

**THE EMPLOYMENT CONTRACT: FROM COLLECTIVE  
PROCEDURES TO INDIVIDUAL RIGHTS**

ESRC Centre for Business Research, University of Cambridge  
Working Paper No. 171

William Brown  
Faculty of Economics and Politics  
University of Cambridge  
Austin Robinson Building  
Sidgwick Avenue  
Cambridge CB3 9DD

Phone: 01223 335236  
Fax: 01223 335475  
E-Mail: [wab10@econ.cam.ac.uk](mailto:wab10@econ.cam.ac.uk)

David Nash  
Judge Institute of Management  
Studies  
University of Cambridge  
Trumpington Street  
Cambridge CB2 1AG

Phone: 01223 339700  
Fax: 01223 339701  
E-Mail: [drn1000@cam.ac.uk](mailto:drn1000@cam.ac.uk)

Simon Deakin  
ESRC Centre for Business Research  
University of Cambridge  
Austin Robinson Building  
Sidgwick Avenue  
Cambridge CB3 9DE

Phone: 01223 335242  
Fax: 01223 335768  
E-Mail: [sfd20@econ.cam.ac.uk](mailto:sfd20@econ.cam.ac.uk)

Sarah Oxenbridge  
Department of Applied Economics  
University of Cambridge  
Austin Robinson Building  
Sidgwick Avenue  
Cambridge CB3 9DE

Phone: 01223 335285  
Fax: 01223 335299  
E-Mail:  
[s.oxenbridge@econ.cam.ac.uk](mailto:s.oxenbridge@econ.cam.ac.uk)

September 2000

This paper relates to the CBR Research Programme on Corporate Governance,  
Contracts and Incentives

## **Abstract**

The article analyses the institutional basis and form of the employment contract in Britain using the 1998 Workplace Employee Relations Survey. It assesses the extent to which collective bargaining still regulates pay and non-pay aspects of employment. The paper shows that while collective procedures have declined in importance, there has been an increase in legal governance of the employment relationship. Logistic regression analysis establishes that both contractual formalisation and legal compliance are greater in larger organisations and where trade unions are present. Trade union activity is also associated with superior fringe benefits. Collective bargaining thus appears to facilitate both access to and improvement on statutory rights.

**JEL Codes:** J53, J41, K31

**Keywords:** employment contract, labour law, collective bargaining

## **Acknowledgements**

This work is funded by the ESRC's Future of Work programme. The authors are grateful for the very helpful comments received at the BJIR conference on WERS98, held at Cumberland Lodge in September 1999, and from Neil Millward, Bob Hepple, and the referees and Editors. A version of this paper is forthcoming in the *British Journal of Industrial Relations*.

Further information about the ESRC Centre for Business Research can be found on the World Wide Web at the following address:  
<http://www.cbr.cam.ac.uk>

# **THE EMPLOYMENT CONTRACT: FROM COLLECTIVE PROCEDURES TO INDIVIDUAL RIGHTS**

## **1. Introduction**

The employment contract has received remarkably little attention in the British industrial relations literature. The explanation may lie in the distinctive evolution of British labour law. For most of the past century, collective bargaining has been the principal mode of governance of the employment relationship. The 'normative' terms of collective agreements, such as pay, hours of work, and other employment-related benefits were, in principle, incorporated by reference into contracts of employment, and hence were legally enforceable by individual employees. In practice, however, under the influence of the 'collective laissez faire' philosophy, opportunities for individual enforcement of contractual rights were few and far between. Most disputes over pay and conditions were settled through collective procedures from which the courts were, on the whole, excluded. Moreover, individual employees had few statutory rights until relatively recently. As a result, the place of the individual employment relationship within the industrial relations system was marginal. Its role was eclipsed by Britain's peculiarly informal, unregulated, multi-layered, and fluid system of collective bargaining.

From the early 1960s, this began to change. Successive governments took the initiative in enacting statutory rights which were enforceable by individual employees before specialised labour courts, the industrial tribunals (now renamed employment tribunals). Beginning with the Contracts of Employment Act 1963, employees acquired statutory protection in a range of areas relating to termination of employment and protection of wages. This was followed by the recognition of rights to protection against discrimination in relation to sex, race and disability. Alongside the enactment of these statutory rights, a new process was developing which was little noticed at first

outside legal circles, but which has come to acquire increasing significance. This was the growing legal formalisation of employees' contractual terms and conditions. These are the terms incorporated into their contracts principally from collective agreements but also from sources such as employer handbooks. The principal catalyst of formalisation was the requirement, dating from the 1963 Act and later extended by a European Directive of 1991<sup>1</sup>, that employers should provide employees with a written statement of their particulars of employment.

The Workplace Employee Relations Survey (WERS98) provides an opportunity to reassess both the place of the contract of employment within British industrial relations and the complementary issue of the method by which it is established. In this article we draw on the survey to investigate the nature of the individual employment contract in 1998, having first established the extent to which it is influenced by collective processes. WERS98 came at a time when the system of collective bargaining was in retreat. During the previous two decades the membership of trade unions and the coverage of collective bargaining had contracted substantially, battered by competitive, legal and structural change. The proportion of employees covered by either bargained or statutory collective arrangements more than halved, from 83 per cent in 1980 to 35 per cent in 1998 (Cully & Woodland 1999; Milner 1995). As part of this process, employers increasingly took the initiative in fixing unilaterally those matters concerning pay, conditions and working arrangements which hitherto had been the subject of joint regulation. Sometimes this was accompanied by the explicit derecognition of trade unions, but more often by incremental reduction in the depth of recognition and an accompanying diminution of union influence over the terms of the contract of employment (Brown *et al* 1998: Ch. 9).

This reduction in the procedural role of trade unions in determining the content of employment contracts has been called 'individualisation' in the industrial relations literature, and one

intention of this analysis of WERS98 is to map its current extent and character. The authors, as part of an earlier study of the changing nature of employment contracts, were involved in the design of several of the relevant WERS98 survey questions. The earlier study drew on over 30 case studies to gain an understanding of the processes of procedural individualisation that were being experienced across a broad range of workplaces (Brown *et al* 1998). The period over which these case studies were conducted encompassed that of the WERS98 survey. The survey thus allows the findings of the case studies to be placed in a statistically representative perspective as part of the continuing iteration of the two research techniques that has characterised the development of the WIRS/WERS series (Marginson 1998: 371).

From a socio-legal point of view, the timing of WERS98 was peculiarly blessed. The survey was conducted over the first winter after Labour's return to power in 1997 after an 18 year absence. It thus came at the end of a long period during which a succession of legal changes had greatly increased constraints on collective action and collective organisation. Paradoxically, although this is often described as a period of deregulation, it did not diminish the body of individual employment protection legislation. Although there had been certain changes aimed at enhancing flexibility, such as modifications made to the qualifying periods for statutory rights and to remedies for unfair dismissal (Deakin & Morris 1998: 43), the legal formalisation of the individual employment relationship had increased during this period as new regulation, both substantive and procedural, was added. The new Labour government has contributed further to this process. It came in committed to substantial legislation, both to enhance individual employment rights and to facilitate collective organisation. Some of these proposals came in the wake of European Community initiatives. The two years subsequent to the survey saw the implementation of the Working Time Directive (October 1998), the National Minimum Wage (April 1999), the European Works Council Directive (December 1999), and the royal assent to the wide-

ranging Employment Relations Act (July 1999). It would have been hard to choose a better temporal base-line against which to judge the impact of this wave of statutory intervention. The employment contract which this paper explores is thus situated at a time when the tide of collective bargaining was at an unprecedented ebb, while the tide of statutory regulation was about to rise in an unprecedented flood.

The analysis starts by assessing the extent to which the content of the employment contract is still determined by traditional collective bargaining. After noting how the coverage of collective bargaining has contracted, and how its influence over the control of work has diminished, the article goes on to investigate the form that employment contracts now take in practice. It concludes with a consideration of the influence that the growth of individual rights has had on the employment contract in contemporary Britain.

## **2. The contraction of collective bargaining coverage**

The coverage of collective bargaining, the principal means of governing the employment contract for most of the 20th century, has been contracting. This is best charted by considering collective bargaining over pay. WERS98 and its predecessors indicate that the proportion of all employees (in workplaces of 25 employees or more) covered by collective bargaining over pay fell from 70 per cent in 1984 to 54 per cent in 1990, and to 41 per cent in 1998 (Cully *et al* 1999: 242). The level at which this bargaining occurs has also changed. The traditional form of collective bargaining, at the multi-employer, industrywide level, has continued its long retreat in favour of single-employer bargaining at some level within the enterprise. The surveys show that the proportion of workplaces (of 25 or more employees) affected by multi-employer bargaining fell from 43 per cent in 1980, to 31 per cent in 1990, and 14 per cent in 1998 (Cully *et al* 1999: 228).

Previous surveys have tended to examine the formalities of collective bargaining over pay and to ignore those tracts of the economy where it did not prevail (Daniel 1976; Brown 1981; Daniel & Millward 1983; Millward & Stevens 1986; Millward *et al* 1992). The emphasis was on describing the bargaining structure. Such an approach made sense when collective bargaining was the norm, and when one system of pay fixing was dominant within an establishment. It no longer does. WERS98 therefore used various approaches to explore who is involved in fixing pay, and whether or not trade unions are involved in the process. The most direct question asked managers to say, for each of eight occupational groups which might be present within their establishment, which of a range of descriptions most closely characterised the way that pay was set.

Table 1 uses this to analyse the structure of pay-fixing by industry for all workplaces employing 10 or more.<sup>2</sup> It does so by summing for each industry the responses relating to each occupation within each establishment. The first row provides the percentage of all employees whose pay is fixed by the different methods, and the second and third rows provide percentages separately for the public and private sectors. The remaining rows do this for the twelve main industrial categories. The final column gives the percentage of all employees who are in each industrial category.

It is evident from Table 1 that, according to employers, collective bargaining (as represented in the first three columns) determines the pay of 35 per cent of the workforce in workplaces with 10 or more employees. How does this compare with the 35 per cent coverage suggested by the Labour Force Survey (LFS), which used a question asked of a random sample of *employees*?<sup>3</sup> The WERS98 excludes those 19 per cent of all employees who report themselves as employed in workplaces of fewer than 10 employees<sup>4</sup>, whereas the LFS includes them. We need to allow for this. An estimate based on WERS98, extrapolating from LFS data for small establishments<sup>5</sup>, suggests

coverage of collective bargaining of *all* British employees to be 33 per cent for the winter of 1997/98. This employer-based response is probably more reliable than the slightly higher employee-based LFS response.

Some points revealed in the ‘map’ of pay fixing in 1998 that is provided by Table 1 are worth highlighting. The coverage of collective bargaining can be broken down into 15 per cent of employees covered by multi-employer collective bargaining, 7 per cent of employees covered by workplace bargaining, and the remaining 13 per cent covered by single-employer bargaining at some level of the organisation higher than the workplace. Collective bargaining covered 61 per cent of public, but only 24 per cent of private sector employment. In the private sector, multi-employer bargaining remains a significant institution in construction only. In manufacturing, where twenty years ago workplace bargaining was so dominant, it now accounts for the pay of less than a fifth of employees. Individual negotiation of pay is confined to a very small percentage, mostly in managerial grades. For half of all employees and for two-thirds of employees in the private sector, pay is set unilaterally by management within the enterprise.

We have looked at collective bargaining over pay as a relatively formal process, resolved at a specific organisational level with some sort of explicit agreement with trade union representatives. But the extent of trade union involvement in fixing pay may often be fairly minimal. Management and worker representatives from the same establishments were asked about how the most recent settlement was arrived at. In those cases where worker representatives were involved, only 66 per cent of managers said that they negotiated an agreement, the remainder saying it amounted to no more than consultation. An even lower proportion of the worker representatives, 57 per cent, described the process as negotiation as opposed to consultation. The British bargaining structure has thus not only contracted it has become increasingly fuzzy. Pay, the principal component of any

employment contract, is now fixed by formal collective bargaining for no more than one third of the employed population. Within this, however, there is a margin where the influence of trade unions is more informal and consultative.

### **3. Collective bargaining over the control of work**

The employment contract is the outcome of a transaction which encompasses both the entitlements and the obligations of the employee. In the contemporary context it is easy to forget that collective bargaining may regulate not only entitlements such as pay and fringe benefits, but also the obligations placed on employees such as workloads and job descriptions. Bargaining over work obligations is bargaining over the control of work. We turn to a thirty year historical perspective to underline how the regulation of this aspect of the employment contract has changed.

A crude but eloquent indication is to be gained by recalling the responses to similar questions in earlier workplace surveys. The 1966 Royal Commission survey drew on a sample of 319 managers from manufacturing workplaces of 150 or more employees and construction sites of 50 or more employees. The proportion of works managers who reported that, where they had shop stewards, they ‘discussed and settled’ particular issues with them was as follows: on the taking on of new labour, 46 per cent; on the distribution of work, 46 per cent; on the manning of machines, 47 per cent; on the distribution of overtime, 50 per cent; on the introduction of new machinery and jobs, 61 per cent; and on transfers between jobs, 62 per cent (Government Social Survey 1968: 80). This was not a representative sample, but it reminds us that bargaining played a large part in regulating the organisation of work in the *de facto* employment contract, at least in larger manufacturing and construction workplaces in the 1960s.

Fourteen years later, the 1980 WIRS survey drew responses from a representative sample, very comparable to WERS98, of managers from workplaces of 25 or more employees. At those that recognised trade unions, the proportion of managers reporting that they negotiated with union representatives of manual workers at the establishment was as follows: on recruitment, 43 per cent; on internal redeployment, 64 per cent; on manning levels, 49 per cent; and on major changes in production methods, 45 per cent (Daniel & Millward 1983: 197). Again, bargaining over work organisation issues was clearly the norm.

By 1998 the picture is vastly different. If we consider only workplaces of 25 or more employees in order to be as comparable with the 1980 sample as possible, the proportion of managers at establishments with workplace union representatives who report that they negotiated over issues was as follows: on recruitment or selection, 3 per cent; and on staffing or manpower planning, 6 per cent. The collapse in trade union influence over recruitment between 1980 and 1998 is particularly clear. Although the questions are less specific (an interesting reflection of changing practice in itself), it is clear that there has been a very substantial decline in union representative involvement in the regulation of employee obligations and work organisation aspects of the employment contract.

A fuller picture of the scope and character of collective bargaining at the workplace in 1998 is given in Table 2. This compares employer and union representatives' views within the same establishment (from the 870 establishments in which union representatives were present) of the nature of their relationship in regulating different aspects of the employment contract<sup>6</sup>. The relatively small proportion of workplaces reporting negotiation over pay reflects in part the fact that, especially in the public sector, negotiation may have taken place at a higher level than the workplace. The handling of grievances is perceived by employee representatives to be their most common area of negotiating activity but is considered by employers more commonly to be an area

of consultation. With this exception, union representatives and employers shared similar perceptions of the extent and nature of negotiation. These perceptions are substantially different when it comes to consultation, with managers claiming much more than the representatives. Perhaps what is most notable is the extent to which, on most of these issues, neither side reports *any* negotiation or consultation to be taking place; for eight of the ten issues at least one third of respondents on both sides report no interaction at all. Although not shown in the table, there is a surprising similarity in the pattern of negotiation and consultation when we separate and compare the public and private sectors, with the exception that private sector respondents report more negotiation over pay.

In summary, it is not only on pay aspects of the employment contract that the influence of trade unions has diminished. Workplace union activity is also much less concerned with the control of work than twenty or thirty years ago. Another indication of this change in union function is provided by responses to a question in which union representatives were asked to name the most important issues they had dealt with over the last twelve months. The highest proportion, 27 per cent, chose treatment of employees by management, 24 per cent chose employment security, 20 per cent chose health and safety, and 19 per cent chose wages and benefits. In terms that are interestingly consistent with the evidence that people join trade unions primarily for mutual support at the workplace (Waddington & Whitston 1997: 538), one might therefore characterise what has been happening as a shift in workplace trade union activity away from limiting the obligations placed on employees by employers, towards monitoring the exercise of employers' obligations towards their employees.

#### **4. The substantive content of the employment contract**

If employees are increasingly not covered by any sort of collective agreement, where do the contents of their employment contract come

from? To answer this we first need to ascertain the extent to which, within a given workplace, employees' individual employment contracts differ. Our earlier study had suggested that, despite a widespread rhetoric of 'individualisation', in most organisations there has been a general trend towards greater standardisation of the employment contract. This was certainly the case for non-pay entitlements. The study suggested that there has been a diminution in differentiation in the non-pay entitlement content of contracts between employees in the same firm, whether or not trade unions are present (Brown *et al* 1998: Ch 4). How far does WERS98 support this conclusion?

The survey asked employers what proportion of their largest occupational group of employees had standard (that is, the same) employment contracts for non-pay terms and conditions. As many as 78 per cent said that *all* employees in their largest group had the same contract. The employers who did not report standard contracts were almost all in small firms; 90 per cent of them managed establishments of fewer than 50 employees and 75 per cent of them were in organisations of fewer than 100 employees. They were also overwhelmingly in the private sector and most had no union members. In brief, whether or not they have collective bargaining, the non-pay terms of employment contracts in all but the smallest organisations are, as the case studies suggested, highly standardised. None of the previous WIRS surveys provide any data from which to deduce how the degree of standardisation might have changed.

Our earlier case studies also found evidence of a general tendency for pay structures to become increasingly simple and less specific, whether or not unions were recognised. This increasing vagueness of job description tended to reflect greater employer discretion over the actual content of jobs that we have just noted. The case studies also found widespread use of performance-related pay. Where this is linked to individual performance it implies that substantive pay terms

will be differentiated between employees (Brown *et al* 1998: Ch 4).  
What did WERS98 find?

There are considerable methodological difficulties in investigating payment systems by survey techniques. They cannot probe crucial aspects of incentive structures such as wage variability and the discretion exercised by management. Moreover, WERS98 provides only broad indicators of their current state. Only 18 per cent of establishments reported that any non-managerial employees received payment from some sort of individual or group performance-related scheme. In two-thirds of these cases, individual (as opposed to group) performance or output measures determined the amount of pay. In sum, while some sort of performance-related pay is used for a minority, for the large majority of employees, pay is still based upon relatively standardised wage and salary structures.

We conclude that there is a high degree of standardisation of employment contracts within British workplaces, so far as both pay and non-pay entitlements are concerned. This is irrespective of trade union presence. Factors related to transaction costs and issues of internal equity and motivation within organisations appear to place a limit on how far the individualisation of contracts can be taken, even in situations where union influence over the setting of pay and conditions has been effectively removed (Brown *et al* 1998: Chs 2, 4). The exceptions, where there is differentiation on non-pay entitlements, are almost all to be found among very small workplaces. So far as pay entitlements are concerned, while performance-related pay which differentiates between individuals is more widespread among larger workplaces, it still only affects a minority of employees. Although in past decades the standardisation of employment contracts was primarily brought about through the mechanism of collective bargaining, its survival in a period of union weakness suggests that standardisation may have substantial benefits for employers.

## **5. The formalisation of the employment contract**

While collective bargaining has declined in importance as an influence on the employment contract, the role of statutory employment law has increased. Under the common law of employment, no formalities are required to bring an employment relationship into being. A contract of employment can simply be implied by prevailing practice or, if it is to be made explicit, this can be done either in writing or orally. As noted in the Introduction, however, beginning in the 1960s, legislation has superimposed a growing set of duties upon the employer to provide the employee with written information on certain specified terms of the contract and certain specified rights. The relevant law is now found in section 1 and related sections of the Employment Rights Act 1996 (Deakin & Morris 1998: 248-257). How far is this duty complied with; and how is it complied with? Earlier studies suggested that there was widespread confusion among employers concerning the meaning of the law (Leighton & Dumville 1977), and that it was only partially applied in many smaller firms and in non-unionised establishments (Clark & Hall 1992; NACAB 1990). The more recent erosion of collective bargaining protections makes it particularly important to establish whether written statements of employment contracts are still often missing.

In order to gain some measure of how far contract terms are, in practice, formalised, the WERS98 survey asked employers which of a number of aspects of terms and conditions of employment they made available in writing to employees in their establishment's largest occupational group. It addressed this by asking about terms which exemplified four distinct categories of legal status.

First, and most clear-cut, the law requires the employer to set out, in a single written statement, a number of matters, including 'the scale, rate or method of payment', 'hours of work', and entitlement to holidays. A second category of matters must be reported to the

employee but that may be done in a separate document. These matters include the length of the agreed period of employment and any collective agreement affecting the employment relationship. A third category of information must be provided to the employee either in a written statement or in another document which the employee has a reasonable opportunity to read in the course of employment. The list of items this covers includes sick leave arrangements and occupational pension schemes. A fourth category relates to disciplinary and grievance procedures. Disciplinary procedures must be specified in the written statement or in another readily accessible document, unless there are fewer than 20 employees in the organisation. Details of grievance procedures (including grievances over issues of discipline) must also be notified in writing, irrespective of the number employed. In addition to asking employers whether a selected number of the above items were, in practice, notified to employees, the survey also asked about ‘training opportunities’. This was added because it is a term of employment for which there is *no* statutory requirement to provide written details. It thus provides an interesting benchmark against which to judge the degree to which employers provided information on those matters listed in the Act.

Table 3 sets out the extent to which employers report that they provide written details for the largest occupational group in the workplace, with the first column giving the percentage of workplaces of 10 or more employees doing so, and the second column giving an estimate of the percentage of all employees so covered<sup>7</sup>.

It is evident from the table that, for the first three items, for which there is a statutory requirement to include relevant information in the main written statement, well over nine out of ten employers claim to provide the information in question, and this covers all but a very few employees. It is also close to this level for the next two items, for which there is a statutory requirement that a written statement should be ‘reasonably accessible’. However, the issue of training opportunities, for which there is no such requirement, is well behind,

with only six out of ten providing written particulars. Finally, just five per cent of employers (covering two per cent of all employees in establishments of 10 or more employees in Britain) report that they provide none of these written details.

This suggests two important conclusions. First, contrary to the findings of previous studies (in particular, Clark & Hall 1992; NACAB 1990) there now appears to be a high degree of formalisation of basic terms and conditions of employment in most workplaces. Secondly, the variations in legal obligations contained in section 1 and related sections of the Employment Rights Act 1996 do appear to be reflected in the varying incidence of formalisation, with the strong implication that they have played a significant role in bringing it about.

How far does collective bargaining influence the provision of written details? A difficulty arising here is that one might expect both formalisation and the level of unionisation to be closely associated with establishment and enterprise size. We therefore carried out a simple logistic regression analysis in order to unravel this. The results appear in the last four columns of Table 3. It is apparent that the provision of written details on all five 'statutory' issues is significantly related to the size of the employing organisation and, for all but written details of payment, to the size of the establishment. It is small workplaces and firms that appear to have difficulty in keeping their employment paperwork up to legally required standards.

There are also interesting findings with respect to collective bargaining. There is evidence of an independent and significant association between union density and the provision of written details of pay, and of sick leave. There is also significant evidence in the final row that, even allowing for size, written details are in general less likely to be provided where unions are weak or absent. This suggests that, in this as in other areas of labour law such as health and safety (Dawson *et al* 1988; Sandy & Elliott 1996), statutory rights are

more likely to be upheld where trade unions are present. We conclude, then, that the formalisation of the employment contract is enhanced by statutory obligations. But we also conclude that both the size of the organisation and of the establishment, and also the strength of any trade unions present, are associated with greater formalisation of employment contracts in addition to and independently of the law.

It should be noted that this does not directly enable us to say how many employers are not complying with the law, at least in all its aspects. To do this, we would need to know whether those employers who did not report issuing a written statement had anything at all to report on the matter in question. The law relating to the written statement, for the most part, does not set a floor of rights and does not directly regulate the contents of employment contracts. It only places on employers an obligation to report those terms and conditions of employment which have been either individually agreed, incorporated into individual contracts from collective agreements, or implied from some other source such as custom or practice.<sup>8</sup> However, something about non-compliance can be said by focusing on terms relating to grievance procedures (which must be notified, regardless of the state of the underlying contract) and pay (since it is very unlikely that the obligation to pay wages would not be a contract term). Seven per cent of all respondents reported that management at their workplaces failed to issue written details of terms relating to pay while 13 per cent failed to issue written details of grievance procedures. A reasonable inference would be that most of these workplaces are failing to meet their legal obligations under the Act.

The relatively high rate of observance of the law indicates that some of the problems of failure to notify employees of their terms and conditions which were encountered in the years following the Contracts of Employment Act 1963 may have been overcome. This is unlikely to have been because of the legal sanctions for non-compliance, which are largely limited to the rectification of the relevant statement and do not entail a financial penalty on the

employer. Nor does it seem that union pressure for compliance with the law has been the crucial factor. The law appears to have become more generally observed in practice at the same time as union influence in the workplace has been declining. This suggests that while unions may have made efforts to enforce the law, both at workplace level and through litigation to establish its limits, employers have increasingly come to apply the law as a matter of routine once its effects have become familiar.

## **6. The means of provision of contractual details**

The provision of written details is one thing how they are provided is quite another. How easily accessible to the employee are the terms of his or her employment contract? Here the survey sheds useful light by asking about the medium of communication for two particular issues for which there is a statutory obligation for easily accessible written information: discipline and grievance procedures. We have already noted that there is a cut-off for the legal requirement at organisations of fewer than 20 employees for disciplinary procedures, but not for grievance procedures. It should also be noted that, while both are important in terms of employee rights, written disciplinary procedures may be of particular value to employers should dismissal cases go on to employment tribunals. Survey questions asked how employees were made aware of the procedures, whether through letter of appointment, staff handbook, noticeboard, as part of an induction programme, or being told by the relevant manager.

The overall incidence of grievance and discipline procedures is very similar and it is likely that they are often combined in the same document. Written versions of both procedures were reported for 87 per cent of establishments. There is no evidence that a self-interested concern to be protected in employment tribunals has encouraged employers to make a greater effort with disciplinary procedures. Nor did an analysis of workplaces with 10 to 19 employees suggest that

the exemption of firms of fewer than 20 employees with regards to written disciplinary procedures results in there being significant differences by comparison with grievance procedures, where there is no such exemption.

Table 4 deals with the way in which details of grievance procedures are provided. The first column gives the percentage of establishments using them. The letter of appointment and a staff handbook are equally popular means of conveying procedural details and each account for about half of cases. In practice, the handbook is often sent to the new employee with the letter, so the distinction is not clear-cut. Trailing a long way behind is reference to the procedure in an induction course, and behind that is being told by a manager. The notice-board is the least popular medium. Being told by the employee's manager was the only means of finding out about the procedures in six per cent of establishments.

Again, the last four columns in the Table indicate, by means of a logistic regression analysis, an association with union presence as well as with workforce size. Staff handbooks are more commonly used to give details of grievance procedures in larger establishments and organisations, but larger organisations also make significantly greater use of the other modes of communication, perhaps reflecting the fact that many have to deal with multiple workplaces. The letter of appointment is widely used irrespective of workforce size but it is used significantly more where union presence is stronger. This may reflect a tendency for unionisation to encourage more formal notification of grievance procedures in smaller firms which do not have staff handbooks. Strength of union presence is also positively associated with firms that give details of grievance procedures in their induction programmes. Perhaps surprisingly, it appears that workers are more likely to be told about the grievance procedure by their manager in places where unions are stronger. This probably indicates that, where unions are weak or non-existent, workers are, for whatever

reason, less likely to seek information about the grievance procedure, if one exists at all.

## **7. The influence of statutory rights on non-pay terms and conditions of employment**

Statutory regulation of employment contracts might imply not just levelling up, but also levelling down. The presence or prospect of a statutory entitlement might rein back both the generosity of employers and the aspirations of employees and their unions. How far do firms exceed statutory terms, or exceed terms which might become statutorily regulated in the foreseeable future? And does collective bargaining have a distinctive effect in this respect? Here we use a question in the survey which asked about the entitlement of employees in the largest occupational group in the establishment to three specific benefits with differing legal status. The first is sick pay entitlement in excess of existing statutory requirements. The second is four weeks or more paid annual leave (excluding public holidays) which was to become statutorily required by the Working Time Directive at the end of 1999. The last is employer (or company) pension schemes, which have become of growing significance in recent years with increasing government pressure to reduce dependence on state-provided pensions, but for which no statutory requirement has yet been laid down.

Table 5 indicates what proportion of establishments and employees provide these non-pay conditions. It suggests that most employers already provide these fringe benefits in excess of what is, or is in prospect of being, statutorily required. The proportion of establishments providing sick pay above the statutory minimum is 63 per cent (covering 77 per cent of employees in establishments of 10 or more employees). As many as 83 per cent of establishments (covering 89 per cent of employees) already provided four weeks or more holidays before the Working Time Directive required it. Employer

pension schemes are provided by 65 per cent of establishments (covering 79 per cent of employees). There is no evidence here of 'levelling down' to the statutory requirement in terms of sick pay and holidays, and employers are already providing substantial occupational pension benefits in advance of any future statutory pension reforms.

How does collective bargaining influence the response to the statutory entitlement? The final four columns present the results of logistic regression analysis intended to detect any distinctive effects arising from trade union activity as opposed to workforce size. It is evident that organisational size is significant for all three items and establishment size for sick pay and pensions. Larger employers clearly appear to offer better fringe benefits. But, even taking this into account, there is a strong positive association with trade union density. Superior sick pay provision, longer holidays entitlements, and access to a company pension scheme are all associated with a stronger trade union presence. In short, collective bargaining is associated with significant improvement in employment contracts with regard to present and prospective statutory fringe benefit entitlements.

## **8. Conclusion**

This analysis has explored two closely related aspects of the employment contract in contemporary Britain. How far is it determined by some sort of collective or regulatory process? And what is its nature now, in practical terms?

We have charted the position to which the tide of collective bargaining has ebbed as the principal means of regulating employment contracts. Where trade unions retain recognition, their influence has become more narrow and consultative. Meanwhile, whether or not backed by collective agreements, employment contracts for most employees have become both highly standardised

and increasingly formalised. For the great majority of employees, employers provide the details of terms and conditions of employment which are required by law. Their likelihood of doing so is greater in larger organisations and where trade unions are present. Trade union activity is associated with superior non-pay terms and conditions in comparison to where unions are weak or absent. In this, as in other aspects of employment, collective bargaining appears to facilitate both access to and improvement on statutory rights. Management has achieved a high degree of control over the content of the employment contract, but trade unions still help to enforce their members' statutory and other employment rights.

This analysis has broadly confirmed our earlier case study based findings on 'individualisation' in employment relations (Brown *et al* 1998). Substantive individualisation - the differentiation of contractual terms within the organisation - has not generally been realised. But, taken with earlier surveys, the findings imply a substantial increase in procedural individualisation, with the declining influence of collective regulation of the employment contract.

It is natural to associate this with the rise of deregulatory policies in the 1980s and early 1990s, particularly when the undermining of collectivism was an explicit objective of government policy during that period. But the present paper suggests an additional perspective. This draws attention to the legal roots of individualisation in the 1960s rather than the 1980s. It was in the earlier period that the enactment of statutory employment protection rights began to revive the individual contract of employment as a focus for and instrument of employment regulation. As collective bargaining entered a period of crisis and erosion in the 1980s and 1990s, legal governance of the employment relationship increased in importance, rather than withering away. From this perspective, the significance of individualisation lies not so much in the reduction of regulatory influence on employment, but rather in a shift in the mode of regulation from the collective towards the individual level.

Having said that, we have also seen that vital links exist between the enforcement of individual rights and the structure of collective representation. Although the formalisation of terms and conditions of employment is widespread, and is not confined to the unionised sector, the extent to which employers are complying with their legal obligations depends significantly on the presence of active trade unions at workplace and organisation level. This study suggests that collective procedures are the custodians of individual rights. Building an effective framework of employment regulation around the individual employment relationship will require statutory support for collective representation.

## Notes

- <sup>1</sup> Council Directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship; see Clark & Hall 1992.
- <sup>2</sup> The datasets used in this analysis were the WERS98 Cross-section Management and Worker Representative Surveys. The Management Survey sample comprised 2191 managers (representing a response rate of 80 per cent) and 918 worker representatives in 2191 establishments of 10 or more employees (representing a response rate of 82 per cent). We have used data from the Worker Representative Survey in only a few instances to complement analyses from the Management Survey.
- <sup>3</sup> This figure is calculated by averaging the autumn 1997 and autumn 1998 LFS figures (Cully & Woodland 1999: 350).
- <sup>4</sup> Unpublished estimate provided by the WERS98 team.
- <sup>5</sup> The LFS suggests that 'in private sector industries with fewer than 25 employees, coverage is only 7 per cent, compared with 31 per cent in establishments of 25 employees or more. The difference in establishment size has a less dramatic impact in the public sector although, at 61 per cent and 78 per cent respectively, it is still substantial.' (Cully & Woodland 1999: 350).
- <sup>6</sup> Clear definitions of 'consult' and 'negotiate' were provided for worker representatives, but were not provided for managers. This may mean that management and worker representatives have differing perceptions of what constitutes each, or that worker representatives may be working to a tighter definition of what constitutes 'negotiation'.

- 7 It may be assumed that all employees are covered because the largest occupational group in these establishments is covered. Our case studies suggest that employers are likely to extend the same terms and conditions to all direct employees.
- 8 This is the so-called 'limited normative effect' of section 1: see Deakin & Morris 1998: 252-255, for a fuller explanation.

## **TABLES**

**Table 1. Coverage of different pay fixing arrangements, overall and by sector and industry (per cent of employees)**

<i>Industry group</i>	<i>Collective bargaining more than one employer</i>	<i>Collective bargaining higher in organisation</i>	<i>Collective bargaining at workplace</i>	<i>Set by management higher in organisation</i>	<i>Set by management at workplace</i>	<i>Negotiated with individual employees</i>	<i>Other (eg. pay review bodies)</i>	<i>% of total employees by industry</i>
<b>All employees</b>	<b>15</b>	<b>13</b>	<b>7</b>	<b>24</b>	<b>26</b>	<b>3</b>	<b>10</b>	<b>100</b>
<b>Public sector</b>	<b>40</b>	<b>17</b>	<b>4</b>	<b>12</b>	<b>3</b>	<b>0</b>	<b>22</b>	<b>31</b>
<b>Private sector</b>	<b>4</b>	<b>12</b>	<b>8</b>	<b>30</b>	<b>36</b>	<b>4</b>	<b>5</b>	<b>69</b>
Manufacturing	5	13	18	16	43	2	2	<b>23</b>
Electricity, gas & water	9	69	7	7	2	0	2	<b>1</b>
Construction	26	5	2	28	20	3	15	<b>3</b>
Wholesale & retail	6	11	1	48	24	3	3	<b>15</b>
Hotels & restaurants	6	2	1	46	31	8	5	<b>4</b>
Transport & communication	15	32	8	20	19	2	3	<b>6</b>
Financial services	2	32	4	28	27	1	15	<b>4</b>
Other business services	2	5	1	30	45	7	8	<b>10</b>
Public administration	36	28	2	12	1	1	17	<b>8</b>
Education	36	7	3	14	11	1	28	<b>10</b>
Health	28	11	6	17	15	1	20	<b>14</b>
Other services	19	6	6	30	27	2	8	<b>3</b>

Notes: Data weighted, based to population of Great Britain, workplaces with 10 or more employees. The first seven rows do not add up to 100 per cent due to rounding errors.

**Table 2. The scope and manner of collective bargaining between management and union representatives from the same workplaces (*per cent of establishments*)**

<b>Bargaining Issue</b>	<i>Employer view of bargaining with union representatives</i>				<i>Union representative view of Bargaining with employer</i>			
	<i>Negotiate</i>	<i>Consult</i>	<i>Inform</i>	<i>None</i>	<i>Negotiate</i>	<i>Consult</i>	<i>Inform</i>	<i>None</i>
<i>Pay or conditions of employment</i>	43	10	15	32	31	11	23	36
<i>Employee recruitment/selection</i>	4	20	28	48	5	15	29	51
<i>Training of Employees</i>	3	33	21	43	7	29	25	38
<i>Systems of Payment</i>	13	14	27	46	13	8	30	49
<i>Handling Grievances</i>	24	50	10	16	41	36	8	15
<i>Staffing/manpower planning</i>	5	33	26	36	12	20	31	37
<i>Equal Opportunities</i>	10	40	13	38	13	30	23	35
<i>Health &amp; safety</i>	14	61	8	16	22	47	15	17
<i>Performance Appraisals</i>	6	31	13	49	10	15	23	52

Notes: Base: workplaces with 10 or more employees.  
Unweighted data, based on 870 observations.

**Table 3 - The coverage of employment contracts**

	Establishments covered %	Employees covered %	Establishment size (coeff.)	Organisation size (coeff.)	Union density (coeff.)	R squared <sup>†</sup>
Written details provided on						.00
Payment	93	96	.155	.206**	.553**	.129
Work hours	93	96	.233**	.438**	.157	.142
Holidays	94	97	.283**	.253**	.147	.091
Sick leave	88	94	.347**	.313**	.199**	.153
Grievance procedure	87	93	.353**	.233**	.111	.116
Training opportunities	59	65	.001	.197**	.003	.034
None of these	5	2	-.545**	-.528**	-.510**	.256

Significance levels of logistic regression coefficients: \*\* significant at 95% level. <sup>†</sup> Nagelkerke's measure of R<sup>2</sup> was used as this has a finite range of 0–1 with higher values representing better model fit. Data on employees covered assume that the practice for the largest occupational group is general to the establishment. Base: workplaces with 10 or more employees.

**Table 4 - The form of employment contracts**

	Establishments covered %	Employees covered %	Establishment size (coeff.)	Organisation size (coeff.)	Union density (coeff.)	R squared <sup>†</sup>
Notification of grievance procedure						
Letter of Appointment	52	47	.036	-.013	.130**	.015
Staff handbook	52	57	.102**	.296**	-.012	.095
Noticeboard	12	10	-.074	.395**	-.025	.060
Induction programme	29	31	.027	.208**	.091**	.053
Told by manager	18	15	-.058	.105**	.207**	.037
No formal procedure	12	5	-.275**	-.627**	-.640**	.325

Significance levels of logistic regression coefficients: \*\* significant at 95% level. <sup>†</sup> Nagelkerke's measure of R<sup>2</sup> was used as this has a finite range of 0–1 with higher values representing better model fit. Data on employees covered assume that the practice for the largest occupational group is general to the establishment. Base: workplaces with 10 or more employees.

**Table 5 - Non-pay terms and conditions of employment contracts**

	Establishments covered %	Employees covered %	Establishment size (coeff.)	Organisational size (coeff.)	Union density (coeff.)	R squared <sup>†</sup>
Non-pay terms and conditions						
Excess sick pay	63	77	.281**	.192**	.261**	.174
Four+ weeks holiday	83	89	.109	.300**	.421**	.168
Company pension	65	79	.213**	.460**	.458**	.347
None of these	11	8	.018	-.344**	-.612**	.181

Significance levels of logistic regression coefficients: \*\* significant at 95% level. <sup>†</sup> Nagelkerke's measure of R<sup>2</sup> was used as this has a finite range of 0–1 with higher values representing better model fit. Data on employees covered assume that the practice for the largest occupational group is general to the establishment. Base: workplaces with 10 or more employees

## References

- Brown, W. (ed.) (1981) *The Changing Contours of British Industrial Relations*, Oxford: Blackwell.
- Brown, W., Deakin, S., Hudson, M., Pratten, C. and Ryan P. (1998) *The Individualisation of Employment Contracts in Britain*, Employment Relations Research Series 4, London: Department of Trade and Industry.
- Clark, J. and Hall, M. (1992) 'The Cinderella directive? Employee rights to information and consultation about conditions applicable to their contract or employment relationship', *Industrial Law Journal*, 21: 106-118.
- Cully, M. and Woodland, S. (1999) 'Trade Union Membership and Recognition 1997-1998', *Labour Market Trends*, 106(7): 343-351.
- Cully, M., Woodland, S., O'Reilly, A. and Dix, G. (1999) *Britain at Work: As depicted by the 1998 Workplace Employee Relations Survey*, Routledge: London.
- Daniel, W. (1976) *Wage Determination in Industry*, London: PEP.
- Daniel, W. and Millward, N. (1983) *Workplace Industrial Relations in Britain*, Aldershot: Gower.
- Dawson, S., Willman, P., Bamford, M. and Clinton, A. (1988) *Safety at Work: the Limits of Self-Regulation*, Cambridge: CUP.
- Deakin, S. and Morris, G. (1998) *Labour Law*, 2<sup>nd</sup> edition, London: Butterworths.

- Government Social Survey (1968) *Workplace Industrial Relations*, London: HMSO.
- Leighton, P. and Dumville, S. (1977) 'From statement to contract: some effects of the Contracts of Employment Act 1972', *Industrial Law Journal*, 6: 133-148.
- Marginson, P. (1998) 'The Survey Tradition in Industrial Relations Research: an Assessment of the Contribution of Large-Scale Workplace and Enterprise Surveys', *British Journal of Industrial Relations*, 36(3): 361-388.
- Millward, N. and Stevens, M. (1986) *British Workplace Industrial Relations 1980-1984*, Aldershot: Gower.
- Millward, N., Stevens, M., Smart, D. and Hawes, W. (1992) *Workplace Industrial Relations in Transition*, Aldershot: Dartmouth.
- Milner, S. (1995) 'The coverage of collective pay-setting institutions in Britain 1895-1990', *British Journal of Industrial Relations*, 33(1): 69-92.
- NACAB (1990) *Hard Labour*, London: National Association of Citizens' Advice Bureaux.
- Sandy, R. and Elliott, R. (1996) 'Unions and risk', *Economica*, 63(250): 291-309.
- Waddington, J. and Whitston, C. (1997) 'Why do people join unions in a period of membership decline?' *British Journal of Industrial Relations*, 35(4): 515-546.