

Inside this issue of Acas' Employment Relations Matters

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Employment Relations Matters appears every quarter and is distributed free of charge by email and print. Copies can also be downloaded from www.acas.org.uk

Employment Relations Matters is intended to provide accessible articles, focusing in particular on Acas' experience working with and helping managers, employees and their representatives in the world of work.

Features are normally written by members of the Acas strategy unit and there are regular contributions from colleagues in the research and evaluation section. From time to time articles may be commissioned or submitted externally.

We welcome your comments and opinions. These should be addressed to the Editor, John Purcell – jpurcell@acas.org.uk

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Employee representation in the workplace: changes and challenges

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.

Earlier this year, the then Department of Trade and Industry (DTI) (now the Department for Business, Enterprise and Regulatory Reform – BERR) undertook a consultation exercise on workplace representatives¹, to which BERR has recently published its response². The consultation examined the changing nature of employee representatives, the variation in workload and the role and growth of non-union representatives. Acas subsequently published its own Policy Discussion Paper³ exploring some of the key issues raised: this article is a condensed version of the paper.

The discussion paper 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.

Acas senior advisers provide a unique insight into the employment

relations climate of British workplaces today. They also have considerable experience of working with employers to set up forums, training both managers and

employee representatives on how to work together effectively. 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. It is this collective experience that informs this article.

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 – traditionally called a shop steward in many workplaces – operating within a collective bargaining structure, although never ubiquitous, has been in decline for the past two decades, particularly in smaller private sector organisations. 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 2004), the number of non-trade union representatives now equal trade union representatives¹. 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 below.

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 and detriment	Facilities
Shop stewards and similar	✓	✓	✓	✓	✗
Union Learning	✓	✓	✓	✓	✗
Collective redundancy	✓	✓	✓	✓	✓
TUPE	✓	✓	✓	✓	✓
Union safety	✓	✓	✓	✓	✓
Employee safety	✓	✓	✓	✓	✓
Offshore safety	✓	✓	✓	✓	✓
I&C	✓	✓	✗	✓	✗
Transitional I&C	✓	✓	✗	✓	✗
Occupational/Personal Pensions	✓	✓	✗	✓	✗
Working Time	✗	✗	✗	✓	✗
Maternity and 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.*

Acas focus group participants cited shop stewards, union learning representatives, redundancy and TUPE, health and safety representatives and Information and Consultation representatives as those categories Acas most commonly came into contact with. 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 individual representation and associated case work.

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*⁵, although updated to include the introduction of Union Learning Representatives (ULRs), remains focused on trade union representatives, and Acas is consulting with stakeholders on the possible changes that can be made to bring the Code into line with current practice.

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. 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 trade 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.

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', as referred to in the WERS. These are non-union representatives who are not found in joint consultative committees.

A diverse mix?

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. But the gender gap is closing, albeit gradually. 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.

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.

It is widely acknowledged that pressures at work are increasing with 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.

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.

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.

Strategies to promote more effective employee representation

Building the business case

The DTI 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 productivity¹. The empirical evidence is supported by a wealth of qualitative confirmation 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.

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.

WERS 2004 reported the growing prevalence of direct communication and involvement approaches in the workplace, and 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.

Ultimately, 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.

The following sections consider 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. 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 (see table 1).

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.

What’s reasonable?

Some representatives clearly find it difficult to take the necessary time off to fulfil their duties, with considerable variation across organisations. 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 Practice⁵. 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). The 2004 WERS 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. 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:

"...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.

Access to facilities

The statutory provision of rights to workplace facilities is even patchier than that in place for facility time. 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 laptop provided by the union.

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

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 2004 WERS, 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. 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.

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.

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.

A joint activity

Acas delivers a wide range of training sessions for employee representatives, both union and non-union. 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.

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.”

Of joint workplace training events organised by Acas on a wide range of issues including the role of 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.

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.

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. The 2004 WERS 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.

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 reps⁶. 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 than the value of other types of representative. Relying on purely legislative change to encourage a culture where representatives’ roles

are taken seriously is unlikely to be a long-term solution. 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.

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. One Acas adviser pointed 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.
- **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.
- **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.

- **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.
- **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.
- **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.

Recommendation

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.



1. DTI (January 2007) Consultation on workplace representatives: *A review of their facilities and facility time.*
2. BERR (September 2007) *Workplace representatives: A review of their facilities and facility time. Government response to public consultation.*
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4. Kersley, B. et al (2006) *Inside the Workplace: Findings from the 2004 Workplace Employment Relations Survey,* London, Routledge.
5. *Code of Practice 3: Time off for trade union duties and activities,* Acas, www.acas.org.uk.
6. TUC (2006) *Trade union trends survey 06/02: TUC biennial survey of safety reps 2006,* www.tuc.org.uk.

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