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Faces of non-union representation in the UK – Management strategies, processes and practice

This paper will attempt to examine non-union employee representation[1] (NER) structures in the UK and, in particular assess management strategies, processes and practice of NER arrangements in nine organisations. The importance of NER arrangements in the UK has been highlighted by recent initiatives from the European Commission. On March 11, 2002 a general framework for informing and consulting employees in the European Community was formally adopted and came into force on 23 March[2]. This Directive will eventually apply to undertakings or businesses in Member States with at least 50 employees (or establishments with 20 employees or more), and will require them to inform and consult their employees in good time about issues directly affecting work organisation, job security and employment contracts regarding terms and conditions[3]. More specifically, the new Directive will require employers under a legal obligation to inform their staff on an ongoing basis about matters such as firm performance and strategic planning.

While the Directive offers a substantial degree of flexibility in relation to the shape of information and consultation arrangements, some commentators have suggested that this proposal implies the establishment of national-level works councils in the UK, or at least in non-union establishments some form of non-union employee representation (Gospel and Willman, 2002; Gospel and Willman, 2003) For some Member States, notably the UK, it will require organisations to have much more extensive employee consultation processes than are currently in place. Importantly, the Directive requires workplace bodies comprising elected representatives, and consultation to be undertaken in such a way that these representatives and their constituencies can influence management decisions.

In light of these developments, a number of key questions will be addressed in this paper. First, are NER arrangements a substitute or are they complementary to trade union structures? Second, why do employers choose NER arrangements and what factors do organisations consider when choosing the type of NER strategy? Third, in the absence of trade union representation, how independent are NERs from management influence? Fourth, what processes are involved in establishing and maintaining NER arrangements? And finally, in practice what are the outcomes and limitations for employers in adopting NER forms?

Definitions

Organisations use a variety of terms to describe their NER structures. They may take the form of company councils, works councils, consultative councils/committees (CCs), joint consultative committees (JCCs) or staff associations[4]. In reality, the differences in terminology do not equate

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[1] NER structures can also be referred to as union-independent forms of employee representation or alternative forms of employee representation. It is recognised that while such a representative structure may be formally independent of trade unionism such structures may involve union members.

[2] Official Journal (Directive No.2002/14/EC)

[3] The UK Directive is being introduced in phases: firms with more than 150 employees have until 23 March 2005 to set up information and consultation procedures; firms with more than 100 employees have until 23 March 2007; and those firms with more than 50 employees will be included under the Directive from 23 March 2008 (DTI, 2003).

[4] It must be acknowledged that some staff associations have been certified as independent trade unions. In this study I refer to staff associations that have not gained such certification.

to differences of form or function; importantly, all these structures represent all employees[5] at the establishment or workplace. Some structures can include management representation (often as chair) and may involve union representatives. It could be argued this lack of commonality in NER structures in the UK may be a consequence of the lack of prescriptive legal requirements for and precise definitions of such structures.

Due to the complexity of and the variations in NER forms precise definitions are problematical. However, for the purposes of this paper four common elements can be identified. First, only employees at the organisation concerned can be members of the representative body. Second, there is no or only limited formal linkage to outside trade unions or external employee representative bodies, so therefore provide a different function to that of trade unions with emphasis placed on non-adversial conciliation and consultation rather than traditional forms of collective bargaining. Thirdly, a degree of resources is supplied by the organisation in which the employee representative body is based. Fourthly, there is a representation of employees' interests or agency function, as opposed to more direct forms of individual participation and involvement (Gollan, 2001).

The structure of the paper is as follows. First, the paper briefly reviews the conceptual issues and debates of NER forms addressing the question whether NER is a 'substitute' for unions or is in some way a 'complement' to current union forms by examining the strategies and objectives of NER from an employer perspective. The next section briefly reviews the existing research into the extensiveness of NER structures in the UK by examining previous survey and case study findings and highlighting important themes. The third section reviews the evidence of the strategies and processes employed by nine organisations towards NER. This gives an indication of the important representation issues examining management strategies and the aims in establishing NER structures. This section will also assess the processes involved in the operation of NER arrangements and review the practices including perceived outcomes and limitations of NER structures. Having reviewed the strategy, processes and practice of such arrangements the fourth section applies a four-model framework of NER based on the 'Faces of NER' – non-union model, competitive model, adjunct model and marginal model[6] - from the cases presented. Finally, a discussion and synthesis of the major issues surrounding NER forms is undertaken and the implication for management strategies towards NER, and industrial relations policy in general, is examined.

Conceptual issues and debates

Evaluations of the impact of NER structures to date raise key issues about their structure, decision-making capacity, the issues discussed, their outcomes and their functions. The rationale for a representative agency function – union or non-union - in the workplace can be expressed in terms of certain productivity and equity outcomes. These include: improved communication and information sharing; effective dispute resolution; enhanced employee bargaining power; fair and just decision-making; and improved morale and social cohesion.

As such, current theoretical debates can be divided into a number of themes. Freeman and Medoff (1984) have argued that while unions can provide an effective method of collective employee 'voice', there may be an incentive for employers to provide some alternative voice mechanism

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[5] These structures may include union members where present.
[6] This is based on the framework developed by Marchington (1988).

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where workplace union organisation is weak or absent[7]. The academic literature has identified the important role of unions in giving employees a voice - enabling them to express dissatisfaction with the working environment without fear of management retaliation. Thus, it is suggested, where unions are weak or non-existent this voice effect will be absent, or alternatively an employee may exercise voice through the exit option, although Freeman and Medoff also argue that the exit option may be a less than optimal amount of voice (Freeman and Medoff, 1984).

The question remains whether NER arrangements may approximate 'voice' as identified by traditional union structures. Interestingly, as Freeman and Medoff noted, the efficacy of voice depends on the way in which labour and management interact, rather than whether unions exist or not (Freeman and Medoff, 1984). However, this proposition is dependent on the wider institutional context. Organisations may create such bodies for the purposes of bargaining to reduce the likelihood of outside involvement by trade unions in organisational decision-making, thus ensuring that bargaining processes are contained within the organisation. This may be due to the perception that an outside influence can distort internal processes and structures, impacting negatively on employee behaviour and organisational performance.

Others have argued that structures representing the interests of employees through collective bargaining (legally enforced or not) may give more legitimacy and efficacy to the decision-making process (Hyman, 1997), ensuring greater organisational commitment. In addition, Hyman (1997) also suggests that NER arrangements have the capacity to assist unionism in workplaces where they are given many responsibilities and especially when enforced through statutory rights.

Others have suggested that it is not whether such arrangements weaken unions, but rather whether unions will be prevented from developing a strong presence where NER structures are present. In contrast, Kelly (1996) has suggested that works councils have 'consolidated a more recent shift to non-unionism' (Kelly, 1996:56). This rationale is premised on the belief that employer-initiated structures are based on employers' terms and cannot be effective in providing a true voice for employees' issues and concerns because they institutionalise worker co-operation, thus limiting scope for trade union action. (Kelly, 1996; Lloyd, 1999, p.3). In addition, these commentators also state that such structures are packed with 'hand-picked cronies' or in the cases where employees can elect representatives (including union representatives), it will not be fully independent of the company and will not have the backing of national union organisers to enforce action or outcomes.

These debates have raised considerable discussion over the functions of NER forms, their outcomes and impact. In summary, these debates can be classified into two approaches: first, NER structures are an inherent win-lose or zero sum game. This is based on the premise that an individual employee is inherently at a disadvantage in the employment relationship due to the monopoly power of the employer. Alternatively, NER structures can be viewed as an instrument through which both sides realise a 'win-win' outcome in the employment relationship or positive sum game perspective, highlighting common interest between employers and employees and promoting a unitarist approached based on shared beliefs and goals, or a pluralist 'mutual gains' approach emphasising a co-operative system of employment relations.

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[7] This view has been challenged because for many employers it is not important whether NER structures can approximate unions as part of the collective bargaining process, since this may not be the objective or desired outcome.

Management strategies and approaches

There has been considerable discussion in the UK (Dundon, 2002; Gall and McKay, 2001; Gollan, 2000; Marchington, 1994; Marchington *et al.,* 1992; Marchington *et al.,* 2001; Oxenbridge *et al.*; Terry, 1999) whether non-union forms of representation as communication devices or mechanisms for employee involvement, are a 'substitute' for unions or as some commentators have suggested, a 'complement' to management decision-making (see table 1).

INSERT TABLE 1 ABOUT HERE

One notion of a 'substitute' is that it serves in place of a union. It assumes employers create an alternative form of employee representation which employees will prefer to a 'union'. Alternatively, an entirely different notion is that alternative forms of employee representation make traditional union structures unnecessary, in the sense that they transform the employment relationship, with other high commitment practices, into a mutually productive relationship. This notion is based on the premise that employees do not desire or need a protective agency through traditional bargaining *per se* (since this emphasises the adversarial, distributive element of the employment relationship) because their basic interests are satisfied. In this approach the purpose of NERs is to encourage and foster an alignment of interests between employer and employees. An alternative strategy is evident when traditional trade union structures and alternative forms of employee representation 'complement' each other, dovetailing in terms of form and function, as in the case of German works councils through the co-determination process and industry-wide trade union bargaining[8].

Previous research

Survey evidence

Previous research has raised a number of issues regarding the nature and of the extensiveness of NER structures in the UK[9]. The first section examines NER by reviewing current survey research on the presence and level of such structures. The second section draws on published case studies in the UK, and examines management strategies in adopting NER forms, the processes involved in maintaining such arrangements and the outcomes of these initiatives.

The 1998 Workplace Employee Relations Survey (WERS98) indicated that the presence of JCCs from 1990 was stable at 28 per cent, with a further 25 per cent of workplaces operating a committee at a higher level in the organisation. Some 67 per cent of employees were covered by these arrangements (Cully *et al.* 1998, p. 12). Interestingly, only 11 per cent of workplaces indicated they had a representative committee at the workplace as well as at a higher level in the

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[8] A central principle of the German industrial relations model is the dual structure of interest representation: the separation between domestic level labour relations and collective bargaining at regional or industry level. The former is focused on generating substantive and procedural norms through plant-level agreements, while the latter establishes general conditions of employment and salary and wage levels. This dual system is defined and circumscribed by an extensive legal process.

[9] These issues are also linked to Ramsay's (1977 and 1983) notion of cycles of control where consultation (or any participation mechanism) is introduced by employers when they feel they are under threat from organised labour such as trade unions and discard it when such a threat is reduced or is dissipated (also see Marchington, 1992).

organisation (Cully *et al.* 1998, p. 12). This would suggest only limited adoption of an integrated collective consultation strategy in UK organisations, with such structures either located at workplace level dealing with a narrow range of workplace issues, or with consultation structures located at higher levels of the organisation far removed from workplace involvement.

Millward, Bryson and Forth (2000) compared the findings of the previous workplace survey data with those from the latest survey (from 1984 to 1998). They found a fundamental change over the period was the proportion of employees *without* access to active consultative structures through "functioning consultative committees" (committees that regularly meet and discuss important issues at the workplace). Millward, Bryson and Forth (2000) paint a bleak picture for such institutions and suggest that these committees may actually be declining, in step with the fall in trade union membership. Consultation committees were present in only a quarter of workplaces in 1998, compared with just under a third in 1984. The proportion of employees in workplaces with a consultative committee also fell from 50 per cent to 43 per cent over the same period.

This research also highlights the importance of the complementary presence of a trade union and consultative committees at the workplace. It suggests that workplaces that do not recognise a union are significantly less likely to have a consultative body. Only a third of non-union workplaces had a joint consultative structure compared to around three-quarters of workplaces where a trade union is recognised. In addition, the findings suggest that consultative committees are not enduring institutions of employee representation. Between 1990 and 1998 just over one-in-ten workplaces operating through this period discontinued their consultative committee. However, analysis of successive workplace surveys in the series from 1984 to 1998 in workplaces with 25 or more employees suggests that the proportion of employees without access to voice mechanisms has remained relatively stable at around 17 per cent (Bryson, 2000). This study also highlighted the increase in direct forms of employee involvement and participation in UK workplaces. During the period from 1984 to 1998 the incidence of representative-only structures halved, while direct voice channels increased threefold.

Importantly as Marchington *et al.* (2001) have suggested the idea of a simple model of managerial choice towards consultation and representation issues 'may not be so straightforward in reality'. A number of factors may impinge on employer options towards such issues. The regulatory rules and laws may encourage or force certain behaviours that otherwise would not have taken place. Other forces and influences may also be at work such as a particular management culture or attitudes of management that may constrain or inhibit certain strategies. Union or employee behaviour and actions may also influence the choice of consultation or representation model. Finally, the organisation's cultural and historical attitude towards employee consultation and representation may also be a significant factor (Marchington *et al.*, 2001)

Another interesting feature from the WERS98 survey were the views of employees. The researchers found a clear link between how often consultation occurs and its perceived value - with a lack of consultation contributing to perceptions of poor management among employees. Millward, Bryson and Forth (2000, p.129) also found that 'Employees with some type of non-union voice arrangement generally felt that managers were better at keeping them up-to-date with proposed changes at the establishment than did those employees in workplaces without any formal voice mechanism. This was true whether non-union arrangements were found in isolation or together with union channels of voice'. However, in terms of employees' perceptions of 'fair treatment' only the combined presence of a recognised union and union representation on a

consultative committee seemed to be a key factor. Thus, Millward, Bryson and Forth (2000) conclude that while formal voice mechanisms help to promote communication in the workplace, with non-union or direct voice mechanisms more effective in enhancing responsiveness of management to specific employee issues, they also appear less effective than unions at promoting fair treatment for employees in general.

Case study evidence

Previous case study research details the composition, structures and processes involved in NER structures (Cressey, 1985; Cressey, Eldridge and MacInnes, 1985; Flanders, Pomeranz and Woodward, 1968; IDS, 2002; IDS, 1999; IDS, 1997; IDS, 1995; IDS, 1994; IDS 1989; IRS, 1996; Littlefield, 1996; Lloyd, 1999; Marchington *et al.*, 2001; McLoughlin and Gourlay, 1994). A review of the case study research would indicate that in a large majority of firms the main aim of NER forms is to increase consultation and communication, with few having a bargaining role (see Gollan, 2000; Terry, 1999). Most of these companies see NER forms as providing a more effective channel of communication than unions, stressing more 'harmonious' and less conflictual relations with the workforce, thus building and encouraging an atmosphere of mutual co-operation. It would seem from their stated objectives that management view NER structures solely as a means to increase company productivity and efficiency, and to promote an understanding of company policy rather than as an effective forum of collective representation for the interests of employees rather than management. Committees were either based on geography or function, or a combination of the two. Some included management representatives as well as shopfloor employees.

Oxenbridge *et al.* (2001) suggests that the issues most commonly discussed by existing consultative committees in both unionised and non-union firms related to organisational change, including the implementation of restructuring, redundancy, short-time working programmes, harmonisation of terms and conditions following company mergers and acquisitions, and the transfer of workers after winning outsourcing contracts (Oxenbridge *et al.*, 2001:19). The researchers argue that 'the growth of consultation over such issues may offer an explanation as to why many employers were planning new, formal committees'. However, the research also noted that employees were increasingly reluctant to take on the role of a worker representative because they did not want to deal with issues of organisational change, particularly implementing redundancy and short-term working programmes (Oxenbridge *et al.*, 2001:20).

Another important aspect concerning the representativeness of committee members is the interaction of the views of those represented and the representatives themselves. The election process and the procedures of appointing employee representatives was the most obvious form of interaction. While all these cases examined in this paper have some formal procedures, with most having secret individual ballots organised by the personnel departments for terms up to three years, others had representatives appointed by management. The majority of companies operated a qualification period for membership of the committees (usually six months to two years' service with a minimum age requirement) although this was not always enforced. The majority of these firms also excluded employees involved in disciplinary procedures.

While few companies addressed the issue of representatives taking time off, some allowed representatives 'reasonable time away from their places of work to seek the views of employees'. In a few cases, other employees such as shift workers who attended meetings were often not paid

nor were their travel expenses reimbursed. Moreover, few companies provide induction programmes involving training in communications, interviewing, time management and business for employee representatives.

A crucial issue for NER forms and their representativeness is the number of representatives per employee and the frequency of meetings. It is argued that the effectiveness of such structures is dependent on the capacity of representatives to devote time and resources to their constituents. From previous case study findings, the committees varied from around ten to 12 employees per representative to between 200 and 500 plus. These committees had different levels of representation (workplace, store, division and company), with the average being around 40-60 employees per representative. This variation in the ratio of employees to representatives would seem to suggest considerable differences in terms of their ability to effectively represent the views of employees. Most committees had a mix of employee and management representatives with the majority of committee members representing employees. However, most committees were chaired by senior management, usually the managing director or senior divisional director, who had the authority to veto decisions taken by the committee. In addition, some committees could only make recommendations to management but not formal decisions. Frequency of meetings in the case studies ranged from once a month to twice yearly, with the average being around every two months. Some companies also made provision for special meetings where necessary.

Some studies have also identified managerial attitudes as key to the existence of more formalised employee consultation and participation practices (Fenton-O'Creevey, Wood and Callerot, 1998; Kessler, Jennings and Undy, 2000; Millward, Bryson and Forth, 2000; Wood and Albanese, 1995; Wood and De Menezes, 1998). They suggest that underpinning such practices is a relationship based on a high level of trust between management and employees. It is assumed that employees can be trusted to make important workplace decisions that will result in greater productivity and effectiveness. Employees are therefore given the opportunity to develop their knowledge and skills so that they can make these decisions.

The case studies also reveal two areas of concern. First, the attempt to distinguish between negotiation or bargaining and consultation, second, the ability of these committees to resolve conflict and 'deadlocks.' It is argued that these two aspects go to the core of the effectiveness of such bodies, while others have suggested that non-union forms of representation may have many functions, purposes and roles, with negotiation and bargaining a relatively insignificant part of the process (Gollan, 2001; Lloyd, 1999; Terry 1999). Although a minority of committees allowed a degree of negotiation, there were two cases where pay and conditions were negotiated. However, in reality the negotiated agreement then took the form of a recommendation to corporate management or, as previously mentioned, the chair (most often senior management) had the right of veto. Notably, there was an absence of matters relating to financial, investment and company strategy. It must be questioned whether this form of 'consultation' and "negotiation" would be able to exist in a unionised environment.

Research strategy

This section of the paper reviews the experience of nine organisations with NER structures. These organisations include: Sainsbury's plc; John Lewis Partnership; South West Water (Pennon Group); Panasonic (Matsushita) UK; HP Bulmer Limited; Grosvenor Casinos; Eurotunnel (UK); News International Newspapers (UK); and CIBA Specialty Chemicals. The nine organisations

were selected to provide information on the strategies of management in establishing NER structures and to review the processes and practice of such arrangements.

The nine cases were also selected on the basis that either their structures were well established (thus capable of showing their potential effectiveness), or were recognised as leading companies in their field or market (examples of best practice behaviour) and have recently adopted NER arrangements as part of their industrial relations strategy. The cases are drawn from diverse industries and, applying a similar approach to Dundon (2002:237), they were selected on the basis of *dissimilarity* allowing for a comparative analysis of the variability and adaptability of employer strategies across industry sectors, occupational groups, difference systems of corporate governance and geographical spread. Importantly, all organisations in this study are large private sector firms. It was considered appropriate to use these criteria since most non-union representation initiatives are located in those firms. The case study organisations are briefly outlined in Table 2.

INSERT TABLE 2 ABOUT HERE

This study was based on fieldwork undertaken in the nine organisations between October 1998 and June 2000. This period enabled an assessment of management strategies and motivations towards NERs. In all cases the research is based on interviews with senior management including HR managers and directors in order to assess management strategies and processes towards NER. In addition, in those organisations with a trade union presence material from relevant union sources was sought to assess union and employee representatives' views on NER strategies. Interviews were also conducted with employee representatives and, where present, trade union representatives, as a means to assess the outcomes of NER from the perspective worker representatives. In all, the research is based on approximately 45 interviews with managers, employee representatives and union officials. In many cases, access was also given to detailed employee survey data and other internal company documents, such as committee minutes, management memos and committee constitutions. A semi-structured interview was used in each occasion. Each interview lasted between one and three hours.

Management Strategies

Central to management strategies in the implementation of NER is the rationale of establishing NER structures, given that managers initiate and are the architects for such schemes. The case studies provide a number of reasons for the establishment of NER arrangements. In summary, there are five principle reasons why managers established such schemes. First, they were a means to improve information flows and communication between employees and managers in organisations. Second, such arrangements may act as a 'safety valve' especially in the absence of an active union presence. Some companies with a long history of formal consultation structures (eg John Lewis Partnership and HP Bulmer) see this as a primary reason for low levels of industrial conflict. Third, an NER structure may add to the process of organisational and workplace change by enabling management and employees to highlight issues of concern at an early stage thus reducing potential conflict at the implementation stage. Fourth, NER could potentially increase organisational performance in terms of productivity and quality by providing a forum for new ideas and employee input thus increasing employees' understanding of business

behaviour and producing greater levels of satisfaction and commitment. Finally, NER arrangements may be used as an alternative for negotiations in situations where there is little active union or collective bargaining or as an attempt to undermine the union's position.

Importantly, two organisations (John Lewis and HP Bulmer) had long-established NER structures that were created around a strong paternalistic approach and consultative culture. Another three organisations (Eurotunnel, CIBA Specialty Chemicals and South West Water) had established their existing arrangements within the last ten years. A further four organisations (Sainsbury's, Panasonic (UK), Grosvenor Casinos and News International) only recently established (less than two years) their NER arrangements. It could be argued that longer-established arrangements are more embedded into the organisational culture, thus different outcomes could be expected compared to more recently established arrangements.

However, the most significant reason to implement NER arrangements was the desire by employers to avoid active trade union presence in their workplaces - six of the nine companies in the study suggested that this was the main reason for their establishment. At News International, the Director of Human Resources argued that while he agreed that it could be seen as a union avoidance strategy: 'We would prefer to keep our dirty washing inside rather than going external' even if the possibility exists that it could one day lead to an association with one of the large unions or even affiliation with the TUC'. When asked what concerns the company had over union representation, he replied:

> *The problem is that we have a long history and they [employees] do not want to return to yesteryear. They know how damaging [union action can be] and how much damage was caused by the unions. If we have to handle the unions as a result of the new legislation and this process not getting certification, then we will handle them. But as a preference we would rather give our own staff a body that can represent their interests and interface with management without having to go to an association or union and be overturned, which can be described as bloody Sunday many years ago. They (the unions) are desperate to get in and we are desperate not to let them in. We can think of other processes that meet the interests of our staff.*

Other important reasons for introducing NER arrangements given by these organisations were to establish a representation structure to fill the void or 'representation gap' in the absence of unions and to assist in management initiatives such as organisational change.

According to the Senior Manager for HR Policy at Sainsbury's, an employee survey indicated that many employees were dissatisfied and that existing channels of communication (which included the JS Journal (an internal newsletter), videos and ad hoc team meetings) did not give sufficient employee voice and representation. It was suggested that there was little two-way consultation providing little opportunity for employee feedback. She concluded, 'These comments made it very clear that there was a huge gap in internal consultation and communication channels, which needed to be filled quickly – the business and HR arguments were indisputable. In summary, it could be said that people had the feeling that we were not always listening to their ideas and that they did not really have a way of making their voices heard'. She also felt that while these findings were in line with other previous surveys in the company, they nevertheless had serious business implications in terms of poor front line morale and commitment.

Some companies also suggested that such structures were set up as a means to satisfy the requirements of European directives. Other reasons given for introducing NER arrangements included: a means to address employee concerns regarding previous consultation mechanisms; an organisational history of a participative culture; the introduction of UK legislation on union recognition (eg the 'Fairness at Work' initiatives as part of *Employment Relations Act 1999*); as a parent company's human resource strategy; the development of a new participative culture as a means to increase business awareness and organisational effectiveness; and following best practice and the lead of other companies.

All the companies stated that a major reason for the establishment of NER arrangements was the diffusion of information and communication. For example, the constitution for the News International Staff Associations states:

> *The Staff Associations shall also be a forum where staff ideas, concerns and issues are fully debated. They shall be the bodies through which Company decisions on major investment in plant and equipment will be communicated and shall be a primary means of communicating with employees on all matters relating to the status and conduct of the business. The Company takes its employees' ideas and suggestions seriously. The Staff Associations will be the bodies through which employees at every level can propose ways to help the business foster job creation and job security. The Staff Associations will be the bodies through which the Company works with employee representatives in a partnership designed to ensure the employees are treated fairly*
> (Charter of News International Staff Associations and Staff Associations Executive Committee, 1999, pp. 4-5).

Another important reason cited by the majority of companies in the study was that it should be the sole means of company-based representation. Other aims of NER arrangements were to build a forum for new ideas and give employees the opportunity to influence management decisions, to encourage the development of shared values and a participative culture, and to improve commitment and performance. As an example, the reason for establishing the Employee Council at HP Bulmers is stated in the first paragraph of its constitution: 'The company understands and welcomes the desire of employees to become more deeply involved in decisions which affect their future as it recognises and encourages the important part which employees play in ensuring the continuing success of Bulmers for the ultimate benefit of customers, employees and shareholders' (HP Bulmers Employee Council Constitution, 3 June, 1977).

Some firms also indicated that other aims of such structures were to exchange views between management and employees, to provide a forum for problem solving, to regulate wages and working conditions, to ensure employees were treated fairly and to improve working conditions. Three organisations in the study also used their NER arrangements to manage social and welfare budgets.

For example, management at South West Water said that the main reason in setting up their council was to act as a voice for employees' concerns and to encourage greater employee involvement in the decision-making process. Furthermore, the Head of Personnel for the Pennon Group (part of South West Water) also commented:

The management's aim was to create a new culture, as the previous union arrangement was based on an attitude that what was good for the company was bad for the employees ... with this new way we have tried to edge our way to something better, tried to emphasis things that unite us rather then separate us. History was a problem with water being the least popular privatisation, bills rising above the rate of inflation by around 15 to 20 per cent due to the investment programme. So tools were put in place to unite employees and management to create a new culture.

INSERT TABLE 3 ABOUT HERE

Processes and Practice

The processes involved in the operation of NER structures have been central to the debate about whether they are effective in representing both employees' and employer's interests. The debate has centred on the following issues: the coverage and level of operation; constituency size, composition, and representativeness; resources and training of representatives (including access to pre-meetings); powers of negotiation and bargaining; level of union involvement; the number and type of issues for consultation; frequency of meetings; and the availability of dispute and conflict resolution procedures. These issues are covered in turn below.

Coverage and level of operation

Five of the organisations in the study had NER arrangements that represented all permanent employees in the organisation, including management. Two organisations had structures that covered only administrative employees only and another two covered only non-management employees. Significantly, while initially all employees at News International are deemed to be members of the Staff Association electing body in the constituency in which they are employed, they also have the right to opt out of this status if they wish.

With regard to the level of operation, the majority of the organisations (South West Water, Panasonic, HP Bulmer, Eurotunnel and Ciba Speciality Chemicals) use a single-tier NER arrangement. Two organisations have two-tier arrangements (Sainsbury's and News International) and two companies (John Lewis and Grosvenor Casinos) have three-tier arrangements. The number of representative layers is usually dependent on whether an organisation is a multi-site enterprise, the overall size of the operation and homogeneity of the distinctive functional or departmental areas.

INSERT TABLE 4 ABOUT HERE

Constituency size, composition, and representativeness

The majority of representatives (and where appropriate deputies) in the study have a constituency size of between 50 and 100 employees, which represent a geographical, departmental or

functionally-based area. However, at South West Water and Grosvenor Casinos, which have geographically-dispersed operations, the size of the constituency may vary considerably depending on region and the size of the workplace.

Most NER arrangements in the study have a mixture of employee and senior management representatives (HR or Personnel Management/Director and Chief Executive Officer). In two cases, union representatives are also members of the council (Sainsbury's and HP Bulmer). Most representatives are elected by employees for between two to three years. In some cases two representatives are elected, one senior employee representative and a deputy from each area. The deputies are elected to assist the senior representative and ideally represent employees working outside normal hours such as shift workers (examples include Eurotunnel and Ciba Specialty Chemicals). In other instances, management appoints up to 20 per cent of employee representatives (John Lewis and Ciba Specialty Chemicals). In nearly all organisations, the management side (HR or Personnel Management/Director or Chief Executive) chairs council meetings. However, the Council at Panasonic (UK) has the power and authority to appoint an independent chair 'to facilitate the smooth running of the meetings', although s/he does not have the authority to contribute to discussions.

One notable exception is News International where the election of chairperson and deputy chairperson to the News International Staff Association (NISA) is by secret ballot of all the representatives at each of the three sites. According to the Director of Human Resources, the chairperson at each of the three sites acts in a similar capacity to a union general secretary. They are elected for two years and are eligible for re-election. However, the chairperson and deputy chairperson may not be employed in the same constituency or area. In addition, the Joint Executive Committee (JEC) comprises the chairpersons and deputy chairpersons of the three sites plus three additional members elected from representatives at the Wapping Staff Association. The chair of the JEC is rotated every six months among the chairpersons of the NISA.

In the majority of the cases, agenda items are forwarded to the Chair for approval a week before meetings. The senior employee representative and Chair agree on agenda items and the final agenda is sent out before the council meeting. In the organisations in the study, all eligible candidates for election as representatives must be permanent employees with at least six to 12 months service.

Resources and training

Access to resources and training are considered to be critical to the effective functioning of NER arrangements. In all cases, management provides facilities for employee representatives including: secretarial assistance (although this was most often provided by the HR department); telephone; fax; e-mail; computers; photocopier; meeting rooms etc. Seven of the nine organisations also provide induction training when representatives are elected and/or when required. For example, at Sainsbury's, training is given by local HR staff when a need is identified. Some managers have also been given training in chairing meetings and on the latest statutory requirements. Most elected and union representatives undertake a three-day induction programme consisting of communication, interviewing, time management skills and business awareness. At HP Bulmer, training for representatives focuses on issues, such as the operation of the business, financial matters, long-term business strategy, marketing etc. Each half year when the latest financial results are announced, an external trainer facilitates a discussion on financial issues. In addition,

twice a year there is a development programme focusing on the operation of the City, how it works and the importance of maintaining shareholder value. However, one Councillor did indicate that a key challenge for representatives is to counter the perception that the Council is a talking shop.

Six of the nine organisations provided paid time-off for representatives to brief constituents. For example, all representatives at News International have up to one hour a day paid time-off when acting on Staff Association business or when representing a fellow employee in a disciplinary or grievance matter. However, such time-off is at the discretion and approval of the representative's immediate superior. In addition, if representatives are required to perform duties outside their normal working hours compensatory time-off is given. There is also a right for reimbursement of reasonable travel expenses when representatives are required to travel to locations outside their normal place of work. Each chairperson of the JEC is entitled to one day off a month and may if required, liaise with either the General Manager, Director of Operations or the Director of Human Resources to agree on additional time-off.

However, the majority of companies (seven out of nine) enforce restrictions on training expenses. At Ciba Speciality Chemicals, representatives are paid for their time if they are shift workers and if a meeting takes place during their time-off, although no additional travel costs are paid. In these circumstances, a minimum of six hours' overtime pay is paid (which includes any travelling expenses). At present, there is no provision for representatives to spend further time on council business, although most of this is done in normal company time. According to the Company Council Leader, this can be up to six hours a week for most representatives.

Less than half of the cases in the study allocated time for agenda or pre-meetings and in only two cases (Ciba Speciality Chemicals and News International) are council leaders or chief representatives full time and paid equal to their previous position in the company.

In two organisations (John Lewis Partnership and Eurotunnel) a social and welfare budget is allocated equivalent to one per cent of payroll. This money can be used for welfare support for employee families and for social activities. It must be noted, however, that in these two cases the council are trustees only and management may withdraw this money at any time with minimum notice.

INSERT TABLE 5 ABOUT HERE

Negotiation, bargaining and union involvement

Some commentators (Gollan, 1999; Gollan, 2001; Lloyd, 1999; Terry, 1999) have suggested that the ability to negotiate and bargain is central to the effectiveness of representation structures. According to management, six out of the nine cases in the study did not allow their NER arrangements to cover negotiation or bargaining issues. For example, the Head of Personnel at South West Water stated, 'At the end of the day the Chief Executive has to make the key decisions. He uses the Staff Council to be better informed to make those decisions and to understand the impact of those decisions from the people on the sharp end, on the ground that deal with the consequences in getting it wrong'.

However, in one case (Sainsbury's) a union representative[10] is appointed to the committee structure and in another two cases (HP Bulmer and Ciba Speciality Chemicals) there are separate union structures for the purpose of collective bargaining over wages and conditions. At Eurotunnel, there are informal arrangements with unions regarding basic issues such as wages and general minimum conditions. And at John Lewis Partnership and News International NER forms can negotiate or bargain over all issues including pay and conditions. However, in the case of John Lewis, the Chair (a management position) can veto any proposed expenditure (including that for wages increases) if s/he regards it as 'too dangerous' to the Partnership's business interests.

At News International, the new Staff Association has replicated many of the responsibilities of an independent trade union. The Charter states:

> *NISA has collective bargaining rights over hours of work; rates of pay; benefits; and other terms and conditions of employment; To have training provided to them in their role as representatives of the employees; To have access to competent legal assistance; To have a procedure for final arbitration of collective disputes; To enjoy rights equivalent to those conferred by law upon an independent trade union in respect of all rights to information and consultation; To agree procedures generally for making the representative body fully effective in respect of all the above matters and any other matter agreed with News International.*

While the majority of NER arrangements in the study had no formal union representation on their committees, this did not prevent employee representatives from belonging to a trade union. In some cases (eg. News International) the Chief Representative and a number of the other representatives were in fact active trade union members. In two cases (Sainsbury's and HP Bulmer) there were designated union appointees at local level. HP Bulmer and Ciba Specialty Chemicals also have separate union-based bargaining units for the negotiation of wages and basic conditions. For example, at Ciba Speciality Chemicals the partnership agreement signed in March 1999 with the GMB states that both parties should:

> *Work together for the mutual benefit of the business and all those that it employs'; 'the company recognises the right of the GMB to recruit, organise and give guidance and assistance to its members at the Bradford site and agrees to give reasonable facilities for that purpose; the 'GMB agrees to work in tandem with the company council in improving two way communications and understanding of common objectives'; the company recognises the GMB as the sole trade union for collective bargaining and the GMB promises to train all its site representatives with the company giving 'reasonable time off with pay for the purpose'; the company encourages membership of the GMB and for 'new employees the company will arrange for the company council leader to meet with them and advise of the benefits of GMB membership'; union contributions will be deducted from salaries for those employees requiring this to be done; and that the company and GMB have 'a common objective in using the process of negotiation to achieve results beneficial to the company and the employee.*

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[10] They cannot negotiate or bargain over wages and conditions.

In contrast, a different viewpoint was raised by the Director of Human Resources at News International. He acknowledged that in the early days the NISA was seen by management as a union avoidance strategy, although he went on to say:

> *We are where we are now. It is not about union avoidance but [about] having a creditable association that truly represents all of the employees within News International. This is about us getting the biggest bang for our buck. It is very competitive out there, a very closed sector with journalists moving around between the titles very freely. What we wanted to do is maintain the quality we have got and provide as much opportunity to all employees across News International. This (Staff Association) is one vehicle for it.*

He went on to say that, 'A Staff Association is in-house, it's an internal body, not an external body that may have prejudices. The problem is history – it's that strong. Unions have changed etc – but so what. No partnership deals even with a no strike clause can be overturned under legislation with a ballot'.

In an e-mail to staff about the establishment of the NISA, the Director of Human Resources stated, 'If a union made a claim for recognition, they would argue that the ECC is not totally independent. In all honesty, they would probably be right. If you do nothing, you would almost certainly end up with a union. It is not an option, if you want your interests to be represented without the involvement of an external third party'.

INSERT TABLE 6 ABOUT HERE

Issues for consultation

Seven of the nine cases in the study allowed consultation over all issues of concern to employees including pay. For example, the HP Bulmer constitution states, 'The Council, being concerned with policy, will be consulted and discuss matters at an early stage relating to: company objectives; company productivity; rules of conduct and discipline; amenities; training and development of the individual; recruitment; the company's investment policy; company communications; human relations; trading activities; and company financial position'.

Only two organisations (Sainsbury's and Ciba Speciality Chemicals) excluded pay from consultation. In the case of Ciba Speciality Chemicals, pay was negotiated in a separate union based pay committee. The constitution states:

> *At company council meetings the company discusses and consults over a wide range of issues which concern all employees or a large number of employees. These matters include: company financial results and other items from the board; health and safety; the performance-related pay system, holiday entitlements; transport to and from the site; car parking; and medical services etc. Annual pay adjustments (ie wages, salaries and other financial benefits) are negotiated in a separate committee drawn from six company council representatives (including the company council leader and union site representative), six managers, and the GMB Regional Organiser.*

In all nine cases, individual salaries, grievance or disciplinary issues were excluded from discussion (although in the majority of cases individual representatives may represent employees on these matters).

Frequency of meetings and dispute resolution

Most NER structures meet on a regular basis. Three councils (Grosvenor Casinos, News International and Eurotunnel) meet 12 times a year while the others meet between four and six times a year. In terms of dispute resolution, four organisations had no specific procedures in place. Two cases (South West Water and HP Bulmer) had a sub-committee system drawn from employee and management representatives that would have the responsibility to discuss and resolve the dispute. In two companies (News International and Eurotunnel) independent final arbitration is used to resolve any differences. At Sainsbury's any outstanding matters are resolved within four weeks either by the Chair or by a district or senior manager.

Impact and Outcomes

An important issue regarding the impact of NER arrangements on industrial relations outcomes is the practice of such arrangements. However, it must be acknowledged that establishing a causal relationship between NER arrangements and industrial relations or performance outcomes is problematic and open to many influences that may impact on such outcomes. Notwithstanding these limitations, it could be argued that it is useful to assess the perceptions of management and employee representatives regarding these outcomes, since the viability and continued operation of such arrangements is dependent on such assessments.

The cases provided a number of responses and viewpoints regarding the perceived industrial relations and performance impact of NER arrangements. At Sainsbury's, the Senior Manager for HR Policy indicated that the introduction of consultative staff councils has been a positive move. She stated that the councils were achieving their objectives of filling a communication gap and reflecting the views of employees. In addition, she maintained that the local councils which focus on grass-roots issues such as store performance and new technology '...give us a better view about what's going on and issues are getting put right at a local level'.

The Personnel Manager at Panasonic was circumspect regarding outcomes from the company council. She thought that since the PUCC was established, feedback from the staff had generally been good. She also believed that the PUCC was seen by most employees as a way for them to have voice and as a means of access to senior management. However, she did acknowledge that while the PUCC was 'fairly influential', it could not be said that it was as effective as a trade union.

According to the Union Convenor and Council Representative at HP Bulmer, the council is 'reasonably effective' although it could be 'more effective'. Management and representatives have both suggested that one of the benefits of the Council process is that the Councillors have a direct voice and the 'ear' of senior management, including members of the Board. They also thought that the Council represented all employees in the business (union and non-union), 'carried less baggage' than more traditional representation and negotiation structures, was less confrontational and acted as a 'stabilising influence' between employees and management creating an interface and foundation for the discussion and ownership of key issues.

According to the Employee Council Co-ordinator at Grosvenor Casinos, the latest employee survey indicated that the awareness of the councils' existence and role was high with responses ranging from 88 to 100 per cent and over half indicating that the Council was having a positive effect. He also suggested that the relationship between management and employees generally had also improved due to greater communication through the employee council process. However, it was recognised that this relationship still needs improvement. In terms of information flows, he thought that the amount of information had greatly improved and that employee influence was slowly improving but still very dependent on local line managers, many of whom lack skills in managing change. He also said that while he would describe representatives as 'fairly' influential over management decisions, there were still some issues blocked by management at meetings, such as proposals for new shift patterns for London-based staff and the request for financial information and performance figures.

The Head of Personnel for the Pennon Group (part of South West Water) thought that its Council was very effective and important for the implementation and process of achieving certain outcomes, 'Compared with the later stages with Nalgo (now part of Unison), it is now twice as effective in terms of the kinds of issues raised and the approach on both sides, and in terms of the outcomes of those discussions. The Staff Council is more open. With Nalgo some information would be given to the press for their own purposes'. He went on to suggest that the Staff Council has produced a number of positive outcomes. 'Perhaps as a negative measure, we have presided over a reduction in employees from 2,250 ten years ago to around 1,650 employees today and there have only been around half a dozen unfair dismissal claims[11].

Given the Staff Association's recent establishment at News International, the Director of Human Resources predicted the future success of the Staff Association structure as follows, '...if external unions do not come across the gates, it's a success ... Long-term, it's a success if its around in two years' time in its current form'.

Limitations

There were also a number of concerns and potential limitations regarding NER structures raised by both management and employee representatives. The two main concerns identified were the lack of interest from employees and the timing of information. Other concerns mentioned were: council meetings being too bureaucratic and rigid; difficulties in keeping people informed of the latest developments; lack of leadership and senior management support; lack of clearly defined roles and responsibilities; insufficient training of representatives and provision of resources; a perception by employees of a 'talking shop' without appropriate management actions on issues raised; management setting the items on the agenda; lack of muscle on vital issues or as suggested 'voice without power'; lack of line management support; turnover rate of staff in the firm; and the time taken to resolve issues raised by employee representatives.

At South West Water, the Personnel and Services Manager felt that the main concern was maintaining employees' interest in the Staff Council. He suggested that many employees had little interest in the issues raised at Council meetings and thus pressure was placed on representatives to

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[11] The figures stated were as of June 2000 (before union recognition). By 2002 the SWW workforce was around 1,400 employees.

give the views of all workers. Another problem was that workers are geographically dispersed over a large area. Many water plants operate 24 hours a day and many employees work away from their base for much of the time. In this environment, there can be difficulties in keeping people informed of the latest developments. He went on to say that while the Staff Council was increasingly effective and successful, it had had little success in the early years for a number of reasons including, the lack of effective leadership and support from higher management, and lack of trust among Council representatives based on their experience with previous consultative committees and management structures and the previous two-tier committee process. This had created a culture which encouraged issues to be handled higher up the management structures rather than to be resolved lower down the line, resulting in a lack of clearly defined roles and responsibilities.

The lack of time for representatives to conduct council duties was an important factor at Grosvenor Casinos. The Employee Council Co-ordinator thought that the shift arrangements were a major concern. The industry works on a two-shift pattern of seven hours each (14 hours a day) over six days a week. He stated that this shift system restricts the time available for council business, with few people willing to use their limited free time for this. In addition, staff shortages and shift arrangements have meant that council representatives have little time to prepare for meetings - usually no more than an hour. As such, only three hours a month per representative are assigned to Council business including meetings. According to the Employee Council Co-ordinator, ideally representatives should ideally have at least three to four hours to prepare for a meeting (as emphasised in the training programme). In addition, certain specific issues may require site representatives to identify problems and come up with solutions, needing four to five hours per month to prepare. Regional and national representatives require far in excess of that.

At HP Bulmer, a number of concerns were highlighted by the Deputy Chair of the Employee Council. First was the perception among Council representatives that management sets the agenda (in reality Personnel sets the agenda then asks the Deputy Chair for comments). Second, under the profit-sharing scheme large bonuses are paid to senior executives, calling the creditability of the Council into question. Third, the minutes which have been traditionally written by Personnel are too dense. Fourth, there is too little training for Council representatives. Fifth, some representatives are reluctant to raise issues of concern at Council meetings so that employees' concerns are not addressed. Sixth, the role of the council is not adequately defined, in terms of union responsibilities. (For example, some clothing issues were raised with unions on behalf of union members but not raised at Council meetings). Seventh, many decisions are still perceived to be top-down with management making the decisions and informing the Council for comment only afterwards.

At Eurotunnel, the lack of 'clout' on vital issues was of real concern. A recent employee survey revealed that the Company Council lacked muscle, that management lacked understanding and did not listen to employees and company council representatives had no or little training to negotiate with management.

INSERT TABLE 7 ABOUT HERE

Models of non-union employee representation

This section of the paper builds on Marchington's (1988) 'Models of employee consultation' framework. It attempts to identify the major strategies and approaches towards NER in the cases presented in this paper and to assess their likely impact and effectiveness.

According to Marchington (1988), it is possible to identify different models of consultation based on distinctive characteristics, which can be viewed along at least five dimensions: purpose or rationale, issues discussed and subject matter, the nature of representation, process, and levels or layers of employee involvement. In addition, the outcomes and impact of NER can be added to this framework as a means to not only identify different models and approaches but to ascertain the likely impact and outcomes of such approaches drawing on the cases above. The typology consists of four models: the non-union model; the competitive model; the adjunct model; and the marginal model. A brief summary of the key features and potential implications for employers adopting such models are presented below and summarised in Table 8.

INSERT TABLE 8 ABOUT HERE

The non-union model (Panasonic, Grosvenor Casinos and Eurotunnel)

This non-union (or unitary) model is based on the premise that NER arrangements are established to prevent the development of an independent trade union and act as a 'safety valve' for employee opinion in the absence of union activity. The objective of such a model is to be educative by informing employee representatives of management activities and to persuade representatives to go along with management decisions and thinking. Importantly, information on both 'hard' (business-oriented) issues and the 'soft' (welfare and social) issues are given to representatives to discuss. This is the only representative channel for employees to voice their concerns.

Little opportunity will be given to discuss issues outside formal meetings. Although in some cases formal provision for discussions is made during representatives' hours of work, this is seen as inadequate. In addition, due to the lack of resources and training and the high volume of information (often trivial), representatives may tend to accept the interpretation and arguments of management encouraging closer identification with the company. Indeed, much of this information may be presented rhetoric such as 'employees are our greatest asset', giving the impression that belonging to a trade union would not be in the best interests of employees. The chair of the meetings is taken by a senior manager (notably the HR Director or Manager) who will often control the items on the agenda. Other managers may also attend such meetings on occasions. Significantly, the objective of NER is not to challenge management prerogative but to act as an obstacle to unionisation. However, the experience of this approach would suggest there may be concerns expressed by worker representatives when expectations are not met and increasing ambiguities and contradictions lead to its lack of legitimacy and ultimate demise.

For example, recent events at Eurotunnel have suggested limitations to such an approach. As a result of recent legislative developments and the impending information and consultation Directive regulations into UK law, a union recognition and partnership agreement was signed by Eurotunnel management and the T&GWU in June 2000. This agreement recognised negotiation rights, the acceptance of the existing consultation framework and the establishment of a joint trade union forum. As a result, the agreement created two representation structures: a modified

company council with eight representatives meeting six times a year representing all employees at Eurotunnel and a joint trade union forum representing union members at Eurotunnel with a remit to address all issues of concern, including negotiations over company-wide pay levels.

The competitive model (John Lewis Partnership, News International and Sainsbury's)

Under the competitive model, NER structures have been enhanced or upgraded in order to render unions less useful or meaningful. This model in some respects is similar to the non-union model. However, under this model the activity of NER arrangements 'competes' with existing union presence, so acts as a substitute by suppressing existing union activity. Under this model, structures that were considered of little consequence and relatively unimportant have been revitalised with great management enthusiasm. High-level information is given to representatives on matters that have been previously been highly confidential. Much of this information will be based on the organisation's market position and financial situation. This is the only representative channel for employees to voice their concerns.

The rationale behind this approach is to discuss the problems and challenges facing the company and to get representatives to understand and empathise with the company's position and the decisions management has made. This process is essentially an educative one with the development of a 'high trust' relationship underpinning the strategy. Again the chair of the meetings is usually the HR Director or Manager with attendance by other senior management staff[12]. This is seen as crucial in order to present a corporate 'face' or image and company identity to representatives. Representatives are drawn from union members and non-union employees. Given the emphasis on consultation, meetings are likely to be regular (often once a month) with sub-committees focusing on particular issues. In addition, more direct forms of employee involvement and consultation may be established, such as team briefings, videos, e-mail and intranet etc. These are designed to convince employees of the reasons for management decisions and actions and perhaps reduce or curtail more 'militant' expressions of trade union activity by having a more knowledgeable workforce.

One of the aims of this approach is to weaken the link between union members and their representatives and to promote a greater identification with management behaviour. Employee representatives may also be used to moderate any conflict or resistance by employees and show support for management actions and initiatives. The underlying message in this model is to change the nature of unionism, so that any techniques or actions that would enhance the traditional role of trade unions would be discouraged.

However, in an interesting development at News International, the Father of the Chapel for the National Union of Journalist was elected unopposed to the NISA as Chair and leader of employee representatives. He argued, 'Why am I joining a body which actually uses the words 'staff association'? Because I have been asked to by colleagues who agree with me it is important for the chapel to maintain some way of being allowed to talk to management and take up staff issues' (*Journalist*, June/July, 1999, p.11). Currently, the majority of representatives on the NISA are union members.

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[12] One notable exception was at News International where the Chair was elected by representatives.

The marginal model (South West Water – Pennon Group)

This marginal model implies that there is little substantive gain for employees or management and NER is marginal to the company's consultation arrangements or decision-making processes. Many questions can be regarded as 'tea, towels and toilets' matters. Eventually, under this model, such structures will decline and eventually collapse because employees and management get little out of the process. Representatives at such meetings often have few or no links to resources or trade unions. Meetings are also chaired by the HR Director or Personnel Manager and although the range of issues discussed may be wide, there are few of a 'hard' business nature generating little discussion or debate. Much time is taken up with issues that have remained unresolved from previous meetings. Such matters are rarely solved due to limited knowledge, training or resources from management and employee representatives. While such councils seem unsuccessful when based on assumptions of effectiveness, such structures may be of symbolic value. A continuation of such mechanisms may send a message of commitment to the workforce (no matter how ineffective it might be in reality) and to disband such a structure would achieve little and pose questions about why it has been disbanded. To continue such consultative machinery at least guarantees exposure to management actions, provides information (such as minutes) which may at least display a 'veneer of legitimacy' (Marchington, 1988) and may distract representatives from more substantive issues of concern to employees and identifying and acting on employee grievances. This approach is not likely to produce any positive outcomes for employees and may in the longer term produce inherent dangers for management due to unrealised expectations and increased frustration among employees.

Recent events at South West Water have reinforced the limitations of such an approach. In February 2000, with the impending change in legislation over union recognition, management started discussions with Unison over recognition. When asked by one representative at a staff council meeting 'why the change of tune', the Chief Executive replied that, 'although we could have ignored the legislative change and waited to see what happened, this may not have been in the best interests of the Company and its workforce' (Staff Council Minutes, 9 February, 2000). During this period a number of union representatives were brought onto the Council. After a 12-month probation period, a formal recognition agreement was signed with Unison in 2001. This involved representation for all union and non-union members at South West Water.

The adjunct model (HP Bulmer and Ciba Specialty Chemicals)

This adjunct or 'partnership' model highlights the distinction between consultation and negotiation, both in terms of processes and subject matter. Under this model, NER constitutions are explicit about the distinction, with the subject matter often defined in terms of what may be discussed and what will not be discussed. There are two channels for employee representation – a union channel for collective bargaining and an NER arrangement for consultation and information purposes. Often those issues that can be termed as advisory and subject to bargaining or negotiation are not discussed in the council. In this case, bargaining deals with items of a distributive character, notably issues concerning wages, working conditions and hours or work. NER structures under this model deal with issues of an integrative nature, which are reliant on high trust and open interactions. While such a relationship can 'test the water' and act as a preliminary process to full negotiation by trading information and useful in managing expectations in the relationship, its primary purpose is one of problem-solving. As a consequence, information given by management is of a high level and strategic focusing on business plans,

investment strategies, market position, quality and customer relations. Minutes from such meetings are likely to be detailed with issues of a commercially-sensitive nature discussed. As in the previous models the chair of the meetings is usually a member of senior management (often the HR Director or Manager) and supported by other senior members where appropriate, although sometimes the chair position is rotated. The deputy or vice chair will often be the senior employee representative. Employee representatives are also likely to get together before meetings to discuss agenda items and outcomes from previous meetings. This can be useful to both parties as a means to streamline the process and tackle more contentious items, leaving time to deal with more pressing issues. Meetings are held on a regular basis, perhaps once a month.

Underlying this approach is that a consensus exists between management and employee representatives. Both want the NER structure to succeed, play an important part in the development of company decisions and help smooth workplace relations arising from a more adversarial atmosphere of annual wage negotiations with the trade union or from dispute resolution. Success is built upon notions of more pluralist behaviour with both parties keen to maintain stability in their long-term relationships rather than advance more opportunistic tactics or behaviour.

Discussion and conclusions

These nine organisations have provided a means to further explore management strategies towards NER structures and their likely outcomes. Overall, the evidence from the case studies raise a number of important points. First, these NER structures generally have limited access to resources (eg training) for establishing independence, thus reducing their ability to effectively evaluate the issues discussed at meetings and represent the views of employees. Second, most NER bodies are structured on a mixed basis of employee-elected representatives and appointed management delegates, with the latter occupying the most senior position of chair. The findings also suggest that management is usually the party that controls the structure and agenda at meetings. While the election of employee representatives could give the impression of legitimacy to decisions, in reality this must be questioned. Third, there is a lack of willingness among managers to involve employees in formal decision-making with most bodies only given powers of recommendation to management or the chair has the right of veto over decisions. Fourth, unlike unions, few committees have negotiation and bargaining rights, while consultation issues often lack financial, investment or strategic data. Fifth, few NER arrangements in practice fulfil the traditional trade union activity of conflict resolution, which is dealt with by senior management or internal dispute resolution mechanisms. Finally, representatives have insufficient training and experience in negotiating with management potentially undermining the effectiveness of such arrangements. The research suggests that most NER structures are used as devices for consultation and communication rather than as acting as bargaining agents. While it can be argued that consultation, not bargaining, may indeed be their objective, it nevertheless questions the legitimacy of such bodies as true alternatives to unions.

A essential part of the debate centres on whether NER forms make trade unions unnecessary by acting as a substitute for the lack of trade union presence in the workplace thus prevent union activity (or where there is union activity suppress such activity), or whether NER forms have a different but complementary role to that of unions at the workplace. The findings of this study suggest that substitute 'non-union', 'competitive' or 'marginal' models of NER as used by some organisations could have limitations. The implications for organisations of not recognising such

limitations could result in both greater direct and indirect union influence on workplace issues and greater employee dissatisfaction with management.

Drawing on the nine case studies this paper presents evidence that NER structures have been essentially ineffective as substitutes for union representation, due to the very limited role they play in the bargaining and decision-making processes. Many councils had a prime focus on information over performance or 'business' issues (improving quality, productivity, customer service and/or sales) rather than meeting workers' expectations over pay and conditions. Some managers also saw such structures as a means to communicate the benefits of change and to persuade employees of the need for such change. All this would seem to suggest that NER arrangements are ineffective as vehicles for employee voice and have restricted the ability of NER forms to represent employees' interests in the areas of pay and conditions. Other surveys of consultative structures have also come to similar conclusions (Oxenbridge *et al.*, 2001)

The preceding analysis would suggest that it is not the formal existence of NER structures which is associated with greater effectiveness. Rather, the nature of the relationship, management style, trust developed in NER process, and the degree to which influence over managerial decisions is ceded through such forums, are the most important factors. In particular, the evidence presented in this paper indicates that employer approaches towards NER differ in many respects and that these approaches may have a significant impact on the practice of NER forms.

The cases in this study would suggest that if employers wish to encourage an alignment of interests between employee behaviour and organisational goals, they need to place greater emphasis on giving voice to employees. The evidence demonstrates that, only by establishing mechanisms that allow employees to have a legitimate voice and allow differences to emerge will managers be able to channel such differences into more productive outcomes. What is pivotal to the success of such arrangements is that the processes and practices underpin the representation of employees' interests. This evidence would support the thesis that non-union, competitive and marginal approaches to NER may be ineffective. As such, more adjunct approaches (incorporating a degree of collective bargaining and union influence) as a complement to or as part of a NER process, could provide more productive outcomes for employers and employees. In this study, HP Bulmer and Ciba Specialty Chemicals have adopted this approach.

In conclusion, while NER structures can be used as mechanisms for more effective means of communication and consultation, the evidence suggests that their effectiveness as bodies representing the interests of employees in filling the representation gap (Freeman and Rogers, 1993; Towers, 1997) is questionable. The message from this research and the impending legislative requirements on information and consultation is that a mechanism for communication between management and employees at the workplace may not be enough. Voice, the right to be heard and have a true say over workplace and organisational issues and at times an acknowledgement of differing interests may be essential for achieving greater employee satisfaction and commitment.

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Table 1 - Conceptual approaches towards non-union employee representation

Strategy	Substitute		Complement
Process	Representation of employee interests	Co-operation	Co-determination/ Consultation
Power Base	Legally imposed or management initiative	Management initiative	Legally imposed or management initiative
Channel of representation	Single	Dual	Dual
Rights	Information, consultation, limited workplace decision-making	Production line information, suggestions, problem identification and productivity improvement	Information, consultation, co-decision making, limited veto powers

(Gollan, 2000)

Table 2 - Case study industry, size and geographical spread

Company	Industry	Number of employers and geographical spread[13]
Sainsbury's	Retail (Grocery)	Sainsbury's was founded in 1869 as one of the first grocery stores in Drury Lane, London. The group has 140,000 full and part-time employees in over 380 Sainsbury's, Savacentre and Homecare stores nationwide. Sainsbury's employs 115,000 people in around 363 supermarkets and four depots (two-thirds are part-timers). In addition, there are 12,500 administrative staff. Homebase employs 17,000 staff in 332 stores. Savacentre has 10,000 staff in 12 hypermarkets. About 66 per cent of the workforce are part-time and are mainly women.
John Lewis Partnership	Retail (Department Store)	The company was founded in 1864 when John Lewis established a draper's shop in Oxford Street, London. At the of April 2002, John Lewis had 50,000 staff with 40,000 Partners covering 25 department stores, 130 Waitrose food shops, five manufacturing units, distribution centres and warehouses.
South West Water – Pennon Group	Water utility (Water & sewerage)	South West Water Limited (SWW) is the water and sewerage company for the South West region, which employs around 1600 people. It is part of a larger group of companies under the umbrella of the Pennon Group Plc (The other major company in the Pennon Group is Viridor Limited which employees around 500 people and operates four other related businesses covering waste management, environmental instrumentation, construction services and property). SWW holds the licence from the Government to provide water and sewerage services to the South West for 25 years from 1989

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[13] All figures were as of 2001.

		to 2014.
Panasonic (Matsushita) UK	Sales (Electrical appliance)	Panasonic (UK) is the trading name of the Matsushita Electric group based in Japan. It has 11,000 employees in Europe and a workforce of 260,000 worldwide. There are around 4,000 employees in the UK where its European head office is based.
HP Bulmer Ltd	Food and Drink (Alcoholic – cider)	Bulmers was founded after Percival Bulmer began making cider at Credenhill in Herefordshire in 1887. In the Autumn of that year he began operations in Hereford. In 1888, his brother Fred Bulmer joined him to establish HP Bulmer and Company. While it became a public company in 1970 the Bulmer family still owns about 50 per cent of the shares. Subsidiary companies include Symonds (Herefordshire), Inch's (Devon) and businesses in Belgium, Australia and New Zealand. Bulmers has around 60 per cent market share in the UK and accounts for 80 per cent of the UK's cider exports. By 2001 it has around 800 employees at the Hereford plants and a worldwide workforce of 1,250 employees.
Grosvenor Casinos	Entertainment (Casinos and Clubs)	Grosvenor Casinos is one of the largest entertainment operations in the UK with interests covering casinos, bingo, bowling alleys, and nightclubs. The company forms part of the leisure division of the Rank Organisation plc. Grosvenor opened its first casino in 1970 and has been developing its portfolio ever since. It now operates over 33 clubs throughout England and Wales (providing over 300 gaming tables). In addition, two clubs in Belgium were bought in 1998. On average, there are 120 employees per club, although one London club employs some 500 people. Overall, Grosvenor Casinos currently employs approximately 3,500 staff (including part-time and casual employees) and is divided into four geographic regions. Some sites operate 14 hours a day seven days a week, 365 days a year.
News International	Media and Entertainment (Newspapers, Television and Motion Pictures)	News International Newspapers (UK) is part of the Australian-based News Corporation. News Corporation is one of the world's largest media companies with total assets of approximately US$40 billion. News Corporation has diversified global operations in the United States, Canada, Continental Europe, United Kingdom, Australia, Latin America and the Pacific Basin. These operations include: the production and distribution of motion pictures and television programming; television, satellite and cable broadcasting; the publication of newspapers, magazines, and books; the production and distribution of promotional and advertising products and services; the development of digital broadcasting; and the creation and distribution of popular on-line programming (The News Corporation Limited Overview, 1999). News Corporation has a worldwide staff of 50,000 employees. The UK News International Newspapers currently employs around 3,600 staff in London (Wapping), Manchester (Knowsley) and Glasgow (Kinning Park).
Eurotunnel (UK)	Transport	Eurotunnel has a 99-year lease to operate the Channel Tunnel link between Britain and France. It has a complex structure consisting of two legal entities to meet requirements in the UK and France. The company is own by private shareholdings in France and the UK. Around 26 per cent of shareholders are banks, a similar proportion are institutional investors and 48 per cent are individual shareholders. Eurotunnel employs a total staff of 2,300, with appropriately 1,300 based in Britain on UK contracts. The UK head office

		is in Folkestone (Longport) with a separate office nearby for some administration activities (ie call centre).
Ciba Specialty Chemicals (UK)	Chemicals	Ciba Specialty Chemicals (UK) is the UK division of the Swiss-based Ciba Specialty Chemicals group. Previously, the UK division was an independent UK company under the name of Allied Colloids. It was sold to the Ciba group in 1998. Worldwide, the group has around 25,000 employees. The Bradford site currently employs around 1,800 staff. It is a leading specialty chemicals and associated chemicals producer with a focus on chemicals for water treatment.

Table 3 – Reasons for establishing NER arrangements

	Sains	JL	SWW	Pan	HP Bul	Gros	News	Euro	Ciba
Drivers for implementation									
Negative employee attitudes with previous consultation	X					X			
European Directives	X			X				X	X
History of participative culture		X			X				
Defence union avoidance strategy		X	X	X			X	X	X
UK legislation (eg Fairness at Work)							X		
Fill representation gap (sole representation body)		X	X				X	X	
Part of parent company HR strategy								X	X
New leadership team						X			
Development of a new participative culture						X			X
Other companies doing the same						X			
Primary means of information and communication	X	X	X	X	X	X	X	X	X
Only representation structure	X	X	X	X		X	X	X	
Forum for new ideas	X			X			X		X
Opportunity to influence management decisions		X	X		X				
Development of shared values and a participative culture			X						X
Improved commitment and performance				X					
Exchange of views									X
Monitor management decisions				X			X		
Problem solving						X			
Regulation of wages and working conditions							X		
Management of social and welfare budget		X			X			X	
Ensure employees treated fairly									X
To improve working conditions									X

Table 4 – Coverage and level of operation

	Sains	JL	SWW	Pan	HP Bul	Gros	News	Euro	Ciba
Coverage									
All employees	X	X			X	X	X		
All administrative employees only			X	X					
All non-management employees								X	X
Level of operation									
One-tier			X	X	X			X	X
Two-tier	X						X		
Three-tier		X				X			

Table 5 – Resources and training

	Sains	JL	SWW	Pan	HP Bul	Gros	News	Euro	Ciba
Paid time off to brief constituents	X			X	X		X	X	X
Paid travelling time	X						X		

	Sains	JL	SWW	Pan	HP Bul	Gros	News	Euro	Ciba
Training for representatives	X	X	X	X	X	X		X	
Facilities provided (eg. secretarial assistance, telephone, fax, email, computers, photocopier, meeting rooms etc)	X	X	X	X	X	X	X	X	X
Agenda or pre-meetings			X	X				X	X
Company paid salary for full-time council leader							X		X
Social and welfare budget		X						X	

Table 6 – Negotiation, Bargaining and Union Involvement

	Sains	JL	SWW	Pan	HP Bul	Gros	News	Euro	Ciba
Negotiation and bargaining									
None	X		X	X	X	X		X	
All issues including pay and conditions		X					X		
All issues except pay and conditions									X
Union involvement									
Formal union representation	X				X				
No formal representation		X	X	X		X	X	X	X
Separate union structure					X				X

Table 7 – Limitations of NER arrangements

	Sains[14]	JL	SWW	Pan	HP Bul	Gros	News	Euro	Ciba
Bureaucratic	-	X							
Rigid	-	X			X				
Little interest from employees	-		X			X	X	X	
Difficulties in keeping people informed of latest developments	-		X			X			
Lack of effective leadership and support from higher management	-		X						
Lack of trust among representatives	-		X	X					
Lack of clearly define roles and responsibilities	-		X		X				
Too much information	-			X					
Timing of information	-			X	X	X			
Lack of training for representatives	-				X			X	
Lack of time and resources for representatives	-					X			
Perception it is a 'talking shop' with management not listening to employee concerns with many decisions top-down with management making the decision.	-				X				X
Perception management sets the agenda	-				X				
High turnover rate in the firm	-					X			
Encouraging employees to provide information	-					X			
Support from line management	-						X	X	
Lack of muscle on vital issues/voice without power	-							X	X
Time taken to resolve an issue	-			X					

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[14] Management and employee representatives did not express a view in this respect since the recent introduction of such arrangements had not been reviewed or assessed.

Table 8 - Faces of non-union employee representation[15]

	Non-union	**Competitive**	**Adjunct**	**Marginal**
Company	Panasonic, Grosvenor Casinos and Eurotunnel	John Lewis Partnership, News International and Sainsbury's	HP Bulmer and Ciba Speciality Chemicals	South West Water (Pennon Group)
Purpose	Prevent unions	Reduce union influence	Problem-solving, co-operative	Symbolic, keep representative active
Subject matter[16]	'Hard' and 'Soft' information	'Hard' high-level information	'Hard' high level information as well as some 'soft' information	'Soft' information and 'trivia'
Representation	Employees General and HR Manager	Union and non-union employees General and HR Manager	Union employees General and HR Manager	Union and non-union representatives General and HR Manager
Channels of representation	One	One	Two	One
Process	Educative Grievance procedure	Educative Persuasive Advance information	Mutual influence Advance information Pre-meetings for reps	Fire-fighting
Levels/Layers	Multi-tiered and established level with clear links	Established level and below	Establishment level only	Established level, no links
Outcome	Lack of power/muscle and voice	Lack of independent voice and representation	Co-operation	Lack of power/muscle and voice leading to employee frustration

(Adapted from Marchington 'Models of consultation', 1988, p.47)

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[15] This table is adapted from Marchington (1988).

[16] For the purposes of this framework 'hard' information is defined as business-oriented issues and 'soft' information is defined as welfare and social issues.