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The *Acas Policy Discussion Papers* series is designed to stimulate discussion and debate about key employment relations issues.

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## Employee Representatives: Challenges and changes in the workplace

### Executive summary

The aim of this paper is to examine some of the key issues currently being debated concerning employee representatives in the workplace, such as access to facilities, time off arrangements and the need for training. Although there is considerable discrepancy in the statutory rights granted to the increasing range of types of representative, there is no clear statutory solution to ensuring that representatives have the time, training and resources to fulfil their functions. Even those categories of representatives that do enjoy rather better statutory entitlements do not necessarily benefit from these rights in practice. Rather, the answer lies in building the business case and encouraging good practice on the part of employers and their managers.

The same conclusion applies to the 'reasonable test': being prescriptive in the amount of reasonable paid time off allowed to representatives would not necessarily mean that this would be translated evenly in workplaces. It is more likely that representatives will be granted adequate time off to perform their duties and activities where there is a productive employee relations climate based on trust. Moreover,

there needs to be flexibility in statutory as well as organisational arrangements to allow for fluctuations in representational needs. The importance of training employee representatives cannot be emphasised enough, the paper concludes – but the type and breadth of training is just as important. Where the training is joint, involving representatives and their managers, the added value to long-term relationships is likely to be well worth the investment.

The paper also considers the steps that could be taken at an employer and public policy level to enhance the contribution that employee representatives can make to organisational performance. There is no magic formula, it concludes – the same key principles apply here as to building good employment relations more generally. For example:

- gaining management buy-in for the employee representative arrangements at a senior and line manager level
- building good relationships in the workplace – it is the level of trust and collaboration between managers, employees and

representatives that will determine the quality of the wider employee relations climate

- appreciating the wider employment relations context – to be properly understood and its full potential realised, employee representation must be understood in relation to the wider framework of dispute resolution in the workplace, and the role these arrangements can play in resolving differences and aiding the early resolution of conflict.

The review of this area of employment relations therefore needs to be seen in the context of a wider raft of measures being considered by government to encourage more cooperative working and reduce workplace conflict. For example, the government response to its consultation on dispute resolution by Michael Gibbons<sup>1</sup> was due at the time of going to print.

In this paper we discuss the importance of employee representatives and consider in more detail the nature of non-union workplace representation, about which relatively little is known. We draw on the extensive experience of senior Acas advisers as well as the existing literature, in particular the latest Workplace Employment Relations Survey (WERS)<sup>2</sup>.

**This paper is split into the following four parts:**

- **Part one: the introduction looks at the background to the paper and the role of Acas**
- **Part two: examines the challenges facing effective employee representation**
- **Part three: focuses on some of the strategies we could use to promote more effective representation**
- **Part four: Conclusions and recommendations.**

**Part one: Introduction**

The evolving role of employee representatives in the workplace is currently prompting considerable interest. This is also an area of significant interest to Acas: as the expert body for employment relations, the organisation

has worked closely for many years with trade union and non-union representatives in a range of different contexts. We therefore have first hand experience of the benefits that effective representative arrangements can bring to the business. The evidence from our advisers, who provide in-depth support to organisations, is compelling: those organisations that demonstrate commitment to genuine employee representation have the potential to raise their game and boost productivity.

Last year, the then Department of Trade and Industry (DTI, now the Department for Business and Regulatory Reform, BERR), undertook a consultation exercise on workplace representatives<sup>3</sup>, to which BERR has recently published its response<sup>4</sup>. The consultation examined the changing nature of employee representatives, the variation in workload and the role and growth of non-union representatives. It concludes that, due to excessive pressure experienced by a significant minority of employee representatives, the benefits that representatives can bring to the workplace are not being sufficiently realised.

**The role of Acas**

Acas was set up as an impartial body to provide information and support to all sides of the employment relationship. Helping employers, employees and trade unions to talk to each other and to resolve differences without recourse to law or industrial action has been part of Acas' day-to-day work for over three decades. Acas has a long tradition of working with trade union representatives and will always urge joint working where its advisers work with organisations that have representative arrangements in place, but also where there are no formal representative structures. As patterns of representation have changed, so has Acas' intervention in response to the changing needs of employers and the new breed of employee representatives.

When the new Information and Consultation of Employees (ICE) regulations came on-stream Acas produced the accompanying guidance and provided training and information for employers and employees.



Although the demand for training on the regulations was not as high as expected, Acas advisers have considerable experience of working with employers to set up forums, training both managers and employee representatives on how to work together effectively and this is explored in more detail in an earlier Acas report, *From challenges to good practice* by Dix and Oxenbridge<sup>5</sup>. Acas also regularly supports and advises organisations where employee representative forums containing a mix of trade union and non-union representatives – with the greater complexity that a three-way, as opposed to a two-way, relationship brings.

Acas senior advisers provide a unique insight into the employment relations climate of British workplaces today. In a series of focus groups we explored, in depth, their knowledge of employee representation gleaned from their daily and in-depth contact with trade unions, employee representatives and their managers.

## **Part two: Challenges and issues affecting workplace representatives today**

### **Changing nature of employee representation**

The role of the employee representative is becoming both more complex and more stressful. Legislation governing individual rights has increased hugely over the past 20 years and work itself has become more intense, putting greater strain on the work-life balance of employees. For a combination of reasons people are less willing to stand for representative posts which, in turn, increases pressure on those who take up this role.

The traditional British model of employee representation involving a trade union representative, (often called a shop steward) operating within a collective bargaining structure, although never ubiquitous, has been in decline for the past two decades, particularly in smaller private sector organisations. The wider employment relations climate has also changed; for example, strike action saw a recent increase in 2006 but still remains much lower than throughout the 1970s and 80s.

Reasons for these changes can be traced variously to the demise of the highly unionised manufacturing sector, in part the result of globalisation, more constraining union laws and the outlawing of the closed shop, as well as an overall fall in trade union density particularly in the expanding private sector. Unions have found it increasingly difficult to organise in a more fragmented labour market where increased use of agency and temporary staff have become part and parcel of the UK economy.

Legislation, too, has played its part as employment rights have moved from a collective arena based on voluntarism to one governed by a complex and expanding framework of individual employment rights. Meanwhile, membership of the European Union has provided rights for employee representation outside the traditional trade union structure.

### **Alternative forms of employee representation**

This decline has coincided with the rise in alternative models of representation charted by consecutive Workplace Employment Relations Surveys over the past 20 years. According to the DTI analysis of the latest Workplace Employment Relations Survey (WERS) the number of non trade union representatives now equal trade union representatives<sup>3</sup>. Although a true figure is hard to establish and anecdotal evidence points to many non-union representatives being trade union members with a degree of union support, non-union representatives are a significant presence and can no longer be ignored.

Moreover, there has been a significant growth in different types of representatives, and in particular those with responsibility for single issues. Those with statutory rights are listed in Table 1 on the next page.

**Table 1. A comparison of Representatives' Statutory Rights\* -**

Representative	Statutory Right to:				
	Facility Time	Payment for Facility Time	Paid Time Off for Training	Protection against Dismissal & Detriment	Facilities
Shop Stewards and similar	✓	✓	✓	✓	✗
Union Learning	✓	✓	✓	✓	✗
Collective Redundancy	✓	✓	✓	✓	✓
TUPE	✓	✓	✓	✓	✓
Union Safety	✓	✓	✓	✓	✓
Employee Safety	✓	✓	✓	✓	✓
Offshore Safety	✓	✓	✓	✓	✓
I & C	✓	✓	✗	✓	✗
Transnational I & C	✓	✓	✗	✓	✗
Occupational/Personal Pensions	✓	✓	✗	✓	✗
Working Time	✗	✗	✗	✓	✗
Maternity & Parental	✗	✗	✗	✓	✗
Fixed-term Employee	✗	✗	✗	✓	✗
European Company	✓	✓	✗	✓	✗
European Cooperative Society	✓	✓	✗	✓	✗

\* Taken from the DTI consultation document. *Workplace representatives: a review of their facilities and facility time.*

In addition to those representative roles listed above are growing references to equality and diversity, environmental and fair treatment representatives.

Focus group participants cited shop stewards, union learning representatives, redundancy and TUPE, health and safety representatives and Information and Consultation representatives as those Acas most commonly came into contact with. None of those interviewed had any experience of maternity and parental leave representatives, and although they were aware of employees with responsibility for environmental, diversity and fair treatment issues, many questioned whether they were really representatives in a formal sense. As one adviser from Scotland noted:

*'One of the identifications that I would start with is what do you mean by a representative? Do you mean somebody undertaking a role and therefore when they appear they're representing that role, as opposed to representative in the more traditional sense, which is representing a group of employees in their relationships with management.'*

Advisers also noted that although there may be distinct roles in theory, in practice many shop stewards hold multiple roles.

### **The legal framework**

One reason for the increased complexity of the representational role, especially for trade unions, is the growth of the individual rights framework. Whereas 20 years ago shop stewards would have been involved predominantly in a negotiating role at a collective level, they are now increasingly being drawn into the role of individual representation and associated case work. There are now well over 60 separate jurisdictions governing individual employment rights, covering a wide spectrum ranging from unfair dismissal to protection from discrimination on the grounds of religion or belief. Moreover, the introduction of the statutory discipline and grievance procedures, currently under review, has placed additional responsibilities on both employers and employee representatives to resolve conflict within the workplace without recourse to litigation.

The legal framework governing employee representatives themselves has also become more complex. There are now at least 15 different sets of legislation laying down different rights for employee representatives, and three Codes of Practice produced by Acas and the Health and Safety Commission. The Acas Code on *Time off for trade union duties and activities*<sup>6</sup>, although updated to include the introduction of Union Learning Representatives (ULRs), remains focused on trade union representatives, and Acas will be consulting with stakeholders on the possible changes that can be made to bring the code into line with current practice.

Perhaps the most controversial piece of legislation to have been introduced in recent years from a trade union point of view are the ICE Regulations giving rights to all employees to be given information and be consulted, usually via elected representatives many of whom are non-union. A year before the regulations came into force for undertakings with 150-plus employees, WERS 2004 suggested that the number of Joint Consultative

Committees (JCCs, now commonly referred to as 'employee forums') dropped from 46 per cent of employees covered in 1998 to 42 per cent in 2004, with the private sector accounting for most of the decline. More recent surveys, however, paint a more positive picture of representation<sup>7</sup>. In the largest ever survey to date of multi-national organisations (MNCs) researchers found that that 26 per cent of UK-based MNCs had non union employee forums, 11 per cent had a mix of union and non-union while 37 per cent had union based forums. Half of the non-union forums had been established in the last three years. The reports authors conclude: "Implementation of the UKs ICE legislation would seem to have promoted substantial recent change in arrangements for employee consultation, again indicating that MNCs might be acting as innovators."<sup>8</sup>

### **The role of representatives in employee involvement**

Perhaps the most fundamental case for encouraging representative structures within the workplace is the smooth management of change. Indeed, change is now a permanent factor in the working lives of most employees in both public and private sectors – a product of increased global competition, the free market and constant waves of company mergers in the private sector, and efficiency drives within the public sector. It is a trend that is predicted to continue<sup>9</sup>.

WERS 2004 reported the growing prevalence of direct communication and involvement including face-to-face, two-way communication via workforce meetings and team briefings. There are obvious benefits for employers and the workforce in terms of providing information and keeping the workforce up to date in this way. However, there will always remain the need for more meaningful consultation on workplace issues that can lead to genuine consensus. Indirect representation through employee forums can provide an organisation with live, ongoing dialogue that can be crucial in contributing to effective change management. Direct communication means that the whole workforce can be kept informed of that dialogue.

Recent research found a combination of direct and indirect methods of communication and consultation that involves employee representatives was most closely associated with positive employee attitudes – namely, “higher levels of affective organisational commitment, job satisfaction and job discretion”<sup>10</sup>. Indeed the BERR response states, *“the most developed systems of direct engagement appear to prosper where workplace representatives also function. The Government therefore re-affirms the importance it attaches to workplace representation. The task ahead is to ensure that workplace representatives can operate as efficiently and effectively as possible to the benefit of all.”*

### **The extent of employee representation**

There are an estimated 322,000 on-site workplace representatives (excluding those dealing exclusively with health and safety) evenly split between union and non-union<sup>11</sup>. According to WERS 2004, 49 per cent of workplaces (71 per cent of employees) with 10 or more employees have access to a workplace representative. However, in 31 per cent of workplaces that recognise trades unions, there is no representative on site. Indeed, there is a growing trend in ‘off-site’ union representation, most notable in the public sector. The vast majority of on-site union stewards are now the sole representative in a workplace. Both these factors have implications for their access to constituents and time off for representative duties. Moreover, this still leaves just under a third of all employees (29 per cent) without access to representation.

Overall, employees are far more likely to have access to representation in the public sector (98 per cent) than the private sector (61 per cent). Workplace size is another factor closely associated with access to representation: 38 per cent of workplaces with between 10 and 24 employees had some arrangement for employee representation, compared with 90 per cent of workplaces with 500 or more.

For public sector workers representation is predominantly provided by trade unions, whereas in the private sector it is more likely to be via non-union joint consultative

committees (JCCs), or ‘stand-alone representatives’. This last category as defined by WERS needs to be treated with a certain amount of caution, however. Stand-alone representatives – of whom there are estimated to be around 5,600 in the private sector – are far more likely to be appointed by management or to be of management grade themselves compared to trade union representatives or non-union JCC representatives. How far stand alone reps can be treated as representatives of the workforce is therefore questionable.

Caution with figures aside, non-union representatives, particularly those who fall outside the statutes and the Codes of Practice, are an important private sector phenomenon. There is no doubt that their role differs from that of trade union representatives. They spend less time on their duties and, for much of the time, are excluded from a negotiating role. However, Acas’ experience of employee forums is that non union representatives can have a significant influencing role, particularly in relation to redundancy and TUPE, and they are increasingly taking on roles more akin to their trade union counterparts. We discuss this in more detail below.

### **Diversity**

The average age of employee representatives, according to WERS 2004, is 40 for non-union JCC and 46 for trade union. The vast majority are white (97 per cent) with very little variation between union and non-union JCC representatives. The gender gap is closing, however. The proportion of senior representatives of recognised trade unions that were male dominated decreased from 64 per cent in 1998 to 57 per cent in 2004. Women are far more likely than men to be working part time as representatives, however.

There are significant differences across sectors. In private manufacturing, for example, 72 per cent of union representatives were white, male and 40-plus compared with 35 per cent in the public sector and 36 per cent in private services, reflecting to a large extent the make up of the existing workforce. There are also specific roles that attract greater diversity, with union learning

representatives being the most prominent example as younger employees, more women and people from ethnic minorities take on the role.

Unions are calling for equality and environmental representatives to be put on an equal footing with ULRs, arguing that these roles will help to increase the diversity of representatives. Although there does not appear to be government support for statutory change, BERR has recently announced £2.8 million in grants awarded as part of the Union Modernisation Fund (UMF), of which a significant proportion went to projects for the development of union equality representatives.

The crucial question is whether the broadening of trade union and representative roles via single issues will increase the diversity of those performing the duty overall, and in particular the more onerous representative functions in relation to TUPE, redundancy, individual representation and so on. Certainly single issue roles bring in new blood and attract people who would never consider taking on a more traditional trade union post, acknowledge Acas advisers. But do they then help to alleviate the workload of existing representatives? In contrast, there is some evidence in both WERS and from the anecdotal experience of Acas advisers that where it proves difficult to encourage employees to take on the ULR role, or other single issue roles, established union representatives add these responsibilities to their existing union portfolio.

### **A recruitment crisis**

The fundamental problem appears to be the difficulty in recruiting people willing to perform representative roles more generally. In its response to the government consultation, the Chartered Institute of Personnel and Development (CIPD) reported that it is increasingly difficult to find employees who are willing to act as non-union workplace representatives. Trade unions are facing similar difficulties as the ageing profile of union representatives indicates.

The experience of Acas can be summed up by the view of one senior adviser: *'At the moment I am not aware of*

*anyone using [diversity] as a specific objective. They are already finding it difficult enough finding people willing to do the job...'*

It is widely acknowledged that pressures at work are increasing with tight budgets imposed on the public sector, teams becoming more streamlined, and teams and individuals operating within strict performance targets. Or, as one Acas adviser put it: *'At the moment time to do something other than produce or deliver is precious'*. Representatives working in production or service teams can find that team members resent them taking time off as it increases their workload, especially if the line manager does not or cannot provide cover. Part-time working and caring responsibilities are likely to present further barriers for women in any decision to put themselves forward for a representative role.

The role of representatives is without doubt becoming more onerous. In the focus group of trade union representatives conducted as part of the DTI consultation, participants discussed the increase in the number of procedures that they had to be familiar with and the intensification of management systems, (for example, sickness absence). They also identified an increased role in dealing with rising levels of stress, and in bullying and harassment issues amongst the workforce.

In the Acas focus groups, participants described the stress suffered by representatives in their endeavours to meet the demands and expectations of their constituents and of management. *'In a dispute it can be a really thankless task,'* said one adviser. Another described the dedication displayed by some representatives. *'I mean the dispute I dealt with last week, the rep had been up since four in the morning because he'd come off one shift and then ... but you know basically he was exhausted ... and did a bloody good job.'*

Although non-union representatives tend to have lighter duties, this is not always the case and the strain can prove too much. Acas advisers provided two examples of where non-union representatives stepped down early

from their role as TUPE and redundancy representatives because they found the demands too great.

While too demanding a role can prevent employees from coming forward, a lack of focus and an absence of issues that are seen to have a significant impact on their working life and that of their colleagues can equally act as a disincentive. *'Many ongoing JCCs fall by the wayside because they are talking about the car parking and the canteen. They are not seen to have teeth and so people get disenchanted with them.'* The view of the same Acas adviser in Scotland was that, as a rule, representatives were more likely to come forward if there was a targeted and time limited issue such as redundancy.

Line managers can present a significant obstacle to recruitment according to Acas advisers, particularly when managers do not see the benefits of the role. In some organisations managers have openly dissuaded people from becoming representatives, and *'a lot of managers don't realise it's a statutory duty to have time off to carry out trade union duties'*, both of which highlight the importance of management training which is discussed later.

### The representational role

Collective bargaining may have diminished over the past two decades, but collective representation in a broader sense remains a key part of trade union representation and, increasingly, a recognised form of representation by non-union representatives. Within what is referred to as collective representation there are three distinct forms of engagement between employer and employee: negotiation, consultation and communication.

At its most adversarial the traditional trade union approach is one of 'negotiation' where parties adopt positions, and the two sides attempt to close the gap by finding a mutually acceptable agreement. Consultation is better described as problem solving, where the employer puts forward a proposal and asks for the views and concerns of the employees and, where possible, takes these into account in what is ultimately

a management decision. Communication, the most passive form of collective consultation, is purely the relaying of information from management to employee representatives and vice versa.

In practice, the lines between the three processes are often blurred, particularly where consultation is concerned. As one trade union representative said at a recent IRS conference: *'management refer to talks as 'consultation', I call it 'negotiation'<sup>12</sup>*. For non-union representatives, the issue that is raised with Acas advisers time and again is: *'How do we know that management have not already made a decision? How do we know this is not just a cosmetic exercise? They are just going through the motions and we have no influence.'* There is some case law here<sup>13</sup>, where fair consultation was said to mean: '(a) consultation when the proposals are still at a formative stage; (b) adequate information on which to respond; (c) adequate time in which to respond and (d) conscientious consideration of the response.' The Involvement and Participation Association (IPA) call this 'option based consultation'. Meaningful consultation can be a demanding role for representatives and they need time, facilities and training to do it effectively.

### What alternatives exist to trade union representation?

There is a general consensus that non-union representatives typically perform more limited functions and operate within a narrower frame of reference, and have less expertise and support. Acas experience largely supports this view. However, there are a growing number of exceptions.

The level of effectiveness and the gravitas of the issues non-union representatives deal with can vary greatly depending on their personal capability and past experience, the attitudes of senior and line management, access to facilities and time off, the presence of a recognised trade union, and the specific circumstances of the organisation they belong to and the state of change within it.



The trade union position is that statutory rights should remain primarily focussed on trade union representatives. The view expressed in BERR's response to the consultation, although not entirely contradictory in so much as the department is not proposing to introduce any radical changes to the statutory rights of employee representatives either union or non-union, is that:

*'Non-union representatives provide the sole means of indirect employee voice at many British workplaces. They can be involved in many important decision making processes, not least in connection with collective redundancies and business transfers [TUPE] where major developments affecting the future of a workforce are taking place within tight deadlines.'*

### **TUPE and redundancy**

Employers are obliged to inform and consult employee representatives on proposed redundancies involving 20 or more employees at a given workplace within a period of 90 days or less. In relevant transfers covered by the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006, employers are obliged to inform (and, where measures are proposed, consult) employee representatives. Amendments made in 1995 to collective redundancy and TUPE regulations reflected a ruling in the European Court of Justice that said that employers who did not recognise unions were not exempt from the obligation to consult workforce representatives. The amendment resulted in regulations that said that where unions were recognised employers must consult them and, where unions were not recognised, employers had to consult workforce representatives and, if there were none, set up elections for them.

In Acas' experience there are employers that realise the very real benefits to consulting employees before making decisions, and employee bodies that operate as effectively as a union at least at a local level. We look at some examples below.

### **Manufacturing firm**

A manufacturing company in the south east planned to close its factory and move all 460 jobs to Poland. There was an existing employee council but the employer decided that given the level of change it would create an enhanced body with more elected representatives to deal with the consultation over the factory shut down. It was a profitable company and the employer was keen to find a redundancy package that the workforce was happy with. The Acas senior adviser who provided support and advice for the organisation noted:

*'The shut down did require some kind of goodwill and cooperation from the workforce because it was a shut down that went over about a two, three year period. Different bits of kit were being sent over to Poland and it did need workforce goodwill, and the workforce was threatening to withdraw it....It was the most effective negotiation I'd ever seen on any shut down and it's the best redundancy package I've ever seen.'*

Although there were union members involved in the forum, the union was not recognised for collective bargaining. In the opinion of the Acas adviser the effectiveness of the consultation was down to a number of factors:

*'They were very capable people. Because it was quite a complex operation they had more or less full-time facility time. It was effective too because there was an enormous groundswell from the workforce..anger really that the company was shutting down. So you had a company that I think felt a bit of guilt and wanted to be seen to be doing absolutely everything it could to reach an agreement.'*

### **The electronics company**

A Japanese parent company decided to merge two existing UK companies in different parts of the country into a single company (a double TUPE) with the loss of significant numbers of jobs at all levels. The HR director from one site took the decision to revamp the existing employee forum *'which until then had basically been talking about car parking etc and not the big issues in the business.'* There were elections and a new constitution was drawn up. The forum then had to deal with complex and emotive issues affecting decisions over redundancies, and the selection pool for alternative employment, *'So ... a lot of things to talk about, a lot of uncertainty. And for the forum obviously quite a major role.'* (Acas senior adviser)

### **Non-union representatives in a wider collective role**

Although a large proportion of the union movement, including the TUC, campaigned for and largely welcomed the introduction of the ICE regulations, there is still considerable ambivalence from some trade union quarters towards non-union bodies, partly because of what is seen as their lack of independence, and the potential threat to union-based representation where it exists<sup>14</sup>.

It is undeniable that some employers have set up forums as a way to preclude or edge out trade unions. Where workplaces have both trade union and non trade union representation there can be a difficult balance to strike, but there are hybrid arrangements in existence that do work effectively. How do these different arrangements affect the quality of representation that employees receive and the topics they discuss?

Advisers report that, in some cases, an employer's desire to keep out a trade union by setting up an employee forum can be counter-productive if the forum is merely a paper exercise and employees' expectations are raised but they are given nothing meaningful to discuss. In other cases it can result in employers

creating very similar structures to that of trade union representation. Where there is a trade union present but not recognised it is often the case that trade union members will put themselves forward to act as non-union representatives, with or without the knowledge of the management. Trade unions can see this as a route to eventual recognition.

Where there are hybrid bodies there is a tendency for trade unions to insist on negotiation remaining a purely trade union function although there are exceptions. In North East England one adviser reported that:

*'We have two companies in the regions which have joint negotiating, union and employee representatives actually negotiating with a very large organisation. It came about because it was an easy route to recognition, as long as they agreed that these so called non-enfranchised people would be able to sit down with them. But in the early stages of the dispute if you like they'll sit together, but if you got really up against the wall the trade union side, which is the GMB, would say "well we reserve the right now to split away."'*

### **Pay**

One issue that non-union forums rarely discuss is pay. The experience of our advisers is that not only do non-union bodies rarely negotiate on pay, it is unusual for the issue to even appear on the agenda for meetings. Where pay does make it onto the agenda 'it's consultation not negotiation', stressed one adviser.

Where there is both a recognised trade union and a non-union employee body, arrangements become more complex. Most unions will only agree to hybrid bodies if pay negotiations are excluded from the agenda and dealt with separately in a union only forum. Occasionally, parallel non-union and union bodies will negotiate separately on pay, although this type of arrangement can prove unsustainable if, for example, the union side negotiates a better deal than that agreed by the non-union body, sometimes in a deliberate

attempt to undermine what it considers a threat to the independence of the trade union function.

Hybrid forums where pay is jointly negotiated do exist but they are unusual, say Acas advisers. The following example is proof that it can work effectively, however.

*'In one company non-union representatives have negotiating rights on pay on the back of ICE, included in the constitution and so sit down with trade union representatives. They are consulted and they have negotiating rights. It is exceptional. Trade union representatives consult with their members and non-union representatives consult with the non-union members. But all sit down together to discuss pay.'*

*In this factory, trade union members are only 19 per cent of the workforce. Eighty-one per cent are non-union. But the non-union representatives have strong personalities and are not prepared to be walked over by the trade union representatives, although they don't have same rights in law. The union understand they only have 19 per cent. The full-time officer realises his weakness.'* (Acas senior adviser)

Where hybrids do function effectively they can therefore provide representation for 100 per cent of the workforce, including those sections where unions are not recognised or where there are non-members in the bargaining unit.

### **Individual representation**

As individual case work occupies an increasing proportion of trade union representatives' time, what happens where employees have no access to trade unions? Individual representation is generally exempt from the constitutions of non-union forums. In workplaces with both union and non-union bodies almost a third of union representatives take on case work for non-union members. WERS 2004 reports that

44 per cent of non-union representatives had dealt with individual disputes in the past 12 months (compared with 73 per cent of trade union representatives). However, many commentators question the level of representation provided. The experience of our advisers is that non trade union representatives tend to lack confidence and are unclear about their role in relation to individual representation, and unlike their trade union counterparts, they do not have the support of an independent body that will provide training, moral support and legal advice where the going gets tough.

Where there is a recognised trade union there appears to be little evidence that non-union representatives are taking on individual representation. But in non-unionised workplaces we are seeing more interest from employers in training both representatives and managers in individual representation. In the South East one adviser reported the existence of designated discipline and grievance representatives in non unionised companies. In a non-unionised food packaging company another adviser reported how:

*'they [the employers] don't want a trade union in there, so their staff forum almost apes trade union if you like and their representatives do take individual grievances. And we've got a lady there who's very assertive ... they even send her away on training, and not just messing about, they send her away regularly, for employment law training.'*

However as one Acas adviser pointed out, where non-union representatives take on the role of individual representation it is sometimes the case that they have been union representatives in other companies and are still members of the union, and therefore bring with them a considerable degree of union backed experience. In new research co-sponsored by BERR, Acas and the CIPD<sup>15</sup> involving longitudinal case studies of a range of organisations following the introduction of the ICE regulation, only two of the non-union cases studied featured individual work as part of the employee representatives' remit. In one it was quite a significant

role. Information and consultation representatives had received training on grievance and disciplinary issues, harassment and discrimination. In the other case, several representatives felt their role in handling grievances and disciplinary cases was better known to staff than their work on the forum and could potentially increase their standing and influence with management.

It seems that non-union representation is on the rise in both individual and collective arenas, but it is also evident that representation in its most comprehensive form remains dominated by trade unions whose accumulated experience and skill pervade even those workplaces where they officially play no role.

### **Building the business case**

The DTI consultation document provides ample statistical evidence of the potential economic advantages of employee representation: BERR estimates that workplace representatives bring an identifiable range of benefits worth £476 million to £1,133 million annually, in addition to which there may be significant other gains from increased productivity. For example, the then Department for Education and Employment has estimated that the benefits of ULRs to businesses in the form of improved productivity range from around £11 million to £49 million in the first year.

It is hard to establish a direct causal link between employee representation and productivity gains. However, DTI calculations – based on the Annual Survey of Hours and Earnings 2004 – estimate that at the minimum, across the economy, there could be additional gains of £3.4 billion in benefits<sup>3</sup>. Analysis of WERS 04 shows that with ‘dual-channel representation’, where union and non-union representatives join together in employee forums, productivity is higher compared with workplaces where there is no representation. This, the authors say, ‘raises the intriguing possibility that this dual channel representation secures advantages for both employers and employees’<sup>16</sup>.

This empirical evidence is supported by a wealth of qualitative evidence of the business benefits. Acas

has extensive and in-depth experience of employee representative structures and the impact that genuine arrangements can have on organisational health. Our Acas advisers provided numerous examples of where representative arrangements had a positive impact that was much wider than any consultative forum’s immediate agenda. For example, a London-based adviser commented: *‘The motivation I think is the smoother management of change. And it is also about productivity. The pay back is that [the company] invests time in setting up the forum and talking to people because [the company] gets a better understanding of the need for change and then there is smoother implementation of change.’* Another adviser added: *‘You get better decisions; employees feel more involved if they are better informed and if they feel that they are listened to properly, and morale is usually better.’*

Ultimately, as this paper will demonstrate, it is the success with which this business case is disseminated to employers, and understood at workplace level, that will determine whether employee representation is taken seriously and its full potential realised.

### **Part three: Strategies to promote more effective employee representation**

The following section considers some of the key factors influencing how employee representatives carry out their representative duties, including their relationship with the other key players in the employment relationship such as managers and employees.

#### **Facilities and facility time**

Being able to spend time away from the ‘day job’ to undertake their representative duties is a crucial factor influencing any employee representative’s capability to perform their role effectively. As the Acas guidance on the ICE Regulations<sup>17</sup> unequivocally states: ‘Employee representatives need to have the time and resources to do the job and their scale should not be

underestimated.’ The 2004 WERS provides a rich source of data on the time spent by workplace representatives on their duties, and highlights the significant difference in the time spent by trade union compared to non-trade union representatives. For example, over two-fifths (43 per cent) of senior union representatives spent five hours or more a week; in contrast, only one-fifth (19 per cent) of senior JCC representatives spent five hours or more in their role as a representative.

The legal provision underpinning the time off and facilities arrangements enjoyed – or not enjoyed – by the wide range of different types of employee representatives can best be described as a statutory patchwork of rights. Table 7.2 within the DTI’s consultation document (reproduced as table 1 earlier in this paper) illustrates this uneven distribution across the 15 listed types of representative very well, and makes the important point that the existence of a statutory right does not mean that the right in question is the same across all representatives who have it. There are also ‘hidden’ discrepancies within some aspects of the 15-plus pieces of legislation covering employee representation. For example, under the standard provisions of the ICE regulations, representatives enjoy a statutory right to payment for facility time. But the majority of JCCs comprise either a voluntary or ‘pre-existing’ agreement (PEA) where there is no corresponding statutory provision. Interpretation of this aspect of the 2005 Regulations has caused confusion for some employers according to the feedback received from some Acas advisers. As one Acas adviser noted: *‘If it’s a PEA you don’t [have a legal right to time off], but employers treat you the same... I don’t think they really understand the differences.’*

The DTI’s consultation paper reports that its focus groups and other consultations with trade unions suggest that representatives may find ‘genuine difficulty in obtaining the amount of time off they need to perform their functions adequately.’ This view is borne out by the focus groups of Acas advisers. One Acas adviser had this to say:

*‘I think one of the biggest problems for the non-union side is that management don’t even think about the time off issues. And it’s one of the things that when we are called back in – because they’re having problems with the effectiveness of the group – to deliver some training on. Employee reps say they have time off for the meetings, but they don’t have any time or no perceived time to actually do the business of getting information.’*

Several Acas advisers highlighted potential problem areas such as pressures of the job and lack of middle management support. As one Acas adviser expressed:

*‘The first line managers or the supervisors of the employee reps are very often under quite strong work pressures so they are very reluctant to release their employee reps and let them have the time off or do training, so it’s not always something that’s within their control. They’ve got targets to meet and may not receive the support of their more senior manager to enable that relationship to grow and develop.’*

The wider implications of representatives finding it difficult to take adequate time off to discharge their responsibilities is emphasised in the co-sponsored research by BERR, Acas and the CIPD. The study notes that, while formally or informally most representatives were allowed time off with pay to attend forum meetings:

*‘there was evidence from several cases of restrictive attitudes to time off, particularly for I&C associated activity outside formal meetings with management. This included, in one case, ‘pressures of work’ meaning representatives had little time to prepare for meetings or meet other representatives before hand, and that whilst in theory paid time off work for this is allowed, it is implicitly discouraged. Management believe that if time off became an issue it would cut across*

*the prevailing organisational culture of commitment to the job.'*

More generally, the report concluded that:

*'while formally or informally most representatives were allowed time off with pay to attend forum meetings, it was sometimes difficult to get other employees to cover for them and management, especially line management, did not appear to be actively helping representatives in this regard.'*

### **What's reasonable?**

Some representatives clearly find it difficult to take the necessary time off to fulfil their duties, with considerable variation across organisations. It is not only too little time, from the representative's perspective, that can be problematic: from the employer's perspective, too much time off can have a negative impact on areas such as workflow and customer service. For example, in some situations – such as in consultation on collective redundancies and business transfers – the amount of time granted by an employer can far exceed the 'average' time spent on representative duties. For example, in TUPE and redundancy, where the business and employment relations situation is typically intense and where there is a lot at stake for employer and employees, the circumstances perhaps demand that a more generous approach is taken in respect of time off. As one Acas adviser commented:

*'...where there has been an issue..., for example, it's been a redundancy situation or a relocation or a TUPE situation, and it's not trade union reps, they are given a lot of time. And given that it's a focused and short period of time over a number of weeks, they are given quite a good free reign to actually consult with their constituents. Because often you are having a meeting every week of the consultative body at that point to get through the redundancy timetable.'*

A focus of this potentially problematic area is the debate on the statutory provision concerning 'reasonable paid time off from employment', as explained in the Acas Code of Practice<sup>6</sup>. As table 1 shows, this legal right to reasonable paid facility time off is now replicated for other types of representative such as (some) JCC representatives, those representatives responsible for health and safety and union learning representatives (ULRs). WERS 04 found that the vast majority of trade union representatives (89 per cent) were paid by their employer to carry out representative duties. The proportions of paid non-union JCC representatives and paid stand-alone representatives were lower (83 per cent and 74 per cent respectively).

These seemingly reassuring figures mask a level of contention about the term 'reasonable' in relation to paid facility time off and how this can be interpreted in the workplace. As the DTI paper notes: 'some employers and representatives have expressed unease with the general language used in statute, especially the inexactness involved with the 'reasonableness test'. They have therefore suggested ways in which the law could be revised to give some clearer guidelines when applying the right in practice.' The solutions suggested to add clarity all propose a more prescriptive approach, such as setting a statutory minimum amount of time off per week – for example, five hours or 10 per cent of working time.

Given the close involvement of Acas advisers in helping organisations develop partnership arrangements and joint consultative committees, and drawing up facilities arrangements as well as advising on how these can best work in practice, this is an area we explored in detail within the Acas focus groups. The overwhelming view from our advisers was that a prescriptive, formulaic approach to providing statutorily for paid time off would not be effective in practice in most employment relations circumstances. Such an approach could even be counter productive from the employer's perspective – as one Acas adviser explained:

*'I would dissuade them from being too prescriptive at the end of the day just because circumstances change. You get a hot topic and you want people there for long periods. The comparison I give is if you have your targets for days of absence and you get people saying I'm allowed 10 days and I haven't had my 10 yet, I need to get an extra two or three in before the end of the year.'*

Another Acas adviser highlighted the risk of going down the prescriptive route:

*'...in the public sector you do get quite detailed agreements about how much time reps are going to get. I can recall collective disputes around somebody exceeding their time and which union is going to get the balance of that time.'*

While a prescriptive approach to time off arrangements was not endorsed, there was a view among some Acas advisers that there could be room for more guidance in this area such as the types of duties and activities deemed necessary to perform the different types of representative role. This is an area that could potentially be considered in a revised Code of Practice or accompanying guidance – particularly if any new provision covers a wider spectrum of representative roles, particularly those of a non-trade union nature. It is clear, from the focus groups, that many employers and employee representatives already find the guidance on what constitutes trade union 'duties' and 'activities' useful, for instance. One Acas adviser emphasised the importance of providing time for representatives to hold pre-meetings, for example:

*'Even with the formal sort of forums...until we go and do some training with them the reps are generally doing precious little in between. They'll have all their regular meetings with management and the forum may not have a lot of life in between meetings, and so often I think part of the job is encouraging the reps*

*to think about the time in between meetings. Because sometimes they won't even have pre-meetings. They'll just end up in a meeting with management and it will all go horribly wrong because they [the representatives] have not really done any preparation, everybody's leading off and there's no consistent line. Part of our training is often to encourage the reps to think about proper preparation pre-meetings.'*

It is how any good practice guidance is acted upon in the workplace that is key, however. As one Acas adviser noted: *'It's more the modern labour law approach of "talk about it, agree it", that's effective.* Another Acas adviser commented: *'But I think we do have a significant role in getting the parties to agree what reasonable might be in their particular situation in terms of numbers of reps and in terms of time off. Because it's all about trying to build a relationship at that point.'* A focus of any revised guidance or Code of Practice, with a wider remit in terms of the range of employee representatives, could expand on the existing Code and potentially provide good practice advice on the type of duties and activities that are part of a representative's role.

### **Serving their constituents**

WERS 2004 found that, not only did JCC representatives tend to be more numerous than their union counterparts, but where they were present they also collectively represented a greater number of constituents in each workplace. Together, the representatives on the most important JCC represented a median of 28 employees while union representatives represented a median of 18 members. The WERS study notes that the nature of the representative's role is such that they are likely to need frequent contact with their constituents, 'both to inform them of developments at the establishment or to collate views and opinions which can then be distilled and passed on to managers.' While such an approach would be an expected and necessary practice on the part of representatives, it is far from clear that this is what happens in practice.

WERS 2004 asked what methods were used by senior representatives to communicate with their constituents: personal discussions were the most frequently mentioned method, used by 79 per cent of union representatives and 88 per cent of non-union representatives. These were followed by noticeboards and general meetings. Union representatives were more likely than non-union representatives to use general meetings, newsletters and telephone contact, reflecting the fact that almost one-quarter (24 per cent) were based off-site. The Acas adviser focus groups identified considerable variation in the communication methods used to report back to constituents, ranging from the more 'normal' methods reflected in the WERS findings, such as email, word of mouth and noticeboards, to the more unusual method of satellite telephone in a company with employees based in Afghanistan. But as one Acas adviser pointed out, there is no 'one size fits all' in the most suitable communication channels chosen to provide feedback as they will depend on a range of factors such as geographical spread of constituents, the culture of the organisation, whether ICT is widely available and so on. The Acas focus groups did, however, concur on the importance of this aspect of employee representational arrangements.

The relationship that employee representatives have with the employees they represent is a crucial measure of the representational arrangements in place. As the Acas ICE guidance makes clear: 'If information and consultation arrangements are to be effective, it is essential that representatives have an opportunity to report back to employees as soon as possible. Any delay in reporting back is not only likely to lead to frustration but will also allow scope for rumours to develop in the place of hard information.' The importance of the constituency aspect of employee representation is highlighted by Claire Logan of PA Consulting in her MBA thesis that examined the development and use of works councils during a time of merger and acquisition between retailers Morrisons and Safeway<sup>18</sup>.

The Morrisons/Safeway case study notes that a great deal is expected of representatives in terms

of their relationship with constituents. According to Logan:

*'Without the ability to gather feedback and understand what is going on in the part of the business they represent the consultation would be worthless. There need to be numerous channels to support the flow of information both to and from representatives. In cascading out information there is a need to consider that the representative's position will have more credibility if some of the feedback to the employee comes from them. This is all about relationship building with constituents who, if they have raised an issue, want a response from the representative.'*

The potential difficulty of meeting constituents' needs and expectations was reflected in some of the Acas focus group discussions. For example, one Acas adviser had this to say:

*'The group of people that are always left out of the equation when you're looking at trying to make these things work and give them some understanding of the process are the rest of the employees. Because their expectations are very often wrong in terms of what the representatives can achieve. And that's why they so quickly get turned off because employees expect them to be able to deliver more than they ever will be able to deliver...'*

The co-sponsored research by BERR, Acas and the CIPD found that employee reps' role in reporting back to the workforce was a patchy process, reflecting the constraints such as lack of time and training, and identified in a number of cases as needing improvement.

There are several implications for good practice guidance and the approach adopted by the main 'actors' involved in employee representation – that is, employers, employee representatives and trade unions. The first is highlighted in the Acas ICE guidance – namely, that the issue of reporting back, and the key role of employee representatives, ought to figure prominently

in any training programme. A useful approach is to ask constituents how they would like to receive feedback: 'Discussing what they would like, and comparing the result with the expectations they and their colleagues have of employee representatives, can help to focus on the key behaviours that will be needed.'

Reporting back can sometimes cause problems for line managers, especially when they do not understand and appreciate the work of the employee representative. Sometimes representatives, fresh from a meeting with senior management, will know more than their line manager. Some can feel this undermines their managerial authority. In some workplaces, however, where there is mutual understanding, representatives can be given time in team briefing sessions to report back. It is sometimes the case that senior management take particular care to brief line managers on matters discussed in employee forum meetings and ensure that the line manager representative at the forum has the means to report back quickly to his or her constituents. Clearly, employee representatives need adequate time to report back to constituents and gather their views and making this part of employee representatives' role effective also involves providing the appropriate facilities in terms of communication tools.

### **Access to facilities**

The statutory provision of rights to workplace facilities is even patchier than that in place for facility time. As the DTI consultation paper notes, 'the majority of union and non-union representatives rely exclusively on the employer and not the law for access to workplace facilities' The 2004 WERS asked employee representatives which of eight specific facilities they had access to. The survey showed that a majority of union and non-union JCC representatives had access to office equipment (91 per cent and 94 per cent respectively); 74 per cent of both union and non-union JCC reps had access to meeting rooms; and 62 per cent of union and 72 per cent of non-union JCC representatives had use of email. Just 9 per cent of union, 5 per cent of non-union JCC and 14 per cent of non-union 'stand alone' representatives had no access to facilities.

One focus of DTI's consultation is representatives' differential access to ICT facilities. The Government is keen to encourage greater access to ICT throughout the country, and these technologies have a vast potential to transform ways of working. The Acas focus groups produced some good examples of representatives' access to ICT, including one Scottish company that had built a dedicated email site for the recognised union that was separate from the company email system. This ensured that the union representatives could send and receive confidential emails, thus overcoming the privacy problem that prompts many representatives to work from home and upset their work-life balance. In another example, the representative had their own lap top provided by the union. At the other end of the spectrum, the only access that one representative had to the internet was via his manager's computer and email address. At another company, one Acas adviser observed that management 'were actually building a PC for their shop steward because they recognised the fact that without that facility they can't fulfil the job in working hours.'

Such moves to improve and maintain good ICT facilities are encouraging, but clearly access to ICT facilities is uneven. The DTI consultation paper highlights the limited availability to email or the intranet and whether this could be leading to two-tier representational arrangements. In some circumstances this could be true, but several Acas advisers also countered this by pointing out that ICT would not be the preferred facility of choice for some representatives. One Acas adviser said that '*there is this massive perception that the way to hit people is via an ICT system, which I don't think is the case necessarily. It works in some organisations and not in others.*'

### **Training for representatives**

As the Acas ICE guidance states, 'one of the main barriers to effective information and consultation is lack of knowledge and skills.' And as the DTI consultation paper acknowledges: 'trained representatives are able to offer a better service to their constituents and can carry out their work more quickly and with greater confidence.' Our Acas advisers were unanimous in

vocalising the importance of training for all categories of representatives, and also for management.

Again, there is inconsistency in the statutory framework for providing paid time off for employee representatives to undertake training. For example, shop stewards, ULRs, health and safety reps and representatives involved in TUPE or collective redundancy enjoy this legal right but most non-union representatives do not. The TUC and trades unions typically provide very comprehensive training courses, but there is no comparable provision for non-union representatives. According to the WERS 2004, almost three-quarters (74 per cent) of union representatives had received training at some point compared to just under half (45 per cent) of non-union JCC representatives.

The content of representatives' training is of key importance. New representatives, for example, clearly need induction training to prepare them for their new role. Disappointingly, WERS 2004 reported that less than half (46 per cent) of representatives, or their colleagues, had participated in induction training. A recurrent theme in the Acas focus groups was the inexperience of new representatives within organisations that the Acas advisers had worked in: this often led workplace representatives to expect too much and 'not understand the reality of employment relations'. The result could be disenchantment with the representational arrangements in place. The importance of ongoing training and development for representatives was also underlined by our Acas advisers – as one colleague commented: *'In our part of the world you're lucky if you get more than a day with people really, they're all terribly busy and so on – now are we really going to change people's lives that much in a day?'*

WERS 2004 also identified that senior employee representatives, or their colleagues, had participated in training related to health and safety (45 per cent), employment law (38 per cent), negotiating/collective bargaining (36 per cent) and disciplinary and grievance matters (13 per cent). Aside from these core areas, the content of training programmes for representatives also

needs to take on board the wider implications of acting as a representative and the changing circumstances in which employment relations is conducted within the workplace. For example, Hall and Terry (2004)<sup>19</sup> point out that the dominant mode of collective interaction has shifted – for both union and non-union representative – from negotiation to consultation, 'a distinction never clearly specified in UK usage.' As the authors point out: 'This raises issues concerning the training and development of employee representative skills, and the managerial commitment to their provision, which appears to be increasingly weak.'

Another area where training is increasingly required is in individual rights issues such as discipline and grievance, an area where there appears to be sparse training provision for employee representatives, both in the technical aspects of handling such matters and in the potential stress that their involvement in some cases can cause. This point also refers to non-union JCC reps: as this paper has already noted, a growing proportion of non-unions reps also spend time dealing with individual disputes. Acas advisers reported that taking on individual rights cases was not an area that they generally advised non-union representatives to pursue, in view of the lack of support and inadequate, or non-existent, training provided for them in discipline and grievance handling compared to trade union reps.

The DTI consultation paper highlights the fact that successive governments have placed importance on trade union education, and the significant public funding that has fortunately been directed to this activity. This provision includes Learning and Skills Council (LSC) provision and the Union Modernisation Fund (UMF). At the TUC Congress on 12 September 2007, John Hutton, Secretary of State for Business, Enterprise and Regulatory Reform, announced that the fund would be extended to include a new focus on protecting vulnerable workers.

Given the equal importance of training for non-union representatives, it is worth considering whether public

policy should also take into account a more inclusive approach for training for a wider range of employee representatives – for example, through the national skills agenda. Paul Gollan’s recently published research on employee representation in non-union firm<sup>20</sup> notes that a number of important points can be made from the research presented. The first point cited is that ‘non-union employee representatives generally have limited access to resources (eg training) for establishing independence, thus reducing their ability to evaluate effectively the issues discussed at meetings and represent the views of employees.’

Clearly, there now exists so many different types of representative that their training needs are multifarious. Modern technology offers the opportunity to tailor training delivery to suit these different needs and e-learning packages represents one delivery method that can be utilised in this way.

### **A joint activity**

Acas delivers a wide range of training sessions for employee representatives, both union and non-union, and customised in-house programmes in areas such as conflict management, discrimination, discipline and grievance, mediation, dispute resolution and negotiating skills. We also deliver a dedicated, tailored course to train non-union representatives. A firm focus of the delivery of much of Acas’ training for employee representatives is its jointness. It is not the case that only one side of the equation – that is, the representatives – require training in how to conduct the ongoing employment relationship. Managers, too, need to acquire the necessary understanding of the role and rights of representatives and gain the interpersonal skills necessary for that relationship to flourish. As the Acas ICE guidance emphasises, such an approach will help to develop mutual understanding.

The importance of training for managers, and the delivery of joint training in the workplace, were twin themes that emerged strongly within the Acas focus groups. As one Acas adviser noted:

*‘I think sometimes companies don’t realise the importance of training management.. They see employee reps as having a particular role which is about gathering the feedback from their own constituents and they think that’s what the training is all about. And they assume that management have already got the training, that they are used to chairing or participating in meetings – they think they know it all and they don’t need it.’*

Even a little management training can go a long way to starting to build a longer-term employment relationship, as one Acas adviser pointed out: *‘When we were training the managers it was actually quite good because they completely swung around in terms of their perceptions. So even half a day’s training of managers about what their role is, what information and consultation is about and so on, took away a lot of the fear of the line managers and made them more behind their own people.’*

The CIPD, in response<sup>21</sup> to the discussion paper, said: ‘Training for non-union representatives should include joint union/management courses in a partnership context. [CIPD] members are aware of several examples of joint training in the public sector of courses facilitated by Acas which have resulted in more effective and real partnership working. Where employers typically pay for the training of non-union representatives this may actually be a positive factor in encouraging joint learning events with managers.’

A recent survey of those attending Acas training events showed that of those taking part in joint workplace training events with managers and representatives, 98 per cent agreed that joint training provided a new opportunity to work together and that the training itself might make working together easier in the future.

## Part four: Conclusions and recommendations

### A case for statutory change?

There is considerable discrepancy in the statutory rights granted to different categories of employee representative (see table 1). These legal inconsistencies are exacerbated in practice by the wide variation in the amount of time individual employers grant employee representatives to carry out their duties, access facilities and undertake the necessary training. The implications for representatives' work-life balance, combined with the broader employee relations imperative that workplace representatives cannot perform their role effectively without adequate time off and training, raises the issue of whether there should be an adjustment to the statutory framework.

Clearly, it would be too simplistic for a blanket set of legal entitlements to be replicated across every category of employee representative as their roles and responsibilities vary considerably in some cases. But perhaps it is worth considering a levelling of the playing field in respect of some categories of representative and with regard to some areas of entitlement. For example, the fact that ICE representatives do not currently have a statutory right to paid time off for training or to facilities does little to promote the important role that they can play within organisations' consultative arrangements.

Union Learning Representatives currently do not have a statutory right to facilities either. Given the widely acknowledged role that these representatives are playing in some organisations in building skills development and encouraging hard to reach employees to access learning opportunities, it seems odd that they do not have a statutory right to facilities. Shop stewards form another category of representative where there is no legal provision for access to facilities. Creating a more level playing field of statutory entitlements could encourage more people to stand as representatives, particularly if they think they will receive the necessary training. It could also increase the legitimacy of some workplace representatives' roles in the eyes of managers.

That said, it is debatable whether a statutory change to representatives' entitlements will impact on established workplace practices. As one Acas adviser put it: *'Does the law change culture?'* – and this is the crucial issue. If legislation is not the answer then there needs to be more good practice guidance and, ultimately, it is the attitude of employers, their managers and the employment relations climate that will determine whether representatives are given adequate time off and facilities to carry out their role effectively. WERS 2004 makes the point that the extent to which facilities are available to representatives is partly determined by management attitudes and support for representatives and their role in the workplace. In workplaces where union representatives described management as being in favour of union membership, managers provided those representatives with a wider range of facilities than establishments where union membership was not supported. A higher range of facilities was also provided in workplaces where management was 'supportive of the role played by representatives.'

A consideration of the position of safety representatives supports this view. Safety representatives enjoy – comparatively – some of the best statutory entitlements and yet many safety representatives are not given time off to attend training or fulfil their duties, according to the TUC's biennial survey of safety reps<sup>22</sup>. The survey found that safety representatives experience difficulty in managing their workload to take up basic health and safety training. And this is one category of representative that does enjoy statutory rights, and where the value of their role – for example, in reducing the number of injuries at work – is probably more widely recognised by employers. Relying on purely legislative change to encourage a culture where representatives' role is taken seriously is unlikely to be a long-term solution.

Another theme that emerged in one of the focus groups was the need for simplifying the regulatory framework for representation. As one adviser commented:

*'In terms of increased legislation, one of the messages that keeps coming back is that*

*people get very confused over procedural stuff and the sort of definitions we talk about, such as trade union duties, trade union activities, some of it can be paid time off, some of it can be unpaid time off. Time and again I am hearing that if we did produce any different sort of guidance can we simplify things as well? And I also think it makes it more acceptable for managers because they almost see another job in managing a complicated time off or facility arrangement.'*

It is where an employer appreciates the added value that employee representation can bring to the business that representatives are more likely to be afforded the time off and facilities they need to do their job. One Acas adviser cited the example of an insurance company that had set up a JCC and established training arrangements for all their non-union representatives where there was not even a statutory entitlement. The whole organisation was committed to the consultation arrangements, including the CEO and the employment relations culture was inclusive. It may be that a revised Acas Code of Practice could promote good practice in this area and, in supporting guidance, provide case study examples of where strong representation has the potential to contribute to organisational effectiveness. This could be more effective than changing the legal landscape.

### **What makes things work?**

There is no magic formula for making employee representation more effective. But, as with good employment relations more generally, getting the fundamentals right must underpin any approach to the issue:

- **Management buy-in:** There are fundamental and concrete issues that have to be addressed in order for employee representatives to fulfil their responsibilities to constituents such as established rules of conduct, including agreements on areas such as time off and access to facilities. But for these to be

effective they need to be understood and implemented by line managers who are supported by senior management. This was a constant theme that emerged from the focus groups of Acas advisers. For example, where employee representative arrangements are purely 'HR-led' they are likely to be less robust. As one of our Leeds-based advisers commented: *'If senior management are committed – and we always try and get them on board – and talking to the rest of management then those managers will buy in and senior managers can even try and get things built into performance management indicators as part of the people issues. If senior management is not on board, the whole thing is lip service. Moreover, if it is HR-driven – that is, a tick box exercise – then it will fail. You need to involve middle management as well or they feel left out and will block representatives' involvement.'* Another Acas adviser balanced this approach by pointing out that if a representative structure was *purely* HR-driven it would not be effective – although many consultative processes are initiated by HR, the key is to secure the buy-in and involvement of senior and middle managers and employees.

- **Good relationships in the workplace:**

Employment relations, and employee representative arrangements in particular, involve a complex series of relationships including those between representatives and their constituents – a relationship sometimes awarded scant attention – and the relationship between workplace representatives and the different levels of management and HR within the organisation. It is the level of trust present in these relationships that will determine the impact of any representative structures on the wider employment relations climate and, ultimately, organisational performance. WERS 04 found that 'trust is a pre-requisite for collaborative working and good relationships more generally.'

● **Understanding employee representation within the wider employment relations framework:**

The general climate of employment relations – for example, whether it is characterised by involvement and a partnership approach – also has a direct bearing on the genuineness of the representative arrangements that are established. To be properly understood and its full potential realised, employee representation must be viewed within the wider employee relations context, and the contribution such arrangements can make to resolving differences in the workplace and aiding the early resolution of conflict. The findings of the DTI’s research into whether employee representation in grievance and disciplinary matters is ‘making a difference’<sup>23</sup> is of direct relevance here. The study found that there was little evidence to suggest that rates of disciplinary sanctions or dismissals were lower in workplaces that complied with the right of accompaniment at hearings and suggests that: ‘Instead, effective representation at earlier stages of conflict, when some sort of resolution is still possible, may be more influential.’ Broader patterns of representation and dispute resolution are key to managing individual conflict in the workplace, and ‘measures that support robust structures of employee representation may have more impact in improving disciplinary outcomes in British workplaces’, the report concludes.

● **Flexibility rather than prescription for what’s reasonable:** The view that being prescriptive in the amount of reasonable paid time off allowed to representatives would not improve employment relations was heavily endorsed by Acas advisers. Rather, there should be flexibility in the statutory framework to allow for changes in organisational and representational needs. Fostering an environment where representatives are allowed adequate time off to perform their role is far more dependent on the attitudes of managers and the employment relations climate generally. As one adviser put it: ‘if we are looking at a new Code of

Practice, there should be a greater emphasis on discussion and consensus rather than prescription.’

● **Train, train, train:** The importance of adequate and ongoing training for representatives cannot be emphasised enough, but this paper illustrates the much wider training need on consultation and representation, in particular for line managers and middle managers and any managers involved directly in the consultative arrangements. It is only if the line manager has the wider understanding of the potential contribution that strong, as opposed to weak, representative arrangements can make to organisational effectiveness and change management that he or she will be convinced of the value of the representative’s role. This is why promoting the business case and spreading good practice in this area could, ultimately, prove to be more effective than pure legislative change. But a balance must be struck within the statutory arena: as Hall and Terry (2004) point out, ‘better regulation does not necessarily equate with minimal regulation.’ And if there is to be (further) regulation, employers are likely to prefer it to be systematic and sufficiently detailed so that they know what is expected of them.

● **A joint approach:** Where possible, joint training approaches that involve managers and representatives can help build a mutual understanding of how the representational arrangements can work in practice to the benefit of all parties in the employment relationship. In Acas’ experience, the value of such an approach is that it can equip both managers and representatives with the skills and attitudes needed to manage the relationship for the long-term.

● **Future influences on employee representational arrangements:** Finally, it is also worth noting the significant implications



for employee representatives arising from the Gibbons review of dispute resolution. The earlier and more widespread application of conflict resolution in the workplace will have a direct bearing on the work of representatives and offers the opportunity for them to play an enhanced role in the earlier and speedier resolution of disputes at their point of origin.

### **Recommendations**

There are clear responsibilities on employers, trade unions and managers – as well as on Government – to provide the right conditions and support for employee reps to be able to fulfil their role.

- Employers need to consider how to manage employee representation to best effect in the workplace and re-appraise the role employee representatives can play. Both strategic and practical considerations need to be addressed here.
- Government and public policy, particularly at regional and sub regional level, needs to consider greater promotion of the benefits of effective employee representation and devise effective channels to promote good practice in this area. The business case needs to be applied to all types of employers – for instance, representational arrangements can boost employee engagement levels and ease the management of change, help avoid formal and legal procedures to settle employment rights cases and enhance the overall health of the organisation.
- Trade unions could embrace more widely the role that non-union representatives can play in the workplace and their needs for time off and access to facilities. Non union representatives are here to stay and trade unions need to consider how trade union representatives can work with non union reps where they exist in a mutually beneficial way. Lessons from mixed constituency forums should prove especially valuable.

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