

**FALSE DAWN FOR CSR? SHIFTS IN REGULATORY POLICY AND
THE RESPONSE OF THE CORPORATE AND FINANCIAL SECTORS
IN BRITAIN**

Centre for Business Research, University Of Cambridge
Working Paper No. 333

by

Simon Deakin
Centre for Business Research
University of Cambridge
Judge Business School Building
Trumpington Street
Cambridge, CB2 1AG
s.deakin@cbr.cam.ac.uk

and

Richard Hobbs
Centre for Business Research
University of Cambridge
Judge Business School Building
Trumpington Street
Cambridge, CB2 1AG
rjh57@cam.ac.uk

September 2006

This working paper forms part of the CBR Research Programme on Corporate Governance.

Abstract

We present a model of CSR as a set of mechanisms for aligning corporate behaviour with the interests of society in reducing externalities and promoting a sustainable corporate sector. These mechanisms include voluntary action by companies to go above minimum legal standards, with the aim of enhancing competitiveness ('action beyond compliance'); interventions by regulators designed to promote self-regulation by industry ('reflexive law'); and steps taken by shareholders to put pressure on companies to make effective use of corporate assets (shareholder engagement). We then assess the degree to which the model is realized in current British practice. Focusing on the issue of working conditions, we find managerial resistance to the linking of CSR with internal employee relations, and obstacles to shareholder engagement on this issue.

JEL Codes: K22, M14

Keywords: corporate social responsibility, shareholder engagement, reflexive law, labour standards

Acknowledgements

We are grateful for support from the 21st. Century COE program of the Ministry of Education, Culture, Sports, Science and Technology, Japan; the Omron Fund at Doshisha University, Kyoto; and the European Union's Fifth and Sixth Research and Development Framework Programmes.

Further information about the Centre for Business Research can be found at the following address: www.cbr.cam.ac.uk

Introduction

Corporate social responsibility (CSR) has been a focus for several policy initiatives in Britain since the late 1990s. A government ministry, the Department of Trade and Industry, was given the task of promoting CSR, and set about stimulating debate and disseminating good practice (DTI, 2001, 2002). Institutional shareholders were encouraged to use their influence with listed companies to press the case for fair employment practices and related aspects of a CSR agenda. The government-sponsored review of company law, while stopping a long way short of endorsing a 'stakeholder-based' agenda for corporate governance, nevertheless supported legal reforms designed to bring about 'greater shareholder engagement and a long-term investment culture'.¹

Yet concrete results of this process have so far been limited. This is particularly the case for the area we focus on here, the 'social' dimension of corporate responsibility and its role in promoting improvements in working conditions. In part this is because of the recent watering down, apparently under the pressure of business lobbying, of some of the core proposals for company law reform. However, it is also the result of a lukewarm response from the corporate and financial sectors, to which most of the governmental discourse on CSR has been addressed. Within the listed company sector, management tends to view CSR as concerned with 'external' issues, such as the organization of supply chains and ethical trading concerns, and rules out its application to 'internal' employment issues. The reaction of the financial sector has been equally sceptical, in ways which indicate some serious shortcomings in the model of shareholder engagement which underpins many current discussions of CSR. Given this uncertain prospect for CSR in the UK, we ask: is the UK government's CSR initiative, while attractive in principle, a model with no basis in the practice of employment relations and corporate governance in Britain? After reviewing the conception of CSR advanced by the DTI in the early 2000s, and comparing it to the emerging notion of CSR at EU level, we look, in turn, at evidence drawn from organisational case studies on the implementation of labour standards in the area of working time, and investigations of shareholder engagement on employment issues, in each case studying the interaction of corporate practice with the changing regulatory framework.

Redefining CSR: managerial, regulatory and financial perspectives

The redefinition of CSR offered by the DTI in its 2001 document, *Business and Society. Developing Corporate Social Responsibility in the UK*, marked a significant step forward in the process of reconceptualising CSR. CSR is, according to this document, associated with *reputation*: 'the costs and benefits

of a company's goods and services, how it treats its employees and the environment, its record on human rights...'; *competitiveness*: managing 'supplier and customer relationships, workforce diversity and work/life balances...'; and *risk*: 'the wide range of risks to which [the company] is exposed – whether financial, regulatory, environmental, or from customer attitudes' (DTI, 2001: 4). This is, then, an expression of a *managerial or organisational* conception of CSR, that is, one which argues that, by embedding CSR in its organisational structures and routines, the company will be better placed to deal with future competitive shocks, caused for example by shifting consumer tastes, and with regulatory changes. Reputation is seen as a corporate asset which management must conserve and enhance. This is not a matter of basic compliance with externally mandated regulation; the enterprise which goes 'beyond compliance' is thereby securing for itself a competitive advantage, in terms of its greater anticipation of, and responsiveness to, external changes.

The *financial perspective* is concerned with the use of capital market pressures and shareholder engagement as mechanisms for realigning managerial strategies with the case for social and environmental sustainability. The so-called 'universal owner' hypothesis argues that shareholder activism is in the process of becoming a powerful weapon for CSR (Hawley and Williams, 2002). This is because, firstly, institutional investors, in particular the large pension funds, increasingly recognise that long term sustainability, both of corporations and of society more generally, is the precondition for being able to deliver on pension promises which will be effective several decades into the future. Thus institutional investors are potentially persuadable of the virtues of taking a long-term view of their holdings.

Secondly, the breadth of institutional holdings is an important factor. Institutional investors have been called 'universal owners' because, on the one hand, they collectively represent the large mass of wage earners and savers in societies such as the UK and the US which are heavily reliant on private sector pension and insurance provision, and secondly because they tend to take a small but significant stake in nearly all listed companies as a way of spreading risk. This dual 'universalisation' of the role of the shareholder means that the institutions have strong incentives to encourage companies to avoid strategies based on the shifting of costs on to third parties or society at large, since whatever the short-term benefit for the company and its investors may be, over the longer term these costs will inevitably come home to the institutions and their own 'principals' in some form or another (pension fund beneficiaries and savers are also employees with an interest in a high quality of employment, and individuals who would like to breathe unpolluted air).

The *regulatory* perspective on CSR complements the other two. This is a conception of regulation in which a certain functional relationship is established between a ‘core’ or possibly a ‘framework’ of legal controls, on the one hand, and voluntary action by companies on the other. The European Commission Green Paper on CSR of 2001 defined CSR as ‘a concept whereby companies decide voluntarily to contribute to a better society and a cleaner environment’ (Commission 2001: 5), but qualified this by insisting that CSR ‘must be understood as complementing regulation or legislation or norms on social and environmental rights, for which it cannot be a substitute’ (Commission, 2001: 8). The DTI’s 2001 paper is more voluntaristic in tone, but, on the other hand, does not seek to portray CSR as a form of deregulation. What both the European Commission and DTI papers have in common is a regulatory conception of CSR which views it in terms of mechanisms which respond to the negative externalities caused by corporate activities. Against the background of a belief that there is a limit to what can be achieved by ‘command and control’ regulation, voluntary action by companies to improve the social and environment context of their activities is seen as preferable to mandated legal regulation. The role of the law is not necessarily to set absolute standards, but to create an incentive structure under which companies which minimise harms are rewarded, and those which increase them are penalised. This requires the creation of information flows which more accurately capture the externality-creating effects of corporate behaviour. This opens up a debate about the use of disclosure rules to ensure a more effective flow of information to shareholders on issues of social and environmental sustainability, and the use of corporate governance rules to embed effective risk-management and internal audit mechanisms inside the organisation. These are all aspects of a so-called ‘reflexive law’ approach to business regulation.

This, then, is the emerging model: a view of CSR as a set of related *mechanisms* for aligning corporate behaviour with wider social and environmental goals, in which managerial, financial and regulatory aspects are combined in a mutually reinforcing way. How far does the model correspond to reality? To investigate this we will look, in turn, at evidence drawn from organisational case studies and investigations of shareholder engagement, in each case studying the interaction of corporate practice with the changing regulatory framework.

CSR as a mechanism for implementing labour standards: the case of working time

Working time is an area which is only loosely regulated by law in the UK; the 48-hour working week which is contained in UK legislation implementing the EU Working Time Directive, can be modified according to the needs of

individual enterprises, and varied by either collective or individual agreement (see Deakin and Morris, 2005: 207-320). At the same time, a ‘business case’ for working time reductions can be made, on the grounds that excessively long working hours are not simply detrimental to the well being (and in some instances the health and safety) of employees, but may also undermine organizational innovation, with negative repercussions for productivity (see Barnard, Deakin and Hobbs, 2003 for a review of the arguments). On the face of it, then, the issue of working time is an ideal one for uniting the organisational and regulatory dimensions of CSR: within the framework set by law, there is space for voluntary corporate behaviour ‘beyond compliance’ which would enhance the sustainability of the enterprise while also addressing a significant issue of social policy.

European Commission has made numerous statements associating employment issues with the corporate social responsibility agenda. The Commission has declared that ‘employment and social policy integrates the principles of CSR, in particular, through the European Employment Strategy’ (Commission, 2002: 19). The Council Resolution on CSR of 2002 emphasised that ‘undertakings should address not only the external aspects of CSR, but also the internal aspects’, that is to say, relations with the company’s own employees.² This followed the European Commission’s Green Paper, which stated that, ‘[w]ithin the company, socially responsible practices primarily involve employees’ (Commission, 2001: 9). Thus the European Union’s position is that CSR is a mechanism which can be used to promote the implementation of fair employment practices and address issues of human resource management at enterprise level.

By contrast, the UK government’s approach to the link between CSR and employment issues has been a highly selective one. A number of the policy documents published by UK government on CSR since 2001 have accepted that the improvement of working conditions should be an element of the CSR agenda, but hardly mention working time or any other basic labour standards. Thus what the DTI refers to as ‘the business case for CSR’ seeks to explain why companies should ‘spend time and energy on helping communities, on protecting the environment or on improving working conditions’ (DTI, 2001: 14). Where UK government pronouncements on CSR have alluded to employment matters, most attention has been paid to the issues of equality and diversity. Three paragraphs were dedicated to these linked issues in the government’s 2002 CSR Report, which also stated that ‘the fundamentals of equal opportunities are a central plank of CSR’ (DTI, 2002: 14). However, other employment issues, such as ‘improving working conditions’ (DTI, 2001: 14), ‘health and safety’ (DTI, 2002: 7) and ‘work/life balance’ (DTI, 2001: 4)

merited only a single sentence (or more accurately part of a sentence) in the government's CSR publications.

How has this uncertain and ambivalent discourse linking the CSR agenda to working conditions been received in practice? We draw here on evidence from a study of the implementation of the Working Time Directive in the UK, carried out for the European Commission as part of its recent review of the UK's implementation of the Working Time Directive.³ However, we found very little evidence of firms going beyond the minimum standards set by law, and widespread use of the low-risk option of obtaining individual waivers of the right not to work more than 48 hours per week. Opportunities for social dialogue and related forms of deliberation in achieving a balance between legal protection and flexibility of working arrangements had not been taken up, and this was reflected in the marginal place accorded to CSR as a mechanism for stimulating organizational change.

We did find some recognition of a relationship between working time regulation, health and safety and CSR. According to the Chartered Institute of Personnel and Development (CIPD),

‘There is an ethical issue about working time...employers believe there are ethical issues underpinning the Regulations... Even though employers did not welcome the [Working Time Regulations] our members told us that they did understand what the Regulations were driving at. They did oppose the Regulations as a matter of principle... [but] there was, certainly in the HR community, an understanding that there were issues about health which arguably are ethical issues.’

A hospital trust told us that:

‘there is quite a lot to be said for corporate social responsibility for public organisations, in particular from a risk management point of view. If you look at the research that says people working long hours are not giving of their best, then I think [working time is an element of CSR]. There is an issue about the service to patients when people who are overtired are not making quality decisions.’

The finance industry union UNIFI was impressed by the approach taken by a major high street bank with regard to CSR and work-life balance:

‘It is all about peoples’ lives outside work and having some sort of responsibility for your workforce beyond just getting the last pound of flesh from them... It is about attracting the best staff and keeping them. It is also about promoting a positive image in the labour market and to customers. But, I think there is a belief in the moral aspects as well... They mean it. They really, really mean it and the business imperative underlies the moral desire to do things right.’

However, in most other cases there was evidence of employer resistance to the idea of relationship between working time regulation and corporate social responsibility. Three of our case study employers argued that responsibility for employees’ health and safety is had to be qualified by the need to provide employees with a decent standard of living job security. For example, a construction firm said that, ‘we aim to be a good employer at all times, with health and safety of our workers paramount. [However], increased earning potential as a result of overtime availability obviously affects the employee and their family in bringing increased affluence.’ A food manufacturer also argued that there was a balance to be made between CSR for working time and providing workers with a decent standard of living:

‘If you asked me that question [i.e. is working time an aspect of CSR?] in isolation I would say ‘yes’. If you said to me how do you feel about working for a business as a personnel director where your employees are working a sixty-hour week I would say ‘I do not like it. It is wrong.’ But it is not that simple. I would also say that we have a responsibility to pay our people a liveable wage. If the only way they can earn a liveable wage is to work long hours then we have to live with that. You cannot go out on a limb as a company and overpay your people or you will not survive and you will not have jobs at all. So, it is not that simple. It is not one-dimensional. I also think we have a number of other responsibilities and it is getting a balance between them all.’

A foreign-owned car manufacturer also argued that a balance had to be made between different elements of CSR:

‘Clearly [working time is part of CSR]. It is part of a wider responsibility, which in our case is health and safety. We have been nominated number one company in the UK for health and safety. But, you can also link CSR to job security and particularly for our kind of work, where it is shop floor manual work, job security is the number

one attraction... Overtime flexibility allows us to ride out the peaks and troughs. That in turn allows us to provide job security [for workers]. So, you cannot just look at one particular aspect [of CSR]... Obviously making sure people have an appropriate financial stability is another aspect as well as making sure that people have a reasonable work situation whether that is in terms of facilities, working hours etc. All those things need to be balanced.'

The link between CSR and labour standards was particularly strongly resisted by employers' associations and representatives of business interests. The Institute of Directors distinguished between the Working Time Directive, which it had opposed, and corporate social responsibility for working time, which it supported:

'Certainly from any official announcements on policy from the IoD centrally I think we would assume that working time is an issue that comes under the rubric of corporate social responsibility and I am sure a lot of individual directors would take that view as well... As well as obviously wanting to look after ones workers as well as one can in terms of not actually imposing long hours upon them we know from our own research that a lot of directors have made quite liberal or progressive moves to workplace flexibility. We know a large number of directors, for example, allow employees to work at home or to work flexi-time and we know they are great supporters of part time work... So, in that respect I think it is quite a nice little counterbalance towards our attitudes towards the Working Time Regulations.'

Similarly, the HR director of a hospital trust did not recognise the regulation of working time as part of the work-life balance agenda:

'Outside of the local authority we are the biggest employer in the area and so we have a social responsibility. Working hours is part of that...it is called "Improving Working Lives" in the NHS... We are running a project to co-ordinate childcare arrangements across the two health communities we serve...We have had an enormous amount of success with employee led rostering... So, I think it is issues like that that have more impact than the regulations on working time... Giving people control of their own working patterns is a real benefit for them and if we are serious about the work-life balance, regulation should assist that process not inhibit it.'

The TUC also indicated that employers view the regulation of working time as distinct from the work-life balance agenda:

‘[Employers] might say something about work-life balance. But I think that has got more to do with increased participation in the labour market by women who are...looking for flexibility that enables them to balance their work and their caring responsibilities... And employers understanding better that to retain good employees they need to offer them a degree of flexibility on family friendly issues... Some flexibility of hours, the right to work part-time, perhaps paid paternity leave or paid parental leave. But, that is about it. It is that angle that gets picked up, if it gets picked up at all, in the CSR debate... But, this does not get to the really difficult question which is what are you going to do about all the people who are working more than 48 and around about 60 hours per week... My sense is that the two rhetorics of excessive working hours on the one hand and work-life balance on the other are still going down separate tracks.’

In particular, there was evidence that employers tend to conceive of CSR as incorporating a set of external issues concerning the image and reputation of the company rather than the issue of its employment conditions. According to the TUC,

‘Employment standards in British companies is not something that has featured as an aspect of CSR. CSR is about poor people in developing countries. It is not about how you treat your workers at home. We are struggling to work with Business in the Community to try and get their member organisations to understand that it is important. The way you treat your workforce is a hallmark of how responsible you are as an employer and as a company. But, I would say it has simply not featured in the mainstream of the CSR debate at all.’

The trade union AMICUS provided a similar view about companies’ attitudes to the content of CSR.

‘CSR is what happens outside the workplace as far as [companies] are concerned. It does not relate at all to what goes on within. Many of the companies that have apparently good policies on [CSR] issues are some of the worst examples of working hours. Not so much with their own staff, but three quarters of the staff

they employ are contractors and they know that the contracts that they issue must demand that the contracted staff work these additional hours. It is the only way it can happen.’

Evidence from the Engineering Employers’ Federation (EEF) also illustrated the external orientation of CSR policies in many companies:

‘I do not think the Working Time Regulations are seen as a central part of CSR. I think CSR is very much external. One of the criticisms that we, as well as others, had about the Commission’s [Green] Paper was that it was so focused on the workforce. We said, “hold on a minute, we thought CSR was about the environment, exploitation of child labour you know those sorts of issues”. We were very surprised to see that this was a DG Employment agenda being pushed through under the guise of CSR. To some extent that has an educational function [as some employers] have now learnt that some of their company policies are CSR... if they can tie it into CSR then they see it as a bonus. But they will have focused on building relationships with the community and relationships with schools, and the environmental [aspects]. I do not think their focus has changed at all.’

An interviewee from the CIPD endorsed the view that most employers conceive of CSR as relating to external matters:

‘As far as they do, [companies] usually think of [CSR] in relation to community activities or terms and conditions of overseas workers, company reputation. They take a very external view of CSR. I would be very cautious about putting the words working time and CSR together because I do not think the debate takes place in those terms.’

Similarly, the HR Director of an investment bank believed that ‘to a large extent’ CSR is conceived in terms of external factors like the environment and the community. So, although the firm was ‘quite good in terms of our involvement in the community like monetary donations’ he was ‘not convinced [working time] would be viewed automatically’ as an aspect of CSR.

The range of views which we have just reported contains some nuanced and carefully considered responses to the issue of CSR. Some firms take it seriously and are attempting to give expression to the aims of CSR at organisational level. However, for many firms CSR is regarded as simply irrelevant to issues of employment conditions. On this issue, at least, the broad definition of CSR set out in the DTI’s 2001 policy paper finds little echo, so far, in corporate practice.

But that practice is not so far out of line with the UK government's highly ambivalent position on whether the management of human resources within the enterprise is an appropriate issue for CSR.

Shareholder engagement on employment issues

There is some evidence to suggest that the financial dimension of CSR is on the policy agenda in Britain and is having an increasing impact in practice. According to the Association of British Insurers, the main trade body for institutional investors, the principle of socially responsible investment has

‘made all companies susceptible to pressure from substantial shareholders on CSR risks... Greater investor activity fuels greater corporate activity, which itself adds to the growing interest from investors’ (ABI, 2001: 13).

The same document commented that CSR can be seen as

‘concerned with the management of ‘downside risk’ – the dangers for companies which lurk in the CSR forest. But in many cases...identifying ways to strengthen a brand against a potential threat could produce opportunities to enhance value.’ (ABI 2001: 35).

The link between risk and reputation has been made in the context of some employment issues. A 2002 report to the Health and Safety Executive, based on a series of interviews with institutional investors, concluded that there was

‘a significant level of interest in health and safety among institutional investors, and that it fits well into corporate social responsibility / socially responsible investment. Investors are generally supportive of the idea that the good health and safety performance is an indicator of good management, and are generally interested in finding out more about health and safety’ (Claros Consulting, 2002: 15).

There has been a related recognition that the CSR agenda can serve the function of increasing the amount and quality of information available to stakeholders (see Dawkins and Lewis, 2003; Roberts, 2003; Lydenberg, 2005). New corporate codes and reports and forms of internal reporting can address asymmetries of information and imbalances of knowledge that characterise the relationship between the different communities of interest. The European

Commission's CSR Green Paper devoted much of its attention to issues of reporting and auditing of companies' social performance and to the implications for investment practice. It suggested that 'the involvement of stakeholders, including trade unions and NGOs, could improve the quality of verification' of company reporting on social and environmental issues (Commission, 2001: 19).

In the UK, several recent corporate governance initiatives have advanced a similar agenda (for a review and comparison with the US situation, see Aguilera et al., 2006). As a consequence of the Turnbull report on internal audit and control (ICAEW, 1999) all listed companies in Britain were required to include in their annual reports a section on their approach to managing and exploiting risk. In viewing internal audit as a means of managing corporate risks, Turnbull was acting on the premise that corporate compliance with a variety of external regulatory controls and liability regimes was essential to the maintenance of long-term shareholder value. New legislation requiring pension funds to disclose their voting policy and to state the extent to which social, ethical and environmental investment matters are taken into consideration, came into force in 2001.⁴ According to the Association of British Insurers, this requirement has had a 'significant and wide-ranging impact on the investment community...[and has] added significantly to the growing Socially Responsible Investment (SRI) movement' (ABI, 2001: 13). During 2001 the Company Law Review, an independent commission charged with reporting to government on reforms to corporate law, recommended a regime of enhanced disclosure by companies of information relating to issues of social and environmental responsibility. The rationale underpinning this 'operating and financial review' (OFR) was that it would assist shareholders and other stakeholders in making better informed judgements on non-financial aspects of corporate performance (Company Law Review, 2001: 49-54). Although legislation making the OFR mandatory for companies above a certain size was introduced, before it could be brought into force the government announced in December 2005 that it was withdrawing the measure, following lobbying from the CBI (among others), on the grounds that it was unnecessary 'red tape'.⁵ In February 2006 the government announced that it was reconsidering its position in the light of litigation initiated by the NGO, Friends of the Earth, on the grounds that there had been a legal failure to consult relevant parties on the repeal of the law. In May 2006 the DTI announced that a new version of the OFR would be introduced into the Companies Bill 2006, but this version did not contain the same requirement for companies to carry out a forward-looking review as before, and possibilities for litigation against boards in the context of the OFR were to be strictly limited, potentially blunting its impact.

Some potential limits to a voluntarist approach in the area of CSR are suggested by the experience of the Kingsmill review of pay and gender equity, which was initiated by the Department of Trade and Industry in 2001 (Kingsmill, 2001). This review argued that there was no need for new legislation in the equal pay field, notwithstanding a poor record in the UK of closing the pay gap between women and men, on the grounds that more could be achieved by a programme of government encouragement for pay audits by large companies, which, it was hoped, would generate a learning process, leading to the dissemination of best practice. The review set out a role for institutional investors in putting pressure on the managements of listed companies to improve their performance on the issues of pay equity and work-life balance, on the grounds that, in the absence of such an improvement, shareholders would have legitimate concerns to the effect that valuable corporate assets, in the sense of human resources, were being wasted. However, there is so far only limited evidence of either investor engagement or of corporate reporting on these issues. A not atypical reaction to Kingsmill at the time of the review was that

‘Investors will only put value on measures of employment of women once they have data on which to work. Companies should consider publishing appropriate statistics as part of their non-financial reporting.’⁶

Although some SRI investment funds have since encouraged companies to conduct employment and pay reviews in the light of the Kingsmill review (see Henderson Global Investors, 2002), it is unclear whether this form of engagement is having an impact on employment practices at company level. The Women and Work Commission, which carried out an independent review of equal pay legislation for government in 2006, made no mention of shareholder engagement as a mechanism for encouraging change at workplace level, but did note that ‘progress on equal pay reviews, particularly in the private sector, has stalled’ (Women and Work Commission, 2006: 79).

A number of potential problems with shareholder activism in general and with the universal owner hypothesis in particular have been noted in earlier studies: these include the high costs of direct engagement and the dangers that other shareholders will free ride on the efforts of activists (see Armour, Deakin and Konzelmann, 2003). Institutional features of UK corporate governance are also relevant here. British trade unions have not so far exercised the same degree of influence over investment decisions as some of their US counterparts, in part because they do not have the decisive voice on boards of pension fund trustees that labour interests have in certain cases in America. Pensions legislation has only relatively recently mandated that employee representatives should make up

half the membership of boards of trustees of defined benefit pension funds. There is also some legal uncertainty over the degree to which social and environmental considerations can be taken into account by trustees when making decisions on investments, although opinion on this issue seems to be shifting in favour of allowing trustees greater discretion. As most employer-based pension schemes move from a defined-benefit structure to one based on defined contributions, with an increased risk of losses from stock market fluctuations falling on employees, it is possible that members will become more risk averse and it will be more difficult to make the case for SRI. However, the move to defined contribution schemes also means that employers play less of a role in pension fund governance, so opening up a new opportunity for unions to use this forum to press for SRI. Where unions have most clearly exercised their influence so far is in encouraging pension funds set up for their own employees and officers to take up an SRI-related agenda. A number of unions have used this route to give SRI-based mandates to fund managers. This is a relatively recent development and its impact on the companies in which these funds invest is not yet clear.

In addition to these potential legal and institutional obstacles, shareholder engagement on employment issues appears to be affected by the same conceptual division between ‘internal’ and ‘external’ aspects of CSR that we noted above in our organizational case studies. Between 2002 and 2004, the consultancy Impactt carried out a project on behalf of a consortium of purchasing companies and investors, aimed at addressing the problem of excessive overtime working in Chinese factories which formed part of the purchasing companies’ supply chains. The objective of the project was ‘to reduce excessive overtime without reducing wages, through building the factories’ own capacity to improve productivity, human resources management, and internal communication’; this was to be achieved by avoiding an over-rigid approach to compliance-based audits, with ‘a new approach, one which allows for gradual change over time [and] presents a clear business case to factory managers’ (Impactt, 2006: 4). Among the outcomes of the project was a recommendation to investors that ‘badly managed workplaces with substandard labour conditions are also inefficient, unproductive workplaces’, and that they could no longer rely on ‘a presumption... that low labour costs will inevitably offset low productivity’. The project is a striking illustration of the use of CSR-related mechanisms to initiate organizational change; but only in the context of an ‘external’ conception of CSR. While it is clear that long-hours working, and its negative repercussions for worker health and safety and productivity, is problem of a different order of magnitude in China than in the UK, the basic issues are the same. However, there is, to our knowledge, no equivalent to the Impactt project for long-hours working in the UK itself.

Conclusions

CSR is, without doubt, an area of potential importance for the re-embedding of the business enterprise in society. From the managerial perspective, it can lead to a better balancing of corporate objectives and societal risks; from the regulatory perspective, it offers the prospect of reflexive types of regulation, based on a learning process, which move away from the dichotomy between command-and-control and deregulation; and from the financial perspective it holds out the possibility of new types of deliberation, based around shareholder engagement with enterprises. However, the case studies presented above suggest that this model is far from being realized in practice, in the UK at least. From the managerial perspective, evidence that CSR is truly embedded in firms at the organizational level is rare. A high level of engagement with CSR issues, if understood in terms of the anticipation of new risks and competitive shocks, requires an organisational commitment which most British businesses have yet to make. From the regulatory perspective, there is doubt over the effectiveness of a strategy based on reflexive law, in the face of evidence that most firms are content with 'basic compliance' with standards, and that where a framework of hard law is entirely absent, voluntary responses from firms may not be forthcoming. Finally, from a financial perspective, research suggests that there are, at present, structural limitations on the capacity of shareholder engagement to reorientate corporate behaviour towards a CSR agenda. The theme running through these conclusions is that the potential of CSR will be, very largely, unfulfilled, as long as prevailing conceptions of the enterprise and its role in society remain in place.

Notes

¹ DTI home page on the Companies Bill 2006, <http://www.dti.gov.uk/bbf/co-law-reform-bill/index.html>, last visited 7 August 2006.

² 2002/C 86/03, OJ 10 April 2002, Article x.

³ Barnard, Deakin and Hobbs, 2002. Barnard, Deakin and Hobbs 2003, which contains an account of the research, explains the methods used and choice of case study firms.

⁴ The Occupational Pension Schemes (Investment and Assignment, Forfeiture, Bankruptcy, etc.) Amendment Regulations, SI 1999/1849, reg. 2(4), amending SI 1996/3127.

⁵ ‘Brown scraps OFR in bid to cut “red tape”’, *Accountancy Age*, 28 November 2005, which quoted the CBI Director-General Digby Jones as saying: ‘I’ve been crying out for the government to stop telling us about plans to cut red tape and to get on with it’.

⁶ Press Release, Hermes Pensions Management Ltd. (quoting the then Chief Executive, Alistair Ross Goobey), 26 September 2001.

References

ABI (2001) *Investing in Social Responsibility: Risks and Opportunities* (London, Association of British Insurers).

Aguilera, R., Williams, C., Conley, J. and Rupp, D. (2006) ‘Corporate governance and social responsibility: a comparative analysis of the UK and US’ *Corporate Governance: An International Review*, 14, 147-159.

Armour, J., Deakin, S. and Konzelmann, S. (2003) ‘Shareholder primacy and the trajectory of UK corporate governance’ *British Journal of Industrial Relations*, 41, 531-555.

- Claros Consulting (2002) *Health and Safety Indicators for Institutional Investors: A report to the Health and Safety Executive*. Available at: <http://www.hse.gov.uk/revitalising/csr.pdf>
- Commission (2001), *Promoting a European Framework for Corporate Social Responsibility*. Green Paper COM (2001) 366 final (Luxembourg: OOPEC).
- Commission (2002) *Corporate Social Responsibility: A business contribution to Sustainable Development* COM (2002) 347 final, 2 July 2002, Brussels.
- Company Law Review Steering Group (2001) *Modern Company Law for a Competitive Economy: Final Report Volume 1* (London: DTI).
- Barnard, C., Deakin, S. and Hobbs, R. (2002) *The Use and Necessity of Article 18(1)(b)(i) of the Working Time Directive in the United Kingdom*. Report to the European Commission, mimeo.
- Barnard, C., Deakin, S. and Hobbs, R. (2003) 'Opting out of the 48-hour week: employer necessity or individual choice? An empirical study of the operation of Article 18(1)(b) of the Working Time Directive in the UK' *Industrial Law Journal*, 32, 223-252.
- Dawkins, J. and Lewis, S. (2003) 'CSR in stakeholder expectations: their implication for company strategy', *Journal of Business Ethics*, 44: 185-193.
- Deakin, S. and Morris, G. (2005) *Labour Law* 4th. ed. (Oxford: Hart Publishing).
- DTI (2001) *Business and Society: Developing Corporate Social Responsibility in the UK* (London: Department of Trade and Industry).
- DTI (2002) *Business and society: Corporate social responsibility report 2002* (London: Department of Trade and Industry).
- Hawley, J. and Williams, A. (2000) *The Rise of Fiduciary Capitalism: How Institutional Investors can make Corporate America more Democratic* (Philadelphia: University of Pennsylvania Press)

- Henderson Global Investors (2002) *Closing Britain's Gender Pay Gap. Position Paper* (London: Henderson Global Investors).
- ICAEW (1999) *Internal Control. Guidance for Directors on the Combined Code* (London: Institute for Chartered Accountants in England and Wales).
- Impactt (2005) *Changing Over Time. Tackling Supply Chain Issues through Business Practice* (London: Impactt Ltd.)
- Kingsmill, D. (2001) *Review of Women's Employment and Pay* (London: DTI).
- Lydenberg, S. (2005) *Corporations and the Public Interest: Guiding the Invisible Hand* (San Francisco, CA: Berrett-Koehler).
- Roberts, J. (2003) 'The manufacture of corporate social responsibility: constructing corporate sensibility' *Organization*, 10, 249-265.
- Women and Work Commission (2006) *Shaping a Fairer Future* (London: Women and Equality Unit)