Consultation: a voice lost in a crowd

30 June 2020

Contents

Disclaimer

The views in this policy paper are the author's own and do not necessarily reflect those of Acas or the Acas Council. Any errors or inaccuracies are the responsibility of the author alone.

This paper is not intended as guidance from Acas about how to manage a consultation process.

Introduction

Writing in the foreword to the CIPD's guide on how to consult with your employees, Matthew Taylor of the Royal Society of Arts (RSA) describes how, in 2005, the Information and Consultation of Employees (ICE) Regulations "came up against inertia and institutional resistance". In a 2015 article marking the 10th anniversary of the regulations, the Involvement and Participation Association's (IPA's) Joe Dromey stated that they had been "to put it politely, a bit of a damp squib."

With this backdrop, and the global upheaval from the coronavirus (COVID-19) crisis, it is hardly surprising that there was a slightly muted fanfare for the amended regulations in April this year, which saw the threshold needed for employees to trigger an information and consultation request lowered from 10% to 2%. Was this a missed opportunity, as along with the scepticism, there was also quite a bit of optimism for the part the regulations could play in promoting joint working between employees and employers? For example, in the Acas policy discussion paper 'Has consultation's time come?' (PDF, 1MB, 20 pages) the academic Keith Sisson hoped they could "breathe life into the employment relationship."

The context in 2020 is very different compared to 2005; and reviving genuine consultation must be more than a pipe dream. Unions, who in 2005 were anxious about promoting non-union forms of employee voice, are more supportive, and consultation has been wrapped up in much broader, and arguably more appealing concepts, like employee engagement and job quality. And, unlike in 2005, there is the pressing issue of getting people safely back to work during the pandemic. Perhaps we have the burning platform: employee involvement and participation have never been more important than in the weeks, months and years ahead.

Is consultation genuinely understood?

The language we use to describe the way people can share ideas and work collaboratively to find solutions that, hopefully, suit everyone, can feel a bit dated. As the IPA's Patrick Brione has said, "For many people consultation has negative associations with redundancies and dealing with bad news. It is rarely seen as an enabler of better change management."

Acas regularly runs joint working sessions to promote the values of genuine consultation. Our advisers spell out the important differences between briefing, consultation, negotiation and delegation:

- this is what I have done (briefing)
- this is what I have done, what do you think (briefing with feedback)
- this is what I am planning to do, what do you think (single option consultation)
- these are the options, which do you think I should take (multi-option consultation)
- this is the problem, what should we do (pen option consultation)
- let's get together and negotiate a deal (negotiation)
- you decide what to do (delegating)

Interestingly, the CIPD guidance suggests employers avoid the term 'staff forum' or 'joint consultative committee' for working groups set up to involve staff in business planning; and opt instead for something more upbeat like 'innovation forum'.

But consultation does not just have to hide behind a more palatable name. Since the 2008 economic recession, it has, arguably, been subsumed by other concepts relating to employee involvement and participation, notably employee engagement.

Macleod and Clarke's 'Engaging for Success' report, launched in the shadow of the last recession, contains this description of engagement: "you sort of smell it, don't you, that engagement of people as people. What goes on in meetings, how people talk to each other. You get the sense of energy, engagement, commitment, belief in what the organisation stands for."

There is no doubt that small details can speak volumes. Acas advisers say they can often tell a great deal about a workplace culture by the way they are greeted at reception and the eye contact and body language they encounter. But genuine consultation, of the kind envisaged in the ICE Regs, requires more than just a good sense of smell. It needs robust mechanisms – in other words, groups or committees of trained representatives, terms of reference and proper agendas – and it needs a willingness to work towards mutual interests and on matters that count, all while acknowledging different starting positions.

Language is important. Matthew Taylor in 'Good work: the Taylor review of modern working practices' isn't the only one to use 'engagement' as a way of indicating a general direction of travel. The Financial Reporting Council (FRC)'s UK Corporate Governance Code states that "in order for a company to 'meet its responsibilities to shareholders and stakeholders, the board should ensure effective engagement" with its workforce. I don't think I have been to a conference in the last 10 years that doesn't heavily reference employee engagement – whether it's to do with improving performance, wellbeing or productivity. While voice at work is one of the main drivers of engagement, perhaps engagement makes too many assumptions about the likelihood of a shared vision and values. This take on working life may not serve us so well when, as now, we face significant potential for differences in people's perceived concerns, particularly around health and safety at work and protecting the most vulnerable.

Can the mechanisms provide meaningful outputs?

The recent history of consultation is one of shallowing out, in terms of subjects covered and the level of input from employees (put bluntly, away from strategic issues and towards what is euphemistically called 'tea and toilets').

The Acas research paper analysing Workplace Employment Relations Studies (2004 and 2011) (PDF, 373KB, 57 pages) looking at the state of 'joint consultative committees' (JCCs) under the 2005 ICE Regs, found that they did not have a dramatic impact on the amount of consultation in Great Britain. Worryingly, the study found that managers increasingly said that they used these consultative

committees less to seek feedback on a range of options (down from 45% to 39%) and more to get feedback on a preferred management option (up from 9% to 28%).

Another [Acas report about the concept of employee engagement](#) (PDF, 478KB, 46 pages) written by the IPA, found that of the 4 components of engagement, voice was the least well developed, with only 30% of employees saying that their managers allow them to influence decision making. And of the 3 components of voice – communication, consultation and negotiation – the analysis of WERS suggested that communication was given far more prominence than the other 2. The danger is that some employers see communication as an end in itself; and evidence in the report implies that "many employees see their managers' efforts to seek their views as a merely cosmetic exercise that will have no consequence".

Acas advisers have found that joint consultative forums and the like are usually set up in response to a crisis, for example when an employer needs to make wholesale changes to terms and conditions or working practices. They can often work well in this way – although it is often quicker and easier if consultative arrangements are set up voluntarily. However, these forums can languish when things get back to normal. Following the huge upheaval caused by the pandemic, we all need to believe that lessons will have been learnt from our individual and collective experiences.

In order to make genuine consultation a core part of our working lives, innovation forums, or whatever we call them, need:

Short-term wins

An Acas adviser was told about an initiative at Hull Teaching Hospitals NHS Trust. The Trust keeps records of which staff are waiting for medical appointments and operations. Following an employee suggestion, these records are now used to fill public cancellations and no-shows at the hospital at short notice. As the Trust's HR Director Simon Nearney said, it shows that "Management don't have a monopoly on good ideas". In terms of safely returning to work, each workplace will have its own set of unique circumstances and members of staff are likely to come up with innovative, workable solutions, both individually and collectively, if given the chance.

Standing items that provide a chance to reflect longer-term cultural changes

As a result of the pandemic, some issues that seemed of absolute paramount importance to a shared vision of fair and diverse workplaces seem to have been put on the back-burner. For example, the requirement for organisations to complete their gender pay reporting has been cancelled for the current year. But these issues haven't gone away and the current protests about racial equality may bring forward the recommendations for ethnicity pay reporting. Despite the fear that equality issues may be side-lined, recent [research on the gender wage gap from Alex Bryson at UCL](#), commissioned by the government, suggests that the pandemic could actually help to improve gender equality with the increase in homeworking leading to a greater sharing of caring responsibilities than has ever been the case in the past. But this cannot be left to chance. New consultative arrangements, in whatever shape or form they emerge, could help us get back to work safely in the short-term, but also help us create fairer workplaces in the medium to long-term, but this has to be a shared agenda.

Quicker, more organic forms of consultation

Social distancing has forced us to embrace more innovative and agile ways of working. We arguably need newer, sleeker mechanisms for consultation that exploit the technology and the changing ways we are having to adapt during the pandemic. A few years ago, Acas published its research into internal social networks in ['Going digital? Harnessing social media for employee voice'](#) (PDF, 1.1MB, 51 pages). Many organisations have been pioneering the use of these virtual platforms to create faster, more agile forums for involving staff in decision-making. One of the main lessons from the research is that organisations have to be "open to a loss of some control, trusting staff and resisting the temptation to restrict the conversation." Perhaps a positive by-product of the pandemic might be flatter organisational hierarchies.

As Dix and Oxenbridge wrote in the Acas research paper ['Information and consultation at work: from challenges to good practice'](#) (PDF, 505KB,186 pages), "The subjects addressed in the process of informing and consulting must be central to the needs of the

organisation and meaningful and relevant to the needs of employees."

This principle is surely the starting point for all the conversations that should be going on in workplaces everywhere in the coming weeks.

Can greater worker involvement help us get back to an acceptable version of this new normal?

The quick answer is that yes, it can, but only if we really want it to. Embracing much wider worker involvement would involve quite a change of mindset for many businesses. In his article on the RSA website about the conditions for change, Matthew Taylor has identified 3 ingredients necessary for "real and lasting change":

- an underlying desire and logic for things to be different (latent potential)
- events that create momentum for change (precipitating factors)
- concrete ways of embedding change in social structure (workable mechanisms)

In the current environment, workable mechanisms might prove the greatest challenge for employee voice. The gig economy has taught us some valuable lessons about galvanising opinion and making change happen quickly, and there are encouraging signs that worker voice is beginning to reinvent itself, with the help of campaigning platforms such as Coworker.org and Organise. Further, the creation of self-organised digital communities, as outlined in research by Oxford University into autonomy and algorithmic control in the global gig economy, it has placed some of the negotiating power back in the hands of workers, who can "warn each other of bad clients, recommend good clients and attempt to influence pay."

The Carnegie report on solving the productivity puzzle shows a significant correlation between voice mechanisms and productivity; and the current health crisis has also brought the link between voice and wellbeing into sharper focus. But perhaps the greatest argument for more employee voice and participation is the part it plays in building trust in our leaders; because without trust people won't feel safe coming back to work and won't be as engaged as they could otherwise be.

As Susan Clews said in her blog on fear and trust in the evolving world of work, "One of the greatest challenges that any significant and rapid change presents to organisations is trying to avoid the 'us and them' mindset that can so easily set in."

The coronavirus pandemic has made the need for voice generally, and consultation specifically, more urgent than ever.