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**EMPLOYMENT RELATIONS
OCCASIONAL PAPER**

Implementing information
and consultation: early
experience under the ICE
Regulations - interim update
report

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About this publication

The project manager for this report was Carmen Alpin, Principal Research Officer in the Employment Market Analysis and Research branch.

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Foreword

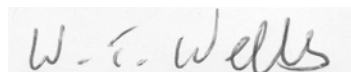
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As part of that work the Employment Market Analysis and Research (EMAR) branch of the Department manages an extensive research programme to inform policy making and promote better regulation on employment relations, labour market and equality and discrimination at work issues.

This project was funded under this research programme, and co-sponsored by Acas and the Chartered Institute of Personnel and Development (CIPD). It was commissioned to investigate organisational responses to the Information and Consultation of Employees (ICE) Regulations 2004. This report analyses developments in the operation of information and consultation arrangements in 12 case study organisations with 150 or more employees in the year following the initial research. The report tracks developments in the way the ICE arrangements were operating and identify business and social contexts which influenced their operation.

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Executive summary

This interim update report analyses developments in the operation of information and consultation arrangements in 12 case study organisations in the year following the initial research. It draws distinctions between some which appeared to be operating successfully and others where problems and difficulties had been encountered, and highlights the importance of managerial commitment in the successful operation of these arrangements.

Aims and objectives

The research investigates organisational responses to the ICE Regulations, paying particular attention to:

- how the strategic choices of management, employees and trade unions (where present) determine the organisation's approach to information and consultation;
- the key features and practical operation of organisations' information and consultation arrangements; and
- the impacts of information and consultation practices on management decision-making, employee commitment, employment relations climate and organisational effectiveness.

The first phase of the research consisted of face to face interviews and employee surveys in 13 organisations with 150 or more employees. Fieldwork in these organisations started in 2006. The organisations studied varied in terms of size, ownership, workforce profile, sector and union presence, and had adopted a range of different approaches to I&C. This interim update report is based on telephone interviews with a manager and a representative of the employees in 12 of these 13 organisations. The interviews took place one year or more after the first research visit. Where possible the employee survey was also repeated. The object was to track developments in the way the ICE arrangements were operating and identify business and social contexts which influenced their operation.

Background

The Information and Consultation of Employees (ICE) Regulations 2004 established a general statutory framework giving employees the right to be informed and consulted by their employers on a range of business, employment and restructuring issues. The legislation has applied since April 2005 to undertakings with at least 150 employees, since April 2007 to those with at least 100 employees and since April 2008 to undertakings with 50 or more employees. The Regulations provide considerable flexibility of response, and enable the adoption of organisation-specific I&C arrangements.

Theme one: the dynamics of employee involvement via ICE bodies

There was emerging evidence in four cases of the ICE bodies declining in effectiveness, and dissatisfaction was expressed usually by both the management and the employee representative respondents. The evidence of weakness was seen in a lack of weighty items on the agenda, the ICE body being bypassed in major organisational change, a lack of training especially to new members of the ICE body, a managerial preference to use direct methods of communication and consultation, difficulties faced by representatives in communicating with each other and with their constituents, and a decline in the support provided by senior managers.

In contrast, in five cases there were signs of growing effectiveness, and in a further three stability in the operation of the ICE bodies. Growing effectiveness came from representatives gaining greater understanding of the role and self confidence in performing it, including handling confidential information. This experiential learning applied as well to some managers on the ICE body so that meetings became more robust and worthwhile. Other positive changes included, in one or more of the organisations, having a rotating chair, focussing on external issues which impacted on the organisation such as the ban on smoking, calling in other senior managers from functional departments from time to time when the agenda item warranted it, attempts to build social networks, further training and participation in management training events, and the use of multiple channels to report back to constituents.

Theme two: the role of the ICE bodies in major organisational change

The experience of major change was a feature of eight cases. In four cases the ICE bodies were largely ignored or bypassed. Where a trade union was recognised the need for statutory discussion on the issues was undertaken with the union. In other cases, in contrast, there was evidence of early provision of information on a confidential basis, special meetings held to review how the decision could be implemented and a feeling of satisfaction with how this had been handled. It was sometimes the case that management felt inhibited from early consultation because of the sensitive nature of the timing of the information provision. Some claimed the stock exchange rules prohibited confidential disclosure. All this points to the very different ways in which managers sought to operate and defined 'consultation'.

Theme three: the changing experience of 'hybrid' ICE bodies which combine union and non-union representatives

This had been a cause of tension. One year later it appeared that there was now greater acceptance by the unions in the organisations and less fear that their role in collective bargaining could be undermined. In one case in particular there was evidence of effective joint working in collective bargaining, consultation over major organisational changes, handling confidential information and discussion of business issues. The union felt that involvement in the ICE body gave them access to senior management and increased their credibility especially with line managers.

Theme four: generating a vibrant representational system

It was common, but not universal, to hear of staff apathy and the problem of getting people to stand as representatives. Management in the more successful examples of

operating ICE were proactive, working with representatives, in promoting the ICE body, using multiple channels of information like dedicated intranet pages and email lists. The purpose was to help representatives communicate with each other, and with their constituents. Training was important, not just for representatives but for managers on the ICE body and, in a few cases, the inclusion of ICE material on management training programmes and in the induction events for new staff. In the less successful cases it was more a matter of 'sink or swim' with the representatives left to solve the problems of communication. This was related to a lack of 'big' issues to discuss at the ICE body meetings with the consequence that it was felt that there was little to report back. In two cases all the original employee representatives had resigned for one reason or another.

Conclusion

It is important to note that these are interim conclusions and some aspects of the organisations' ICE bodies may have changed again by the time of the final research visit in another year's time. It is already clear, however, that it is management which is the crucial player in influencing how the ICE bodies operate and what role they have, if any, in major organisational change. Where management want a successful information and consultation system it reinforces the interest of employees in it. Where management do not support the ICE body or do not take it seriously this can undermine employee interest and involvement in a reciprocal manner.

About this project

The research is funded by the Department for Business, Enterprise and Regulatory Reform's employment relations research programme, and is co-sponsored by Acas and the Chartered Institute of Personnel and Development (CIPD). The research method used is that of longitudinal case studies, tracking developments in each of the case study organisations over a two-year period. The case studies involve semi-structured interviews with senior management, trade unions (where present) and employee representatives, as well as an employee survey. Three waves of case studies are being undertaken. During 2006, case studies began in 13 private sector organisations with over 150 employees. A report of initial findings from these 13 organisations was published in September 2007 and is available to download from the following website: <http://www.berr.gov.uk/files/file41647.pdf>

In 2007, a second wave of case studies began in eight organisations with between 100 and 149 employees. A third and final wave of case studies will start during 2008 in organisations with between 50 and 99 employees.

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Introduction

In September 2007 the report on the first year of research into 13 organisations with over 150 employees concerning their early experience in conducting information and consultation was published¹. This was based on research carried out in 2006 and early 2007 with data generated from case visits where managers and employee representatives were interviewed, complemented by a survey of employees in all but two of the organisations. The research is longitudinal in design with an interim update conducted one year after the original case visit and repeat surveys where possible. The results are reported in this interim update. Final case visits will be conducted two years after the initial visit in these organisations, referred to as 'wave one'. These will be the subject of a report in 2009. Meanwhile 'wave two' of the research commenced in the second half of 2007 in eight organisations with between 100 and 150 employees to coincide with the inclusion of undertakings in this size band within the scope of the ICE Regulations. This is the subject of a separate report. Updates and final case visits will occur in 2008 and 2009. 'Wave three' organisations are those in the size range 50-100 with the initial research conducted in 2008, once this final size band came within the scope of the Regulations, with updates to be held in 2009. In all cases employee surveys are conducted at each stage, where possible.

This interim update is based on telephone interviews lasting between 30 and 40 minutes with a senior manager, usually the HR manager, and with a representative of the employees, in 12 of the original 13 organisations. In most cases these respondents had been interviewed in the first visit. Most of the employee representatives were employees in the organisation and a member of the ICE body, often called an employee forum. In three cases a trade union full time officer, who was a member of the forum or closely associated with it, was interviewed. One organisation, the cosmetics company², dropped out of the research in the year due to a trading crisis leading to it going into administration.

It proved easier to conduct the telephone interviews than to repeat the employee surveys. These require active cooperation from the organisation publicising the survey and either distributing pre-addressed questionnaires or sending them out on-line. Increasingly larger organisations, like the ones covered in 'wave one' the research, conduct their own employee engagement surveys and complain of 'survey fatigue'. It also proved to be the case, as discussed later, that a number of the organisations were going through difficult periods of change and restructuring and management felt it inopportune in these periods to issue a survey. In the event, at the time of writing in late May 2008, surveys had been completed in four organisations with two more currently underway, two planned in June and a request to delay until 2009 in one further case. It had proved impossible to conduct a survey in two companies following the initial research visit and this remained the case for the interim update stage of the research. At the infrastructure contractor the first survey was conducted late in 2007. The survey results, where available, are used to illustrate the key themes emerging in this update.³

This update organises the data from the telephone interviews into four themes. It was observed in the original report that it was too early to come to any firm conclusions on

the operation of the ICE arrangements since, in many cases, the new or revitalised ICE bodies had not been 'tested' in the sense of dealing with organisational change or coping with changes in personnel in management or the representatives. One year later it is possible to discern emerging themes based on how the ICE arrangements were used and dealt with change. The four themes are:

- The dynamics of employee involvement via ICE bodies. Here it is possible to discern factors associated with growing acceptance and utility, and the factors linked to less successful outcomes.
- The role of ICE bodies in dealing with major organisational change. Eight of the organisations experienced major change in the year following the first research visit. In many cases this involved forms of organisational restructuring and TUPE⁴ transfers either out of, or into, the organisation.
- The operation of 'hybrid' ICE bodies combining employee and union representatives. In the original report, evidence was provided of unease and sometimes hostility where unions were recognised but where, often because of a relatively small proportion of employees in membership, they operated alongside directly elected employee representatives.
- The challenges of generating a vibrant employee representational system. It was often the case that it was difficult to get employees to stand in elections and to follow the workings of the ICE bodies even where they otherwise appeared to be successful. Management had to be adept in developing communication channels to keep the ICE bodies and arrangements fresh.

These themes are, at this interim stage, indicative rather than conclusive. Firmer evidence-based conclusions should be possible following the final stage of the research in 2009, two years after the initial case visits.

Theme one: The dynamics of employee involvement via ICE bodies

Change has occurred in all the cases studied in the period since the initial case visit. In some cases there is clear evidence of a decline in effectiveness leading to questions of how sustainable they are, although all remain in operation. In others, more positive developments have taken place, some structural and others less dramatic, centred on experiential learning especially by the representatives themselves. In a third group, change has been modest but there is general satisfaction on the part of both managers and the employee representatives with how the ICE bodies are functioning.

Evidence of decline was clear in four cases, often expressed in dissatisfaction by those interviewed, both from management and employee representatives. There are a number of common characteristics:

- a lack of weighty items on the agenda;
- the ICE bodies being bypassed in major organisational changes;
- delays in the election of replacement representatives;
- lack of training either for new ICE body members or continuing training for established members;
- management preference to use direct methods of information and involvement unconnected to the ICE bodies;
- problems with representatives communicating with each other and with their constituents; and
- less involvement of senior managers in some cases.

It is, however, not always possible to conclude that these factors will necessarily undermine the operation of the ICE bodies. For example, in the charity, it can be argued that the cancellation of some ICE meetings was due to an over-elaborate constitution which required quarterly meetings of local and national forums. More realistic meeting schedules, as have now been adopted, may lead to fewer cancellations and greater activity enthusiasm in the ICE arrangements. The conclusion must be that in these four cases it has proved difficult to get the ICE arrangements embedded into the decision-making fabric of the organisations.

The most notable difficulties in operating ICE arrangements were experienced by the electronics company⁵. No meetings of the employee forum had been held since early 2007 despite the fact that the organisation had embarked on a major expansion both at its UK operations and overseas. The company's expansion plans and its eventual acquisition of a production facility in the US were announced to the workforce via senior management presentations to teams and departments, not via the ICE forum. A rapid rise in the number of migrant workers employed had been discussed at the forum but a management working group on the issue did not include forum representatives. The agendas for forum meetings, when they occurred, were 'less substantial' than previously

because management were using other channels for communicating key strategic decisions. The managing director no longer attended meetings and all the original employee representatives had stepped down due to the perceived ineffectiveness of the forum. No training had been undertaken by representatives. According to the employee representative interviewed, restricted agendas and confidentiality rules had inhibited workforce engagement with the process and some employees saw the forum as 'a waste of time'. The HR manager regarded the forum as 'a bit cumbersome' and considered two meetings a year (as opposed to the four required by the constitution) to be 'more than sufficient'. The employee survey reflected some of these concerns. The proportion of respondents agreeing that 'employee representatives make a difference to what it is like to work here' fell from 22% to 16%. Less than 10% felt that representatives were a 'useful source of information'. Indeed two wrote on their questionnaires that 'we do not have employee representatives here'.

One of the key points of difficulty in the electronics company, the priority given by management to direct forms of communication and involvement, was reflected in the charity and in the financial processing company. In both, the representatives interviewed felt that the use of employee discussion groups to sound out opinion could have the effect of excluding or marginalising the employee forum. In the financial processing company, management had sought to limit any damage this might do by ensuring that all items discussed had previously been raised in the forum. Despite this the forum has a limited exposure in the company media and is not perceived to be very effective. In both of these organisations the representatives feel disenchanted when compared with their expectations early on. One said 'when you read the constitution, it mentions consultation a lot. Now, consultation prior to events doesn't happen . . . We are not part of any body that can change those decisions'. This is then related to problems of apathy on the part of employees and the difficulty of getting representatives to stand for vacant posts.

The original report noted evidence from previous research which suggested that the combination of direct involvement with indirect methods via employee forums can be the most effective in impacting on employee commitment and engagement. The small number of cases reported here throws some doubts on the generality of that conclusion. In certain circumstances, rather than the two forms of involvement being complementary, they are competitive, in particular in cases where management appear to privilege direct over indirect forms. Mechanisms for communication and involvement focussed directly on employees are seen as more effective and the forum suffers as a consequence if, as discussed in the next theme, it has no role in prior consultation over strategic decisions.

At the infrastructure contractor there was strong emphasis on direct forms of communication with staff including mandatory team talks, an in-house journal, safety action groups, regular opinion surveys, etc. Management perceived that the two ICE bodies it had were 'bolted on' to these existing forms of communication and 'will have to make their own way and contribute to the overall communications and consultation process'. The representatives found this very hard to do as they lacked any involvement in strategic issues. In the transport side of its business, the loss of a major contract meant that half of the staff, and 80% of the manual workers, moved to another

contractor. In the roads business, major acquisitions more than doubled the workforce. Neither of these major events was discussed at forum meetings and no special meetings were held. 'Nobody asked for one and we are too busy trying to talk to everyone, and too busy trying to be successful', said a manager. As a result there has been a low attendance at forum meetings and a 100% turnover of employee representatives, only in part because of the restructuring. This organisational turmoil has meant that the employee constituencies and union representational arrangements no longer reflect the new, and still emerging, organisation. In terms of a role in major organisational change, the forum has been irrelevant.

More positive experiences were reported in five cases, with both management and employee representative respondents in agreement. In some cases this was nothing more dramatic than a reported belief that the ICE arrangements 'are becoming more part of our culture now', or 'more robust and worthwhile'. Often this was seen in the way employee representatives had developed a greater understanding of their role and were gaining in self-confidence. In other cases it was an enhanced capacity to engage in more detailed and higher level conversations with management in forum meetings. In three cases this was evident in learning to handle confidential information. In part, the continuing involvement of senior management provided the stability and opportunity for this experiential learning. More structural changes included:

- having a rotating chair;
- focusing on issues connected with externally imposed legislative requirements like banning smoking in buildings, age discrimination legislation and environmental issues;
- other senior managers taking part when an agenda item relates to their area;
- the deliberate building of social networks;
- further training and participation in management training; and
- the use of multiple channels in reporting back to constituents.

All these provide evidence of sustainability and growing embeddedness but this must remain an interim conclusion. There remained common problems of getting employees to stand as representatives and workforce apathy appears common, at least as reported by the respondents.

One good example of growing effectiveness comes from seaside housing. In dealing with a redundancy situation involving the closure of a service area, a special meeting of the forum was held with information given in confidence. The HR manager reported that this meeting had been 'the one where the representatives had made the most important input and thought of things that perhaps we had not considered especially on timescale and the operation of a slimmed down service'. Another issue facing this housing association, reliant on winning contracts, was losing out in the face of cheaper bids. This had been discussed at the forum and the understanding of the representatives helped to 'quell staff indignation' at the loss of contract tenders since they were able to explain why this was happening.

Behind this success lies a commitment to training for new representatives provided by senior managers and the innovation of some more established representatives taking part in line manager training events. Senior managers are regular attendees at forum meetings and now specialist directors from finance and operations will attend if an agenda item requires it. New staff induction training includes an item on the role of the forum and names and addresses of representatives are handed out. There is now a dedicated page on the intranet concerning ICE arrangements. Overall, management are concerned to show that the forum is important and the relationship is marked by trust. Prior to formal consultation on an issue it is often the case that management will float ideas with representatives to seek their views informally. One difficulty, or at least a feeling of unease on the part of representatives, concerned how to handle confidential information. They complained that they can feel like 'a fall guy' in having both to handle sensitive information and relay it between management and employees.

Much the same type of effectiveness-building was evident in the care services company with an emphasis on representative training and the involvement of specialist senior managers. Meetings have discussed business planning, financial forecasting and a job mobility scheme, all helping representatives 'to build their knowledge all the time'. Meetings of the forum are now 'more robust and worthwhile'. In this case they adopted the practice of a rotating chair. The results of the employee survey here reflect this positive approach. As is commonly the case, good results in one section of the survey, for example on management effectiveness, are reflected in other areas, such as satisfaction with key HR practices and in the outcomes related to employee commitment to their organisation. In all of these topics the results are better than the year before and greatly exceed the 2004 comparisons taken from the Workplace Employment Relations Survey. Overall satisfaction with the state of management-employee relations has increased from 76% to 83% and that related to training from 79% to 88% in the year between the surveys. Representatives are seen as a useful source of involvement by 36% of survey respondents compared with 29% the previous year.

Innovations in the ICE arrangements in the unionised engineering company have focussed on the national consultation body. These have included calling in external experts for briefings on certain issues like age legislation and disability, and social events in the evening before meetings to build trust and dialogue. Unusually, these innovations were the product of a formal joint review using a structured tool used by the company in its quality processes.

The training of representatives is given emphasis in the mobile phone company. There are 70 seats on the various local and national employee forums. In the last round of elections 80% of representatives stood again and 60% were successful with only 20 of the 70 elected unopposed. New representatives are given a welcome pack, induction training and there is an annual development/training event held for all, including externally facilitated sessions as well as in-house training provided jointly by management and leading employee representatives. Some representatives attend management development programs and management training now includes material on the employee forums. In addition a wider range of media is now used to keep attention on the forum.

The final group of cases is where a type of 'business as usual' is evident with the employee forum getting on with the job in the way intended. For example, in the news agency the employee representative said that the ICE arrangements had 'become a lot easier because we now know the format and the people who are around us . . . Reps are comfortable with what issues we should take to our council and what we should take to our line managers'. Here, and in the other two cases of urban housing and rural housing, expectations on the role of the ICE bodies and arrangements were relatively modest. Meetings are held, with few cancelled, and most of the items on the agenda are, in the main, concerned with domestic or local organisational arrangements. In two cases they have, like others, discussed how to handle legislative change concerned with smoking and age discrimination. This, in urban housing⁶, led to the phased withdrawal of long service awards which exercised the forum. Organisational issues can be important, such as a move to a new head office in the case of urban housing. In the main, in these three cases the forums' more modest role is to be a communications bridge between senior management and staff. They have not up to now been equipped to tackle major organisational change. This is discussed in the next section.

Theme two: The role of ICE bodies in dealing with major organisational change

Eight of the twelve cases experienced fairly substantial organisational changes in the period since the first site visits. How these were handled and the role of the ICE bodies is instructive since it varies quite widely but at the heart is the willingness, or otherwise, of senior management to discuss plans at an early stage with the consultative forum.

In the previous section reference has already been made to two organisations, the electronics company and the infrastructure contractor, where the forum was largely bypassed, although in the latter the recognised unions were consulted in accordance with legislative requirements. A similar experience occurred in the charity when a large number of staff were transferred to a university. While the local forum had some involvement, at the national level the representative interviewed complained about an inability to get information and engage in any meaningful discussions. This lack of involvement was evident, too, in the financial processing company which lost a major client and announced 100 redundancies. The employee forum was kept informed rather than consulted, as was the recognised union, about this decision and its impact, and they were told just before employees. One of the representatives commented that:

'It's difficult, hand on heart, to say that we've been used as a consultative body . . . It's part of our constitution that we fulfil a consultative role. We may get told snippets in confidence at forum meetings but I don't believe we have been consulted about anything major . . . staff involvement is less prominent than we had been expecting.'

A more positive experience occurred in seaside housing, as noted in the previous section, where the forum was actively involved and was felt to have been able to handle confidential information and to suggest approaches to the closure of a section which management had not considered. Special meetings of the forum were held to consider the matter. Their contribution was felt by management to be most valuable. Similarly in two other cases the forum was involved early on in discussions on restructuring (the mobile phone company) and an acquisition by TUPE transfer (care services company). In both cases special meetings were held, information provided and discussions focussed on the impact and implementation of the business decisions. In the case of the mobile phone company, the employee forum reached a signed agreement with management on the final package of measures.

A more mixed picture is evident in other cases. In both urban housing and the diversified technology company, major changes, involving the sale of parts of the businesses to other companies, were felt by senior management to be too commercially sensitive to allow for early consultation and in both cases the Stock Exchange rules were cited as an inhibitor⁷. Senior site management were similarly kept in the dark until the day of the announcement. In urban housing a specially constituted joint meeting of the recognised

union and the forum took place, for the first time, to receive the news. However, in both, the forums were involved in discussions on the implementation of the sale and the consequential impact on the remaining parts of the business. In the diversified technology company this subsequent action was felt to be important since 'the local management needed an additional tool for helping them with the communication and getting feedback from the workforce'. Ideas generated would have a bearing on management decisions before 'we act on specific things'. In urban housing the employee representative interviewed felt that the role of representatives was 'to act as ambassadors for management in these circumstances, explaining what had happened and giving the rationale for it'.

In the unionised plant of the diversified technology company the need for redundancies after poor trading was handled in a textbook fashion with the recognised union's external full time officer together with local shop stewards formally consulted over the requisite 90-day period. The local ICE body was involved in the follow-up processes to assess which areas were to be affected and the procedures for handling voluntary, and if need be, compulsory redundancy. The underlying level of trust between the company and the union led to effective joint working over these implementation issues. Many special meetings have been held, sometimes attended by senior managers from higher in the organisation.

The meaning of consultation, as was noted in the original report, is fraught and the experience of these eight organisations illustrates both the wide scope of practice and the limits to its meaning. It is clearly the case that the first group of companies cited did not engage in any meaningful way in consultation with their representative body. These ICE bodies were largely bypassed and management appeared not to have believed it was important or useful to engage in consultation, except with recognised unions due to legislative requirements. In contrast, three other organisations did take consultation seriously, not so much over the decision itself, which was seen as a business decision, but over its impact and the way it was to be implemented. This type of 'option based' consultation limited to the subsequent impact had a number of attributes. Confidential prior information was given to the ICE body, a number of special meetings were held and senior management, sometimes at a level beyond that normally attending, were present at one or more meetings. The employee representatives appeared to accept their role in these cases.

A final group of companies restricted the consultation period to the last moment and did not provide information in confidence. They felt this was an inevitable result of dealing with business sensitive information concerning other organisations. The matter, it was felt, could not be handled internally. There was some joint discussion on implementation matters but not in as widespread or meaningful a way as in the more successful previous cases. However, there was clearly some form of dialogue on the issues taking place but how far it can be called 'meaningful consultation' is debatable. This is a matter which will be looked at in more detail in the final year of the research.

Theme three: The operation of 'hybrid' ICE bodies combining employee and union representatives

In six of the cases in wave one of the research there were 'hybrid' union and employee representative bodies in existence where both types of representatives were entitled to attend. The experience of operating 'hybrid' ICE bodies is of particular interest since data from the Workplace Employment Relations Survey 2004 shows that over half of consultative in bodies in workplaces where unions had some form of representation had 'mixed' or 'hybrid' membership involving both union and non-union representatives.

At the time of the first case visits, as discussed in the original report, this was a cause of difficulty in three of the cases. A variety of mechanisms were in place to cope with the tension, from the union sending observers to forum meetings (urban housing), the production of separate minutes and the withdrawal of employee representatives when collective bargaining was conducted (care services company) and general unease in rural housing. In the unionised plant of the diversified technology company and in the engineering company, the dominance of the union meant that their position was not under threat. It is interesting to note that the engineering company has agreed a 'negotiated agreement' with the union but the union has yet to ratify this. In the interim there have been no elections for the employee representatives covering those employees outside of collective bargaining and union recognition. The action required to establish 'hybrid' forums at plant and national level has yet to occur and at present the national forum is a union only body. There appears to be little incentive to finalise arrangements. In the infrastructure contractor the major organisational changes, described earlier, have rendered this matter largely irrelevant especially when major restructuring lead to direct consultation with the unions, as required by law, and the bypassing of the employee forum.

In the three organisations where tension did exist between the recognised unions, all with minority membership and the employee forum covering all employees, these tensions have largely dissipated. The clearest, and most positive, example is that of the care services company. Here the joint union and employee forum have abandoned the practice of producing separate minutes and now join forces as a combined body engaged in every activity including collective bargaining. The union full time officer said that everyone is now 'relaxed about it' and a 'fairly good deal' had been struck. In his view the union representatives are better informed than their non-union counterparts and all are now gaining in confidence from working together. As noted above, this is a case where management are determined to give priority to the forum and it appears to be working well. The union officer concluded that:

It helps the union to be involved in issues that are important to members, discussing them on a regular basis with management . . . If it is known to middle managers that the union is talking to top management it formalises the union role with the former who tend

to be sceptical – and we are able to talk about issues at an early stage before they become problems.

The case of urban housing is different. Here the union had refused to take part in the forum and had vociferously opposed its creation. In the event, it had accepted one seat and sent along a second person as an observer. One year later they no longer bothered to attend meetings since they no longer feared it would impact deleteriously on their collective bargaining role. As the employee representative put it ‘they found the meetings too boring’. Interestingly, when the employer sold part of the business and transferred staff under TUPE rules, a special joint meeting was held of the forum and the JNC. Up until then meetings of the JNC had been held in the morning and forum meetings in the afternoon. This remains the pattern but now a new joint meeting is held to cover those staff not in head office but in the residential homes. In rural housing the unions have not changed their attitude to the forum but they continue to accept it and support it as another source of information and a means to contact senior management.

The national and local employee forums at the mobile phone company are not technically ‘hybrid’ arrangements as the company does not recognise unions for collective representation and unions are not directly represented on the forums. Nevertheless, elected representatives who are members of two unions have maintained a significant presence on the forum (approximately 30% of the seats following the most recent elections). More generally, both management and the lead employee representative reported that the two unions and their members were more content with the operation of the forums than previously.

This easing of the tensions surrounding the operation of hybrid bodies is a pragmatic response to circumstances on the ground. In no case have managements sought to use the forum as an excuse to derecognise the union as had been widely feared by unions. In no case, either, has coolness towards the ICE Regulations at the national level in some unions inhibited action at the local level. In what some may see as a typically British response, employees, unions and managements at the local level have learnt to work together in a pragmatic way to extract the benefits each can gain by working together in these ICE bodies.

Theme four: Generating a vibrant employee representational system

Theme one provided an analysis of the factors associated with successful ICE bodies and looked at cases where the forums were struggling. One of the difficulties all organisations had was in creating vibrant employee representational systems since they do not emerge without deliberate activity. In no case was there a groundswell of employee interest and activism in these formal systems of employee involvement. Where the forums appeared to be working well there was clear evidence that managements in particular provided strong support at a senior level and took steps to try to increase the profile of the work of the representatives and the ICE bodies. This was evident in four cases.

In the care services company, while it proved difficult to get staff to stand for elections due to a general lack of interest, and the practice of representative surgeries had had to be abandoned, efforts were made to improve the operation of the forum and the capacity of representatives to communicate with each other and with constituents. For example, training had been provided in chairing skills since they now have a rotating chair, and joint training of management and employees on the forum was initiated. Confidential intranet pages were used by management to share business information with forum members so that 'everyone has the same information'. A dedicated e-mail site was available for employee representatives to communicate with each other. Some representatives used staff meetings in their area to report back on forum meetings. Much the same use of multiple means to improve the forum and reporting arrangements was evident at seaside housing. Here there is a dedicated website for forum news and an e-mail addresses list for the representatives. One innovation which has improved the visibility of the forum was holding meetings at different locations and not just at the head office.

More systematic and planned changes occurred at the mobile phone company. A new time off and facilities agreement was agreed in 2007. This improved the provisions and gave explicit recognition to the need for more time off when big items like restructuring were under review. The use of special meetings to deal with these issues and allow representatives time to plan their response to management proposals is now an established practice. This is often seen as one of the hallmarks of effective consultation. The company has provided a dedicated office for representatives to use at its headquarters building. Pre-meetings of representatives before forum meetings are routinely held and there have been no complaints or grumbles about time off being provided except for those few representatives involved in discipline and grievance case work, which can be time consuming. There is a dedicated page on the company intranet and confidential e-mail list for the representatives to use. The work of the national and local forums has featured regularly in company media.

This wider use of communication media is, not surprisingly, found in the news agency. Here the staff newspaper devoted a page to the work of the forum and there is a weekly e-mail newsletter which provides reports on forum issues. In addition, there is dedicated

page on the intranet and representatives are encouraged to report back orally at staff briefing meetings. As in other cases, representatives have their own e-mail list. Despite this 'we do find that there is still apathy' about the forum, according to the HR manager. Special training has been provided to improve the way representatives interact with their constituents. It is, apparently, easy to get staff to stand for election. This may be because of the process used. Staff are asked to consider which of their number would be a good person to be a representative on the forum and they allocate first, second and third choices. Only then, once the results have been counted, is the favoured person asked if they wish to stand and some are invited to attend the next meeting on a trial basis if they are reluctant.

The evidence from less successful ICE bodies points to two conclusions. First, management does not devote time in helping representatives or in publicising the work of the forum. In the infrastructure contractor, where less than half the representatives attended the most recent meeting, minutes of meetings are produced and issued to representatives 'but it is up to them to do as they want and feel necessary'. Second, the relative lack of success is related to the paucity of important issues to discuss. In the financial processing company a representative reported that they did not have pre-meetings because 'we're not involved in any major decisions going forward . . . Forum members go back to work and probably the forum is not given a second thought. We rarely communicate with each other as representatives.' At the charity meetings have been cancelled and representatives complain that they have not been given enough information to do their job. Elections for new representatives have been delayed and the use of the intranet as a communication system fallen into disuse. As a result it is felt that feedback to staff on the work of the forum has deteriorated. One of the two staff seconded full-time to support the ICE body has been transferred to other work and the remaining one is unable to maintain previous levels of support.

One of the dilemmas commonly experienced is to get the balance between strategic and domestic or housekeeping issues right. If management does not wish to discuss strategic issues, as in some of the cases, then the forum becomes devoted to small-scale matters. At the financial processing company the representative commented that 'initially we were to discuss more high-profile, in-depth issues but very quickly we were discussing everyday issues the shop floor have'. This was the experience, too, at urban housing. These domestic issues can be of particular concern to staff and it is important not to denigrate them as 'tea and toilets'. Successful forums seem able to deal with both the strategic and the domestic. The latter may not grab the headlines but are a necessary part of the work of the ICE bodies and can help ensure that small issues do not fester. As one of the union representatives in the diversified technology company said, 'big events tend to focus attention. When nothing is happening people show less interest'. The same can be said of all political systems but it does not mean the small and the domestic can therefore be ignored.

Conclusion

The crucial role of management in the initiation of ICE arrangements was a major theme explored in the report on the first phase of our research in the 'wave one' organisations. It remains as true in understanding and explaining why some of the ICE arrangements appear to be successful and embedded into the organisations while in others there is clear evidence of structural and operational weakness. The old adage that 'management acts and unions react' is even truer in the case of employee consultation mechanisms such as those studied here. Unlike trade unions, these bodies have no external source of strength or advice. They are unusually dependent on management. This is seen in a number of ways:

- the extent to which senior management is committed to make the ICE arrangements work;
- the attention paid to ensuring that the work of the ICE bodies is communicated via a variety of media to staff;
- the provision of training to representatives, and to managers, on the skills and competencies needed to be a representative;
- time and the requisite media for representatives to communicate with constituents and each other;
- active encouragement to appropriate staff to stand for election; and,
- above everything else, a willingness to share information in a timely way and to engage in early discussion on strategic matters, especially concerned with the often complex and painful choices that flow out of a major business decision.

What is emerging in this interim update, one year after our initial research, is not just that the 12 organisations vary in how, and how well, they manage the information and consultation arrangements but that the dynamics of this are reinforcing. There is evidence of virtuous and vicious circles of action and reaction in operation. Where the representatives believe that they are not playing the role they thought they would have in being consulted in major issues they become disillusioned and often resign. Their replacements, if they can be found, are rarely trained. Managements' belief in the ineffectiveness of the ICE body is thereby reinforced.

More virtuous circles are also clearly evident, but it is very clear that this is because managements want the ICE bodies to be successful and work with the representatives, sometimes in the face of employee apathy, to ensure it happens. It is certainly not a forgone outcome. It is interesting to observe that in the interviews the respondents from management and from the representatives were in agreement either in the sense of being dissatisfied or, conversely, in being confident that things were going 'as well as could be expected'. In the former case there seemed to be no clear view on what needed to be done to improve the operation of the ICE arrangements. In the latter cases of relative success, there was an understanding of how it was necessary to provide support and backing on a continuous basis.

Much has happened in these organisations in the last twelve months. It must be presumed that the same will apply by the time of the next, and final, round of research in a year's time. By then it will be possible to take a longer view of the operation of ICE arrangements and be more systematic in doing so via site visits. In the meantime this update is no more than an interim, indicative report and analysis of trends.

Endnotes

¹ Hall, M., Hutchinson, S., Parker, J., Purcell, J. and Terry, M. (2007) *Implementing information and consultation: early experience under the ICE Regulations*, Employment Relations Research Series No 88, London, Department for Business, Enterprise and Regulatory Reform in association with Acas and the Chartered Institute of Personnel and Development.

² All organisations are referred to by the same pseudonym used in the original report.

³ Response rates have been disappointing ranging from three to 19 percent. The results must be treated with caution.

⁴ TUPE is the Transfer of Undertakings Protection of Employees Regulations. Where an independent trade union is recognised for collective bargaining purposes for some or all of the employees affected it must be consulted in advance by the employer. Where there is no trade union consultation must take place with employee representatives or with the employees directly. In the non-union cases reported here the ICE body was used as the representative forum.

⁵ Details on the organisations referred to here can be found in the appendix to the original report and in the tables and text of the report.

⁶ In this case, and in the news agency, the employee survey only had response rates of three percent which is below an acceptable threshold.

⁷ Stock exchange rules were also cited by the infrastructure contractor as a reason for not consulting the employee forum. In each case it was felt that commercially sensitive information related to the sale of a business to a listed company had to be restricted.