

‘Entering the New ‘ICE’ Age: The efficacy of the Information and Consultation of Employees (ICE) Regulations as a conduit of employee voice in the UK’

**Miss Elaine Bull, University of Kent, UK
Dr Amanda Pyman, University of Kent, UK
Dr Mark Gilman, University of Kent, UK**

INTRODUCTION

The Information and Consultation of Employees 2004 Regulations transpose into national law the EU Information and Consultation Directive and provide employees within medium and large organisations rights to be informed and consulted over a range of business and employment issues. Such issues include organisational restructuring, staffing levels and financial performance (Hall, 2005). Approximately 36,000 organisations fall within the scope of the ICE Regulations within the UK. Seventy seven percent of these organisations operate within the SME sector (DTI, 2004).

Despite being heralded a major landmark in EU social policy (Hall, 2002) and a ‘once in a lifetime opportunity to improve the quality of UK industrial relations’ (Sisson, 2002: 3), the ICE Regulations have not escaped criticism. In the context of labour law, the UK government is reputed for taking a ‘light-touch’ approach to the transposition of EU mandates (e.g. Working Time Directive). Their transposition of the Information and Consultation Directive is no exception to this condemnation. In an effort to preserve the UK’s comparatively flexible labour market at national level, the provisions of the Information and Consultation Directive have been watered down by the UK government. Compliance is no longer mandatory, as the European Commission intends, but instead requires employees to trigger the Regulations (written consent from 10% of the workforce is needed to activate the provisions). In addition, the reform will not in itself lead to the establishment of works councils, as upheld by the European Social Model for two reasons. First, precedence is given to the creation of organisational-specific voice arrangements which can include direct-only systems of voice. Second, rights to employee voice do not extend beyond consultation. As a result, the Regulation’s capacities to redress the UK’s ‘representation gap’ (Towers, 1997) and enforce a ‘floor of rights’ with regards to employee voice are open to question.

With some exceptions (e.g. Ryan, 2005; Wilkinson *et al.*, 2007; Hall *et al.*, 2008), much of the research on the ICE Regulations and employee voice to date has been concentrated within larger firms. The study of voice within small to medium-sized firms in comparison is under-researched. This is surprising, given their significance and contribution to the UK economy in terms of job creation, innovation and national economic performance (Bacon & Hoque, 2005). Organisational size, however, is likely to be an important determinant of regulatory compliance, with smaller organisations being the least likely to comply. This research therefore addresses an important lacuna in the literature, and complements existing research into the impact of the ICE Regulations in medium and larger firms

LITERATURE REVIEW

The Information and Consultation Directive is the ‘national sister’ of the European Works Council Directive and infixes a rights-based framework of information and consultation into the Community (Lorber, 2006: 232). The desideratum for

Community action was largely impelled by the redundancy infringements of French motor manufacturer Renault in 1997, when failure to inform and consult the workforce ahead of a plant closure placed Renault in breach of domestic and European conventions regarding collective redundancies (Weber *et al.*, 1997). In sum, the main provisions of the Information and Consultation Directive are as follows:

- Provisos are mandatory to establishments or undertakings with more than 20 or 50 employees respectively.
- A works council or similar consultative body is the intended mechanism of delivery (inferred through the pillars of the European Social Model).
- The information and consultation remit of the agreements will include: a) information on the recent and probable development of the undertakings or establishment's activities and economic situation; b) information and consultation on the situation, structure and probable development of employment within the undertaking or establishment, and on any anticipatory measures envisaged, particularly where there is a threat to employment; and, c) information and consultation with a view to reaching agreement, on decisions likely to lead to substantial changes in work organisation or in contractual relations.

Member States were given until the 23rd March 2005 in which to transpose the Information and Consultation Directive into national law. The UK and the Republic of Ireland, and Cyprus and Malta following the 2004 enlargement, were provided a further three years in which to implement the Information and Consultation Directive according to organisational size.

The extent to which the Information and Consultation Directive has prompted legislative reform in the realms of information and consultation and employee voice has varied significantly between Member States (Carley & Hall, 2008: 2). For some countries, such as Germany, Austria, Slovenia, and France, the Directive's inception has required little or no action being taken at national level, as existing national measures already fulfilled, or exceeded, the Directive's requirements. For other Member States, including the UK, compliance has been far more momentous.

Within the UK context, the ICE Regulations are significant for two reasons. First, the Regulations widen the scope of mandated information and consultation. Previously, legal requirements upon employers' to inform and consult have been event-driven and issue specific, notably through the EU Directives on collective redundancies, transfer of undertakings, occupational health and safety, and more recently, the European Works Council and European Company Statute [following Labour's election and engagement with EU social protocol in 1997, Hall & Terry 2004]. Second, the mode in which the UK transposed the Information and Consultation Directive was equally innovative. Government consultation included the publication of two high-performance workplace consultation documents; tripartite discussions with key social partners in the UK, notably the Trade Union Congress and the Confederation of British Industry, and the publication of draft regulations, updates and guidance. This was the first time the UK government engaged in tripartite discussions with the CBI and TUC to ratify a Community Directive (Hall, 2005: 10). However, one could reasonably question whether is it here that the revolutionary potential of the Directive and the ICE Regulations end?

The Melting of the ICE Regulations?

The Labour government took full advantage of Article 5 of the EU Directive to allow management and labour, at the workplace level, the freedom to decide the practical arrangements for informing and consulting employees. This action by the

government was motivated by a desire to avoid a one-size-fits-all approach, and an ideological commitment to labour market flexibility; or as some critics may argue, a desire to please big business (given the CBI's staunch opposition). As a result, there is a large disparity with the EU Directive. In particular, the issues of compliance, sanctions and quality (democratic accountability, influence, scope, embeddedness) represent a potential melting of the ICE regulations in the UK.

First, since compliance is not compulsory, the trigger imposes a number of antecedents that reduce the overall impact of the ICE Regulations. First and foremost, the incidence of voice arrangements that are established in response to the Regulations depends on employer and employee awareness of the Regulations; employees' dissatisfaction with their existing voice arrangements; and above all, employees' ability and willingness to mobilise a request (DTI, 2004; Hall, 2005; Welch, 2006). Secondly, the quality of voice arrangements that will ensue will be varied, since the Regulations encourage employers and employees to determine the parameters of voice themselves, to best suit the individual needs and culture of the organisation. On the one hand, this may have positive implications generating workplace flexibility and innovative approaches. On the other hand, allowing the actors' the freedom to determine practical arrangements of voice at the workplace level may simply extend and/or embed, managerial prerogative, particularly in non-unionised organisations, where arguably, employees' are less likely to be aware of the Regulations. In sum, the effectiveness of the Regulations in heralding a new era in employee voice depends critically upon not only the awareness, knowledge and negotiating expertise of employees' and their unions, but also the willingness of employers' to legitimise and recognise voice as a democratic right. The potential for variation in these determinants, at workplace, sectoral and industry level raises doubts as to whether the ICE Regulations will extend and embed employee voice at a deeper level, beyond the minimum standards outlined in the statutory provisions of the Directive. In non-unionised sectors of the economy and in those areas of the economy where employees are deemed more vulnerable, this argument holds even greater significance.

METHOD

This research adopts a multi-method research design comprising two stages: a mail survey ($n=338$) and four in-depth case studies. A mail survey of small to medium organisations provides descriptive data pertaining to the diffusion of direct and indirect employee voice practices and managerial attitudes to voice. The general impact of the ICE Regulations to date is also explored along the following indices from an organisational perspective: employer and employee awareness of the ICE Regulations, incidence of ICE agreements and, rationales for compliance and non-compliance. Of the 338 distributed, 70 useable surveys were returned (a response rate of 20%).

The case study research explores the following themes from both a managerial and employee perspective:

- Drivers and managerial rationale(s) for the implementation of voice.
- The scope of voice and issues raised to date.
- Influence of voice on management-decision making
- Benefits and constraints to employee voice

In order to investigate the dynamics of voice under the UK's new legal environment, all case organisations had implemented or modified their voice arrangements in part/full response to the ICE Regulations. Case selection was according to both convenience and purposive methods, to reflect differences in terms of organisational size, ownership, union involvement, industry and sector. Case organisations were

drawn from the private and voluntary sectors. Their spheres of activity included accounting (Accounts Co); cake manufacturing (Cakes Co); paper manufacturing (Paper Co); and, a local charity (Charity Org). Access was obtained in three ways: through survey responses in Stage one, networks with a gatekeeper in a regional branch of the UK's Advisory, Conciliation and Arbitration Service (Acas), and through networking and contracts within an MBA programme at Kent Business School, University of Kent.

A combination of semi-structured interviews, employee focus groups and documentary analysis were used to collate the qualitative case study data. Documentary analysis based upon company reports, information from company websites and intranets, constitutions and minutes from past meetings and staff handbooks were used to supplement the interview and focus group data. Overall, twenty-five interviews were conducted with key management personnel, including HR managers, senior managers and employee representatives (union and non-union). The number of interviews conducted within each organisation varied depending on factors such as organisational size and structure, access and the availability of respondents. Employee focus groups were used to capture the perceptions and experiences of rank and file employees regarding their voice arrangements (The focus groups are in process at the time of writing, thus preliminary results are presented here in the paper. An in-depth, comparative analysis of the results will be the focus of the presentation).

CASE STUDY PROFILES

Cakes Co: This single-site cake manufacturing company is the largest organisation within the sample, employing 484 employees. Initially set up as a home-run business in 1989, the company is no longer family-owned following two management-buyouts. Today, Cakes Co is a subsidiary of a Dutch-owned multinational (acquired in September 2007). 'Our Voice' is the main channel of representation and participation within the company, set up and launched by the HR Director in August 2008. Its inception was driven by a need to revamp an existing forum, concomitant with the desire to preserve its non-union status. The organisation of work has over-formalised the operation of this new initiative. Shift-working has meant that five separate meetings occur on a monthly basis to ensure representativeness. Workforce diversity and a high reliance on migrant labour have also added to the complexities of regulatory compliance and expectations of voice, more generally. As noted by the HR Director:

"The ICE Regulations are all well and good if you are talking about a traditional British business, but we are not. We have got a really diverse workforce. Culturally, people are different and have different expectations. As much as you try and say to them it's ok to have a view, it's ok to disagree with the board of directors, they are not going to, it's just not in their comfort zone" [HR Director, Cakes Co].

Paper Co: This paper manufacturing organisation is joint venture between two blue-chip multi-national companies (Swedish-owned and American-owned). Formed in 1993, Paper Co employs 370 employees, the majority of which are manual workers operating on a rotational shift basis. The only unionised organisation within the sample, there is now a dual-system of employee representation. The 'Operating Council' (OC) is well-established and represents the interests of workers covered by a national bargaining agreement. This operates alongside a 'Joint Consultation Forum (JCF) created in 2005, which extends information and consultation rights to the non-manual workforce. Predictably, the Operating Council was perceived to be the most influential of the two bodies given its history, union involvement in the

Council and its focus on operational issues within the organisation (e.g. strategy, working hours, health and safety, lifelong learning). The JCF was considered to be ineffective in comparison, due to its restricted scope toward information provision. As the HR Manager commented:

“The union reps think collectively, they think what’s the impact on my members; that’s the language they use; that’s the thought process they have. The JCF reps don’t think collectively. It is individuals going along. Whilst they know they are representing a group of people... it’s not ingrained in them. They’ve not grown up with this way of work and they’ve not watched other people do it before” [HR Manager, Paper Co].

Accounts Co: Established in 1969, this medium-sized, multi-site accountancy firm is a Limited Liability Partnership comprising 24 partners and 194 employees. A Staff Forum (SF) has been in place since 2004 and forms part of a broader strategy to move the culture of the organisation towards a more participative ethos. Employee voice is essentially upwards and largely informal. Meetings are bi-annual and membership to the forum is considered a ‘closed-shop.’ Positions are filled through managerial appointment or self selection. A formal election process does not exist.

Charity Org This medium-sized charity provides accommodation and support services to asylum seekers and refugees entering and living in the UK. Founded in the late 1980s, operations are spread over several locations. Numbers employed have fluctuated in response to changes in the political management of migrants seeking asylum. With 5 employees in 2000 to over 200 in 2003, the number of spontaneous arrivals has since declined. Today, the total number employed within Charity Co is 50 employees. The charity is non-union but has union members on-site (10% membership density).

Against the milieu of a failed recognition campaign by a large, general union in 2006, an ‘Information and Consultation Group’ (ICG) was established for reasons of best practice, legal obligations, the arrival of a new HR manager and a need to formalise communication due to rapid growth at the start of the century. Funding cuts and subsequent redundancies however, now threaten the stability and future of the ICG and the organisation, more broadly. At the time of writing, the entire HR function has been outsourced. A paternalistic management style is a further constraint to voice. Described culturally as ‘family like’, the founding CEO ‘doesn’t like to let go’. Little autonomy is devolved to middle management, and middle managers are not represented on the ICG.

RESULTS – PRELIMINARY FINDINGS

A discussion of the preliminary findings with respect to the survey and case studies is provided.

Survey Findings

The survey findings highlighted the predominance of individualised voice channels and more specifically, downward communication. The most common forms of downward communication were team briefings (75.5), email and company intranet (58.6%) and notice boards (58.6%). The use of upward communication, such as suggestion schemes and quality circles, was marginal in comparison. The presence of indirect (representative) voice was even less apparent.

In terms of management attitudes towards the utility of voice, the business case dominated the use of voice within the sampled organisations. For example, the

dominant rationales for voice were unitary in nature, such as the improvement of organisational performance (83%), staff morale (80%) and the enhancement of business awareness (76%). There was a high belief amongst managers (83%) that organisational decisions were best determined at senior level. Decisions were made without recourse to information and consultation in nearly one half of surveyed organisations. With regard to the ICE Regulations, less than half of the managers surveyed were aware of the Regulation's existence, and only a few organisations had implemented or modified their voice arrangements in response to the statute. The Regulations nonetheless do appear to have placed information and consultation at the forefront of management thinking within some organisations. Most managers that were aware of the Regulations were, at the very least, intending to review their current information and consultation arrangements within the next twelve months (2007-08).

As noted, the case study research explores the following themes from both a managerial and employee perspective: drivers and managerial rationale(s) for the implementation of voice; the scope of voice and issues; influence of voice on management-decision making; and, the benefits and constraints to employee voice.

Drivers and Managerial Rationale

There were a multiplicity of internal and external drivers that prompted organisations to implement or adapt their voice arrangements. However, voice was management driven in all cases, which is consistent with previous research (e.g. Hall et al. 2007). In Paper Co for example, the key drivers were best practice and to extend voice to employees not covered by the union operated Negotiating Council. In Cakes Co and Charity Org, the dominant rationales were union avoidance and the need to improve existing forums within the organisation. This latter imperative was driven by new HR managers in both cases, seeking to enhance the credibility and effectiveness of the forums to better suit the needs of the firm. At Accounts Co, the staff forum was less impelled by the enactment of the regulations, and rather was borne from a staff survey which revealed a desire for a more communicative and cooperative environment.

Scope of Voice and Issues

Whilst the formal scope of voice as embedded in constitutions was potentially far-reaching in all case study organisations, the nature and quality of voice varied. In three of the four case organisations was preoccupied with information only, on daily workplace issues; commonly referred to as 'tea and toilets' issues. For example, in Accounts Co, the agenda was based solely on issues raised by employees regarding their immediate work environment, such as showers, flexitime and bonus schemes. Whilst senior managers on the forum recognised the potential value of addressing issues raised by employees that are pertinent to their immediate working environment, managers' did not view the forum as a legitimate decision-making body within the organisation, particularly regarding strategic level issues. This sentiment was particularly evident amongst managers external to the forum. In contrast, at Charity Org, the forum was used to discuss organisational-wide strategic level issues, such as redundancies (criteria for selection and compensation), and drafting of employment policies (communication, security, information technology).

Influence of Voice on Management Decision-Making

Employee knowledge of the existence and requirements of the ICE Regulations was extremely low across all organisations. However, in all case organisations, there were tangible examples whereby employees had the opportunity to influence the managerial decision-making process. In Paper Co for example, employees were successful in influencing the implementation of smoking bans, cycle to work scheme

and 'dress-down' Fridays. However, the scope of employee influence on management decision making was often constrained by the nature of the issues subject to discussion. In many cases, this was accepted by employees and they did not have an expectation of influence over more strategic and significant decisions within the workplace. Whilst in Charity Org, employees did have a greater level of involvement over strategic level issues such as redundancies, in all case organisations management reserved the right to make the final decision. Despite this fact, there was a widespread sentiment among employees that management directly involved in the voice arrangements were approachable and sincere in responding to issues raised by representatives and their constituents.

Benefits and Constraints to Employee Voice

Despite the lack of weighty issues addressed by the forums in three of the four organisations, in all cases, employees and managers identified improvements in communication (scope and frequency of meetings) as a primary benefit. In particular, all interviewees claimed that organisations were providing a greater degree of detail regarding the financial situation of the company. In Charity Org, Accounts Co and Paper Co, employees identified increased accessibility to senior managers as a tangible benefit of voice. From a managerial perspective, managerial interviewees in Charity Org reported that voice had enhanced employee business awareness, increased the transparency of decision-making and facilitated the implementation of change. Managers in both Cakes Co and Accounts Co revealed a strong desire to extend voice to encompass firm-level issues and improve problem-solving, rather than just being narrowly focused on employee-centred issues; in the form of 'wishlists'.

Wider employee disinterest in the operation of the forums was a prevalent constraint within Paper Co and Accounts Co. Employee representatives reported that a minority of employees would suggest issues for consideration at their respective forums or take an active interest in the forums' outcomes. There were also reported difficulties in finding new representatives to fill vacant positions in all four organisations. Most interviewees took this as a positive sign that employees were content with the extent to which management kept employees informed and consulted at the work, and with their working life, more generally. Some however did believe that employees outside the forums misunderstood the forums' purpose and objectives, or were unaware of the potential influence that employees could exert through these bodies. All organisations acknowledged the need to raise the profile, visibility and credibility of their forums as a means to combat these constraints. In contrast at Charity Org, organisational restructuring and subsequent redundancies had raised employee interest in their information and consultation group.

CONCLUSION

Despite the 'promise' of the Information and Consultation Regulations to extend employee voice in the UK, the flexible approach of the UK Labour government has meant that large disparities exist between national legislation and the EU Directive. This paper addresses an important lacuna in the literature, examining the efficacy of the Regulations as a conduit of employee voice. In all case organisations, the scope/content of employee voice had improved yet the strength of employee voice was questionable. Nevertheless, management and employee respondents directly involved in the operation of voice channels were enthusiastic and committed to their purpose, and identified tangible benefits and influences upon managerial decision making. These themes will be further analysed and critiqued in the comparative in-depth analysis of the case study findings.

REFERENCES

- Bacon, N. & Hoque, K. (2005) 'HRM in the SME sector: Valuable employees and coercive networks', *International Journal of Human Resource Management* 16(11): 1976-1999.
- Carley, M. and Hall, M. 2008: *Impact of the information and consultation directive on industrial relations*. Dublin: European Foundation for the Improvement of Working and Living Conditions.
- Department of Trade and Industry (DTI) (2004) *Final regulatory impact assessment*.
- Lorber, P. (2006) 'Implementing the Information and Consultation Directive in Great Britain: A New Voice at Work', *International Journal of Comparative Labour Law and Industrial Relations*, 22(2): 231-258.
- Hall, M. (2002b). UK reaction to agreement on EU employee consultation directive. *European Industrial Relations Observatory*, [online]. Available: <http://www.eiro.eurofound.eu.int/2002/01/inbrief/uk0201116n.html> [Accessed 14th June 2005].
- Hall 2005 Hall, M. (2005a). Assessing the information and consultation of employees regulations. *Industrial Law Journal*, 34(2): 103-126.
- Hall, M., Hutchinson, S., Parker, J., Purcell, J. & Terry, M. (2008) 'Implementing information and consultation in medium-sized organisations', BERR: Department for Business, Enterprise and Regulatory Reform, Employment Relations research Series No.97, EMAR: BERR: October.
- Hall, M. & Terry, M. (2004), 'The emerging system of statutory worker representation', in G Healy, E Heery, P Taylor and W Brown (eds), *The future of worker representation*, Palgrave, pp. 207-228.
- Ryan, A. (2005). Representation, Consultation and the Smaller Firm. In M.Ram, S. Marlow & D. Patton. (eds.) *Managing Labour in Small Firms*. USA: Routledge, pp. 203-221.
- Sisson, K. (2002) 'The Information and Consultation Directive: Unnecessary Regulation or an Opportunity to "promote" partnership', Warwick Papers in Industrial Relations, No. 67, The Warwick Lowry Lecture, Industrial Relations and Research Unit, April.
- Towers, B. (1997) *The Representation Gap: Change and Reform in the British and American Workplace*. Oxford University Press: Oxford.
- Weber, T., et al. (1997). The Renault case and the future of social Europe. *European Industrial Relations Observatory*, [online]. Available: <http://www.eiro.eurofound.eu.int/1997/03/feature/eu9703108f> [Accessed 14th June 2005].
- Welch, R. (2006). *The information and consultation regulations*. ICE regulations seminar, July 2006: Institute of Employment Relations.
- Wilkinson, A., Dundon, T. & Grugulis, I. (2007) 'Information and not Consultation: Exploring Employee Involvement in SMEs', *International Journal of Human Resource Management*, 18(7): 1279-1297.