the European Court of Justice which in the past, in areas such as representation, sex discrimination, and working time, has rendered Directives far-reaching. The implementation of the directive will seemingly depend on the preferences of employees and on the capabilities and actions of employers and unions.

On the basis of the foregoing, what can we speculate about this? On the part of employers, their advantage lies in the fact that for some time they have controlled employee relations and in many cases have introduced more sophisticated human resource policies. On the other hand, in addition to the new law, there are other constraints. Employees would seem to want more representative voice at work, and employers now confront more confident unions than they have

for many years. Undoubtedly, some employers will seek to avoid new arrangements, arguing either that they already have adequate mechanisms or that their employees do not want arrangements on these lines. This strategy clearly has dangers in that it may be challenged by unions, in all or in parts of an enterprise. For other employers, there is an opportunity to establish arrangements, either wholly or partially new, either with or without trade unions.

Union fears must be that employers may use the Directive to exclude or eject them and that they have neither the leverage nor the capability to mobilize workers to achieve and operate new information and consultation arrangements. However, there is evidence that employees desire more voice at work, many workplaces have a union presence which can be built on, and unions now have legal supports which they can potentially turn to their advantage. At one end of the spectrum, where unions already have a high level of membership and bargaining coverage, they may eschew new arrangements, but use the law to capitalize on what they already have and expand the scope and level of consultation and bargaining. At the other end of the spectrum, where unions have no presence, they will have little choice for employees but to accept what employers may put into place. Here unions will have mixed motivations as to whether they wish to see such arrangements succeed. Where arrangements are successful, this may mean permanent union exclusion; where they are less successful, this may mean new opportunities to intervene. It is in situations at the middle of the spectrum, where there is hollow recognition or a partial presence, at some levels or in some parts of an undertaking, that unions will confront challenges and have real opportunities to increase their membership and activities.

To conclude, the UK has a differentiated system of worker representation, where direct voice has been on the increase, indirect voice through joint consultation has held up, and voice through trade unions has shrunk considerably. In terms of indirect mechanisms, in both law and practice, the UK has already moved down the road of multi-channel representation and is likely to move further in this direction in future. British workers clearly want more voice, but with a preference for joint consultative arrangements and based on multi-channel representation. The present situation presents a set of major challenges and opportunities for the industrial relations parties. In the light of the Directive, the opportunity for government is to establish for the first time in the UK a permanent and effective general system of information and consultation at work. Some employers may see this as an opportunity to create weak voice mechanisms; for others, there is an opportunity to establish strong arrangements which may complement one another. The challenge for unions is to be able to build on these arrangements and to maintain and expand their role within them.

Appendix

Detailed comments on the discussion paper considerations and questions.

Below there follows a detailed set of comments on the discussion paper and on the considerations and questions posed therein. We take the paper section by section.

Executive summary

Para 1. 'It will not be imposed on workplaces; it will give those workforces who want it the right to information and consultation'. Giving the right implies that there will be some mechanism, such as balloting, whereby a workforce will be able to actualise the right to establish machinery.

Para 3. 'Successful' workplaces. In our analysis of WERS, we do not find much effect of information sharing alone on performance, with the exception of an effect on quality of goods and services. Information sharing may only work when other voice mechanisms are supportive.

Para 4. The reference to 'team briefings and quality circles'. There are various references throughout which in places imply that that these direct forms of participation may qualify as mechanisms for information and consultation under the Directive. Our reading of the Directive is that, if challenged, they would not qualify, because they would not pass tests of independence, representativeness, and permanency.

Para 5. We strongly agree with the conclusion that the Listing Rules are not an obstacle to disclosure and consultation with employee representatives.

Chapter 1

Para 1.2. List of fair standards so far introduced. Why not list the national minimum wage which would seem to be relevant here and might be seen as an enabling basis for effective participation at work.

Para 1.3. Is it 72 or 75 per cent?

Para 1.4. See comment above about the small independent effect on information sharing alone. Disclosure may only work where there are strong voice institutions to support it.

Para 1.8. Information and consultation may not be an extension of collective bargaining, but arguably effective consultation may be a form of joint decision-making.

Chapter 2

Para 2.12. Reference to 'team briefings, workplace-wide meetings…' As stated above, this implies that that these direct forms of participation may qualify as mechanisms for information and consultation under the Directive. Our reading of the Directive is that, if challenged, they would not qualify.

Para 2.14. 'More than 50 per cent of workplaces operate some sort of joint consultative committee'. Our reading of WERS98 is as follows. In the survey year, 29 per cent of all workplaces had a workplace-level consultative committee. In the private sector, this was 26 per cent of all workplaces. However, in both cases, a slightly lower percentage had a functioning committee, i.e. one which met at least three times a year (23 and 20 per cent respectively). Consultative committees can of course exist at various levels. Thus, in the private sector, 16 per cent of workplaces had a committee at workplace level, 18 per cent at a higher level, but only 8 per cent had both (Cully *et al.*, 1999: 99; Millward *et al.*, 2000: 109). See 2 (d).

Para 2.14. The reference to committees 'appointed' by management. Of course, such committees would not qualify under the Directive if challenged. See above.

Para 2.14. The discussion of pay may be higher in situations where consultation exists alone, in the absence of collective bargaining.

Para 2.17. Indeed the incidence of joint committees are related to union presence. They would also seem to be related to various forms of direct participation and employee involvement. Arguably the causal link runs from representative to direct participation. Much academic research suggests that the latter is more likely to survive and be effective where indirect representation via unions or joint consultation is strong.

You might wish around here to say something about the durability of institutions. 85 per cent of private sector workplaces recognizing unions in 1990 still had them in 1998. By contrast, the proportion of functioning consultative committees to survive over the period was 63 per cent. The figure was a little lower for workplace-wide meetings (58 per cent), problem-solving groups (56 per cent), and briefing groups (42 per cent). Overall, therefore, despite its decline, union voice and consultative committees would seem to be more durable than direct forms of participation.

Chapter 3

Paras 3.3. 3.5. These paragraphss refer to what we describe as events-driven v. process-driven information and consultation. Where information and consultation is events-driven, it is triggered by a specific, usually employer-initiated, event, such as a reorganization of work or a plant closure; where it is process-driven, representation is part of an on-going process in which the representative body is more likely to be permanent and to have an agenda which is pro-active.

Para 3.6. We agree with your interpretation of the Listing Rules. Of course, it could be argued that the final paragraph implies a disadvantage for, and discrimination against, employees who do not have representatives.

Chapter 4

Para 4.3. A key feature of the French *comité d'enterprise* is that it is chaired by management.

Para 4.4. German legislation provides for information and consultation for 'employees of individual divisions of the establishment'. The question of levels is an important one and will certainly be a tricky one when it comes to transposition and practice in the UK. Remember that the Directive states that information and consultation shall be 'at the relevant level of management and representation depending on the subject under discussion'. We take this to imply that there should be different levels within an undertaking and that failure to provide for this could fall foul of the Directive.

Chapter 5

Para 5.1. We agree that British law has developed in a 'piecemeal' fashion. As a result the law is fragmented and contradictory. This is an argument for integrating the existing laws.

Para 5.2. It might be argued at the ECJ that diversity of practice is discriminatory. Again this is an argument for integrating the existing laws.

Para 5.3. It is proper to point out that 'legislation must be fully consistent with the new rights and responsibilities contained in the Directive'. We think it is of the utmost importance to stress this from the start and to get it right. It would not be productive to have a repeat of the 'toing and froing' between the ECJ and the British legislature which occurred with collective redundancies and transfer of undertakings. This would unsettle industrial relations and work against any positive outcomes.

Para 5.3. Reference to 'support of employees'. One mechanism to consider might be the establishment of some sort of Learning Fund which employee representatives would be able to draw on for training.

Para 5.8. On our reading of the Directive, it is only the third item where information and consultation must be 'with a view to reaching an agreement'. The draft later points out that this phrase is also in the collective redundancies legislation. It has not yet been fully tested in the courts. Our interpretation is that it implies an on-going process of give-and-take and that in a legal case employers would have to be able to show evidence that this had indeed taken place.

Para 5.10. See point above re 'with a view to reaching an agreement'.

Para 5.12. Why have two stages of consultation?

Annex A

Para 5. The reference to 'existing representatives provided their remit and method of appointment gives them suitable authority from the employees concerned' is important. A weak transposition of the Directive which contradicted this provision would lay any legislation open to challenge.

Para 6. Of course, in all the cases, it is good to put in the sanctions. It will be noted how they differ from one another, making the point about the piecemeal and fragmented nature of the present law. It is interesting to speculate as to whether any consolidation could lead to a levelling down or levelling up.

Para 10. However, the obligation is not to inform and consult 'with a view to reaching an agreement'. Again note the inconsistency.

Para 11. In cases involving both collective redundancies and transfers of undertakings, it is indeed important to note that separate awards may be made in relation to each. This toughens the penalties.

Para 13. There needs to be another para here on the sanctions under the 1992 Act. These offer yet another procedure, viz arbitration by the CAC which may be incorporated in terms and conditions of employment. Of course, there is an exception to this in the addition in the 1999

Act in the case of training. Here the sanction is the sanction of compensation for the individual employee. Another inconsistency in the law.

Para 15. Again in the case of health and safety note different procedures.

Para 18. It is right to mention pensions. However, this might be the least able to be integrated in any consolidation of the law.

Finally, you do not mention Working Time, where again there are obligations to inform and consult.

Annex B

Para 10. Is a corollary of this that to comply with an obligation to inform and consult means there have to be representatives?

Table 1. The scope of negotiation, information, and information-provision, by type of worker representatives, 1998

Issue	Negotiates	Consults	Informs	None
Union representatives				
Pay or conditions of employment	38	13	17	32
Recruitment or selection	3	15	30	52
Training	5	29	24	42
Systems of payment	12	16	26	46
Handling grievances	18	54	13	15
Staffing or manpower planning	6	33	24	37
Equal opportunities	7	41	17	35
Health and safety	13	62	11	14
Performance appraisals	6	25	16	53
Non-union representatives – workplaces with no recognition				
Pay or conditions of employment	16	33	36	15
Recruitment or selection	2	33	32	33
Training	3	46	24	27
Systems of payment	4	20	48	28
Handling grievances	14	50	16	20
Staffing or manpower planning	3	36	40	21
Equal opportunities	10	45	23	22
Health and safety	18	62	19	1
Performance appraisals	2	48	19	31

Note. All establishments with 25 or more employees. The figures for union representatives are weighted and based on responses from 923 managers in workplaces with 25 or more employees, union recognition and a union representative on site. The figures for non-union representatives are weighted and based on responses from 134 managers in workplaces with 25 or more employees and without union recognition, but with non-union representative.

Source. WERS 98.

Table 2. Union presence, density, and recognition, collective bargaining, and joint consultative arrangements, 1980 to 1998

	1980	1984	1990	1998
Union presence – by workplace				
All	73	73	64	54
Private manufacturing	77	67	58	42
Private services	50	53	46	35
Union density – percentage of employees				
All	65	58	47	36
Private	56	43	36	26
Union recognition – by workplace				
All	64	66	53	42
Private	50	48	38	25
Collective bargaining predominant form of pay determination – by workplace				
All		60	42	29
Private manufacturing		50	33	23
Private services		36	29	14
Consultation – incidence of joint consultative committee – by workplace				
All – any consultative committee	34	34	29	29
Private	26	24	18	26
Union recogntion	37	36	34	30
No recognition	17	20	17	18
All – any functioning consultative committee	30	31	26	23

Source. Adapted from Millward *et al.* (2000), pp. 85-87, 96, 109, 186-191, 197

Table 3. Preferences of employees for dealing with workplace issues. Percentage

Would you prefer to deal with this problem on your own or with…	All employees	Union membership status		Only workplace with union presence	Only Workplaces with recognized unions	Only workplaces with WC or JCC	Both WC/JCC and union presence at workplace	Neither WC / JCC or union presence at workplace
		Member	Non-member					
Sexual or racial discrimination at work								
Group of fellow workers	72	78	68	78	78	70	76	63
Union or staff association rep.	67	84	58	72	77	56	83	54
Negotiating salary								
Group of fellow workers	65	81	56	73	74	60	82	44
Union or staff association rep.	53	80	38	73	77	38	72	31
Negotiating hours and conditions								
Group of fellow workers	71	81	65	73	75	67	80	62
Union or staff association rep.	52	76	38	69	73	39	68	34
Promotion issues								
Group of fellow workers	46	50	43	39	37	54	50	38
Union or staff association rep.	27	36	23	34	35	21	33	20
Workplace bullying								
Group of fellow workers	69	72	68	70	71	74	74	60
Union or staff association rep.	58	80	46	65	69	46	75	41
Training and skill development								
Group of fellow workers	67	73	65	66	63	73	71	59
Union or staff association rep.	30	36	26	40	41	28	30	23

Note: Sample was divided at random into two variants. One variant asked if the respondent preferred to solve specific problems on their own or with the help of a group of colleagues or fellow workers. The other variant asked if respondents preferred to solve problems on their own or with the help of a trade union or staff association representative. Each respondent could only choose either an individual or collective solution. Source: BWRPS (2001) Q35

Table 4. Do you think your workplace would be better with…? Percentage

Do you think your workplace would be better with…	All employees	Union membership status		Only workplace with union presence	Only Workplaces with recognized unions	Only workplaces with WC or JCC	Both WC/JCC and union presence at workplace	Neither WC / JCC or union presence at workplace
		Member	Non-member					
Trade Union on its own	7	11	5	14	16	2	9	6
Works Council on its own	21	6	29	11	10	40	9	27
Works Council and Trade Union	44	74	27	60	63	24	72	20
Neither	24	5	34	11	8	31	9	43
Don't Know	4	3	5	3	3	3	2	4

Source: BWRPS (2001), Q51.

Table 5. How well informed do you feel about the following matters? Percentage

	All employees	Union membership status		Only workplace with union presence	Only Workplaces With recognized unions	Only workplaces with WC or JCC	Both WC/JCC and union presence at workplace	Neither WC / JCC or union presence at workplace
		Member	Non-member					
Future employment or staffing plans for your workplace								
Very / Quite well informed	63	58	65	49	48	72	66	61
Not very well / not at all	37	42	35	51	52	28	34	39
What other people doing your job are earning								
Very / Quite well informed	62	71	56	61	64	60	72	52
Not very well / not at all	38	29	44	39	36	40	28	48
The financial performance of your employer								
Very / Quite well informed	68	68	67	63	62	75	72	61
Not very well / not at all	32	32	33	37	38	25	28	39
Your job prospects with your employer								
Very / Quite well informed	75	71	77	63	61	82	78	72
Not very well / not at all	25	29	23	37	39	18	22	28
The training you need to advance your career								
Very / Quite well informed	74	76	73	69	69	84	81	63
Not very well / not at all	26	24	27	31	31	16	19	37

Source: BWRPS (2001), Q51.

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