

**CAPABILITY THEORY, EMPLOYEE VOICE AND CORPORATE
RESTRUCTURING: EVIDENCE FROM UK CASE STUDIES**

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by

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Abstract

We examine the relationship between capability for voice and corporate restructuring through an empirical study of the operation of the UK's Information and Consultation (I&C) Regulations of 2004. These Regulations, implementing an EU Directive, introduced elements of the continental European codetermination model into UK law, while allowing for flexibility and experimentation in forms of employee representation. Although the absence of a preferred role for trade unions in the establishment of I&C arrangements limited the scope for interaction with existing structures of collective bargaining, there is evidence that unions were able to use the new arrangements to extend their influence in some contexts. We also report evidence of deliberation mitigating the impact of restructurings on workforce morale and contributing to a longer-term perspective on skills in some firms. We conclude that the I&C model has unfulfilled potential in the UK context.

Keywords: capability for voice, employee representation, labour law.

JEL Codes: K53, K58, J31.

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1. Introduction

This paper is concerned with the relationship between enterprise structure, the sectoral environment of firms, and the regulatory framework provided by laws on employee information and consultation, in establishing the conditions for the effective exercise of employee voice – ‘capability for voice’ – in the context of corporate restructuring. The concept of ‘capability’ suggests that the well being of the members of a given group should be evaluated by reference to their capacity to achieve a set of subjectively valued states or activities, ‘functionings’, through which their potential, not just as economic agents but also as citizens, can be realised (Sen, 1999). Against the backdrop of a knowledge economy, this approach implies a shift away from an employer-centred notion of ‘employability’, in which workers are provided with the ability to respond to the changing demands of firms and organisations, to one in which the capabilities of individuals themselves are enhanced through participation in employment. Our study provides evidence on how far the organizational strategies of UK-based enterprises and the conditions in which those firms operated supported, or alternatively detracted from, the exercise of a particular kind of capability for voice in the period following the implementation in the UK of the European Union Directive of March 2002 on the information and consultation of employees (the ‘I&C Directive’). To this end, we look at a range of experiences in firms in three industrial sectors, chemicals, financial services and retail, using evidence drawn from interviews with managers, workers and other relevant actors, and material derived from documentary and public sources.

Section 2 provides a brief overview of the legal and industrial relations background to the UK implementation of the I&C Directive. Section 3 outlines the theoretical framework of our study, developing the idea of the capability approach in this context, and describes our research methodology. Section 4 presents the empirical results, focusing in turn on the process of establishing I&C arrangements, the structural and operational dimensions of I&C agreements, and their operation against the backdrop of corporate restructuring in the UK economy of the mid-2000s. Section 5 concludes.

2. Corporate Restructuring and the Evolution of Employee Representation Regulation in Britain

The introduction into UK law of a statutory right to redundancy compensation by the Redundancy Payments Act 1965 led to a rapid growth in collective agreements setting out procedures for the implementation of redundancies and providing for levels of compensation above the statutory maximum (Deakin and Morris, 2009: 358-359). However, the effect of these developments was to facilitate the use of redundancies as a mechanism of workforce reduction, and to limit the degree to which trade unions could effectively adopt a policy of

resisting corporate restructuring, which had been the strategy of many British unions prior to 1965. Instead, their role increasingly became one of ensuring that where redundancies took place they were voluntary rather than compulsory, and that the resulting payments were as generous as possible, rather than seeking to limit the number of redundancies made by firms (Deakin and Wilkinson, 1999: 72).

Statutory requirements for consultation aimed at avoiding impending redundancies or mitigating their effects were first introduced by the Employment Protection Act 1975,¹ which, in line with the EU Collective Redundancies Directive,² required employers to inform and consult recognised unions in advance about any proposed redundancies, and laid down certain minimum consultation periods dependent on the number of employees involved. In the early 1990s, two ECJ decisions held that the UK law on redundancy consultation and the closely analogous area of consultation over business transfers was defective in not providing for employee representation in workplaces without union recognition.³ Following a short-lived attempt by the then Conservative government to amend the legislation to give equal representation rights to unionised and non-unionised forms of representation,⁴ further Regulations were introduced by a Labour administration in 1999.⁵ These stipulated that worker representation in relation to collective redundancies should primarily be conducted by recognised trade unions but that, in the absence of union recognition, employers should inform and consult representatives elected by the affected employees themselves, or elected or appointed by the affected employees for other purposes, but with authority to receive information and be consulted about the proposed dismissals on their behalf.⁶

The relevant legislation, set out in the Trade Union and Labour Relations (Consolidation) Act 1992 ('TULRCA') currently requires an employer who is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less to consult about the dismissals 'all the persons who are appropriate representatives of any of the employees who may be affected by the proposed dismissals or may be affected by measures taken in connection with those dismissals'.⁷ The consultation must include ways of avoiding the dismissals, reducing the number of employees to be dismissed and mitigating the consequences of dismissals.⁸ The first two categories may include consideration, for example, of alternative strategies such as reallocating work, reducing overtime or giving employees the opportunity to work more flexible hours or to job share. Where appropriate the possibility of redeployment elsewhere in the organisation, possibly after training, should also be explored. Where dismissals are inevitable, mitigating action may include providing counselling and outplacements for employees, and information about retraining elsewhere (Deakin and Morris, 2009: 807-809).

Despite some recent judicial dicta indicating a duty to consult, in certain circumstances, over the substance of the decision to make workers redundant,⁹ there is no clear requirement in the UK for a ‘social plan’ under which, with state support, the social partners negotiate for retraining and redeployment of employees as well as for severance payments, as in a number of continental European countries.¹⁰ Where the competent authorities in some EU Member States such as the Netherlands have long-established powers to authorise or prohibit redundancies, British legislation only imposes, in line with the Directive, an obligation on employers to notify ‘the competent public authority’ in writing of ‘any projected collective redundancies’.¹¹ In case of unjustified failure to consult, the remedies provided by the legislation do not include a ‘status quo’ clause which would have the effect of postponing or reversing the job losses. Instead, the affected employees, or an independent trade union if recognised by the employer, may present a complaint to an Employment Tribunal,¹² which can make a protective award in respect of employees in relation to whose dismissal or proposed dismissal the employer has failed to comply with a statutory requirement. The award entitles the employees subject to it to receive their normal pay for the period of the award (the ‘protected’ period) which may not exceed 90 days.¹³

During the 1990s, the limited growth of ‘partnership’ agreements at firm level, which involved the negotiation of agreements between unions and employers over issues concerning employee flexibility and employment security, afforded employee representatives a modest increase in influence over restructuring. But with the exception of some high-profile restructuring cases such as BMW’s break-up of the Rover Group in 2000, which, because of the scale of the dislocations involved led political actors to get involved in seeking a solution which would preserve the productive capacity of the Longbridge car manufacturing plant (see Armour and Deakin, 2003), there were limited possibilities for unions to build political alliances with regulatory authorities, or to mobilise a wider coalition of affected parties, including suppliers, customers and community groups, in such a way as to shape corporate restructuring.

Against this background, the adoption of the I&C Directive¹⁴ in 2002 offered the possibility of a new approach to employee representation in the UK. The Directive envisages a significant participative role for permanent employee representation arrangements in relation to a range of matters coming under the heading of corporate restructuring, broadly construed to refer to: openings and closures of business operations; increases in or reductions of operations at particular locations; transfers of production and/or service provision from one location to another within the same firm, or beyond the firm; and mergers, takeovers, and bankruptcies. The Directive also gives expression to the principle that employee involvement should take place at a sufficiently early stage in the restructuring process to ensure that there is proper representation before final

decisions affecting employees are taken.

The Directive was transposed into UK law by the I&C Regulations 2004.¹⁵ This legislation constituted a break from the previous British practice for handling corporate restructuring in three ways. Firstly, by encouraging (but not, as we shall see, clearly mandating) the establishment of permanent structures for employee representation in management decision-making, the legislation went beyond the previous practice of making *ad hoc* arrangements for employee representation in restructuring, instead providing a vehicle for dealing with such issues as and when they arose. Secondly, by extending the statutory requirements to inform and consult employee representatives on a wide range of matters such as changes in work organization, firm structure and business, and the firm's financial and employment situation, the legislation had the potential to promote the development of a holistic organisational approach to human resource management, which could, in principle, have reduced firms' reliance on redundancies. Finally, by providing rights of information and consultation rights which did not depend on trade union recognition or membership in the workplace in question, it opened up the possibility for a more integrative form of employee participation in firm-level decision making than that associated with collective bargaining, with its assumption of a clear separation of worker and employer interests.

The legislation was novel in other respects. It rejected a 'one size fits all' approach in allowing pre-existing agreements ('PEAs') to stipulate the nature of I&C arrangements that would apply in a given employment unit. At the same time, the PEA route allowed employers to circumvent the application of the Regulations' provisions governing 'negotiated agreements', as well as those relating to the 'standard' procedure which was to apply if negotiations failed.¹⁶ To be valid, a PEA had to be agreed before the point at which a request for negotiation for an I&C agreement was made by 10% or more of employees in the relevant employment unit. A PEA had to be in writing, cover all employees in the employment unit, and have been approved by the employees. Government guidance (DTI, 2006) suggested that approval could be obtained by a majority ballot of the employees, by obtaining the signatures of a majority, or by an agreement through a trade union or other appropriate representatives representing a majority of the workforce. In other respects, the content of a valid PEA was only minimally defined by the Regulations. There was no need for all employees, sites or business divisions to be covered by a single PEA, provided that all employees in all of the 'undertakings' within the Regulations' remit were covered by one or more such agreements; a PEA could determine the subject matter, timing and even the nature of information and consultation, subject only to the requirement that such an agreement should 'set out how the employer is to give information to employees or their representatives and seek their views on such information';¹⁷ under a PEA, the statutory penalties and

dispute resolution procedures otherwise applying to I&C procedures did not apply;¹⁸ there was no requirement for trade union representatives to be involved in a PEA, even if the union was recognised for the purposes of collective bargaining in the employment in question;¹⁹ and a PEA could provide for direct information and consultation with individual employees, cutting out the collective representatives.²⁰

Somewhat awkwardly, the rights set out by the I&C Regulations cut across the consultation rights set out in TULRCA 1992 and underpinned by the Collective Redundancies Directive. An employer proposing to make collective redundancies had to comply with these requirements even if separate consultation arrangements were established as a result of the I&C Regulations.²¹ Guidance notes indicated that where some affected employees were not represented by a recognized union, the employer would have to make arrangements to inform and consult appropriate representatives of those employees (DTI, 2006: 57). These could be either new representatives elected for the purpose, or existing representatives, provided that their remit and method of election or appointment gave them appropriate authority from the employees concerned. Representatives elected or appointed under the Regulations' standard procedures would be appropriate representatives for this purpose, although the employer would still be free to consult other appropriate representatives or arrange for new ones to be elected for the purpose. Where there was a PEA or negotiated agreement, that agreement would have to make specific provision for the employee representatives to be informed and consulted over collective redundancies.

The passage of the I&C Regulations marked a potential step change in the regulation of employee representation in the UK, importing into domestic law and industrial relations practice a model of employee participation that owed much to the continental European tradition of codetermination (Rogers and Streeck, 1995). At the same time, the method of flexible implementation set out in the Regulations provided scope for experimentation in this new form. The emphasis on deliberation and learning, both in the formation of I&C procedures and in their operation, chimed with theories which enjoyed growing resonance at this time in EU policy discourses, above all the capability approach.

3. Applying the Capability Approach to the Empirical Study of Employee Voice

The capability approach (CA), which was initially developed by Amartya Sen (1999, 2005) in the context of the study of poverty in developing countries, has more recently come to prominence in the debates over the future of the European Union (EU) and national policy agendas concerning work and employment relations (Salais and Villeneuve, 2004; Deakin and Wilkinson,

2005). Departing from utilitarianism and rational choice theory, the CA's central tenet is that the end of development should be conceptualised in terms of individuals' capabilities to achieve a range of subjectively defined functionings. Thus a 'capability' refers to the effective opportunities which a given individual has to undertake, with the resources or commodities that they command, the actions and activities they choose to engage in. The CA identifies a range of 'conversion factors' through which resources or commodities can be transformed into 'capabilities' in this sense. Conversion factors can be derived from aspects of the physical or natural environment, but they may also be found in organisational and institutional dimensions of societal structures (Robeyns, 2005: 99). Thus the CA provides a normative framework for judging the effectiveness of institutional mechanisms in terms of how far they extend the substantive freedom of action of individuals. In the area of work and employment relations, such mechanisms may include rights which support claims to resources, such as rights to wage or job security or the rights to out-of-work benefits, or rights to participate in the decision-making processes which affect working lives (Browne et al., 2004: 211).

Sen's version of the CA (see Sen, 1999, 2009) insists on the need for an enriched 'informational basis' for evaluating societal arrangements. In this vein, the CA can be thought of promoting a context-dependent process of social learning as the basis for institutional formation. The importance of learning points the way to a particular kind of capability, 'capability for voice', as the basis for 'the ability to express one's opinions and thoughts and to make them count in the course of public discussion' (Bonvin, 2008: 247). Legal provisions and industrial relations practices concerning information and consultation of employees can accordingly be conceptualised as 'social conversion factors' for the development of a 'capability for voice' in corporate decision making. Their success can be judged on how far they induce a process of institutional learning, based on deliberation, through which employees are provided with effective opportunities to shape the workplace environment (Browne et al., 2004: 212).

For this to take place, the institutional framework for employee consultation needs to address the separate 'opportunity' and 'process' aspects of substantive freedom (Bonvin, 2008; Koukiadaki, 2010). The 'opportunity' aspect is concerned with the nature of the substantive opportunities made available to the collective actors. In the I&C context, this focuses attention on the resources made available to employee representatives, in terms of time, money and facilities; the actual use made of facilities for communication with the workforce; and the degree of formal inclusion of autonomous employee representative bodies, in particular trade unions, in structures and processes of information exchange. The 'process' aspect looks to the quality of decision-making processes and collective choice procedures. This aspect highlights, among other things, the degree to which the employee side can shape joint

meetings with management; the ability of employee representatives to express the interests and identity of the work group in their dealings with management; and the role of unions in providing support to the arrangements in question.

Our research set out to explore the development of I&C procedures in practice against these two sets of criteria. In doing so, it aimed to explore how conversion factors provided by the legislation and the sectoral and industrial relations context, and developed by the actors themselves, could assist in the promotion of capability for voice as an indicator of the collective dimension of substantive freedom in employment relations (De Munck and Ferreras, 2004). To this end we adopted a qualitative case study approach, involving data collection based on a combination of a number of elements: semi-structured interviews with industrial relations actors (senior and human resource managers, employee representatives, and trade union representatives and officials); non-participant observation of meetings between management and labour (where possible); and analysis of relevant documentary material, including I&C agreements, minutes of meetings, documents disseminated to the workforce and trade union statements and communications. Although individual employees were not interviewed, an indirect indicator of the interaction between the representatives and their constituents was provided in the form of evidence on employee participation in elections for the I&C arrangements and consultation exercises/meetings held with their representatives, as well on the level of their awareness and appreciation of the I&C arrangements as depicted in firm surveys.

The research placed emphasis – at the stages of data collection, data analysis and writing up of the findings – on the actors' perceptions and actual use of the new statutory framework for employee consultation. This, in conjunction with an examination of the availability and use of resources and other non-legal conversion factors such as organizational/management norms and trade union activity, made it possible to evaluate the opportunity and process aspects of the arrangements we were studying. For the purpose of developing a cross-case comparison, a common template was used for the conduct of the research. This covered information about the general industrial relations background, the origins, agreements, operation and impact of the I&C arrangements. The depth of the case studies varied depending on factors such as firm size, complexity of I&C arrangements, logistics of access, time and availability of respondents. Table 1 provides a synoptic overview of the case studies, which were drawn from three sectors with contrasting characteristics: two industrial and services sectors, chemicals and financial services respectively, exposed to international competition and the entry of foreign-owned multinationals into the UK market, and a more domestically orientated sector with limited exposure to overseas competition or entry, retail, in which firms were nevertheless under intense pressure to maintain high returns to shareholders throughout the period of the

study. The Annex provides further background details of the firms, their approach to I&C, the role of global financial and competitive pressures, and the influence of public actors.

Table 1. Outline of the Case Studies

Name (date of I&C agreement)	Data (71 interviews in total)	Workforce size	Corporate form	Competition	Organisational context	Employee representation	I&C arrangements	Experience of restructuring
Chem1 (2005)	6 interviews (management, union and employee reps) in 2008	Medium (around 664 employees)	Subsidiary of US multinational	Highly competitive national and global market	Employee involvement values; proactive approach to regulation; sustainability	High membership in parts of the firm/recognised union for industrial workers	Introduction of I&C arrangements (PEA)	Significant (in the past)
Chem2 (from 2005 and onwards)	25 interviews (management, union and employee reps) in 2009	Large (4000 employees)	Subsidiary of US multinational	Highly competitive national and global market	Employee involvement values; employer of choice; expansion by acquisition	High membership in parts of the firm/recognised union for industrial workers	Introduction and amendment of existing I&C arrangements at site level; national I&C forum established (PEA)	Significant (in the past and more recently)
Fin1 (2005)	11 interviews (management, union and employee reps) in 2005 and 2006	Large (6,800)	UK-based publicly-listed firm	Highly competitive national and global market	Employee involvement values; growth by acquisition; legal compliance ethos	High membership; recognised union in all but one sites	Introduction of I&C arrangements (PEA)	Significant (in the past)
Fin2 (2003)	8 interviews (management and employee reps) in 2005 and 2006	Large (2,700)	UK-based privately-held firm	Highly competitive national market	Employee involvement values; rapid growth; proactive approach to regulation;	Low membership; no recognition (but active campaign)	Amendment of existing I&C arrangements (but not in writing)	Considerable (in the past)
Fin3 (2007)	6 interviews (management and employee reps) in 2009	Large (8,500)	UK-based publicly-listed firm ^{xxii}	Highly competitive national and global market	Employee involvement values; demutualised firm	Low membership/union recognition in one site (and active union campaign)	Amendment of I&C arrangements (PEA)	Significant (in the past and more recently)
Retail (2006)	5 interviews (management and employee reps) in 2008 and 2009	Large (75,000)	UK-based publicly-listed firm	Highly competitive national market	Employee involvement values; concerns re reputation	Low membership/no union recognition (but active campaign)	Amendment of I&C arrangements (PEA)	Significant (more recently)

4. Inside I&C Procedures: Empirical Findings

4.1 The contents of I&C Agreements

We begin our empirical analysis by looking at the terms of the agreements in our sample and considering how far they were influenced by the terms of the Regulations and the procedures they put in place for agreeing PEAs. In each of our case studies, organizations put in place PEAs by either establishing new arrangements or amending existing ones. In two cases (Chem1 and Fin1) consultative arrangements that covered all employees were established for the first time. In Fin2, Fin3 and Retail, pre-existing procedures for employee representation had been in operation, either in the form of informal mechanisms, as at Fin2, or as formalized arrangements, as in Fin3 and Retail. Site-based variations on the approach to the I&C Regulations were also observed. At some sites of Chem2, union recognition or partnership arrangements were extended by the addition of elected representatives of non-union employees to form ‘hybrid’ I&C arrangements; alongside those, elected I&C arrangements were introduced at a number of the company’s non-union sites, and a firm-wide employee forum was established for the first time.

We found evidence of the indirect impact of the Regulations on the establishment or amendment of I&C arrangements in almost all cases (Chem1, Chem2, Fin1, Fin3 and Retail). In a number of cases, the establishment or amendment of I&C arrangements was the result of a pro-active approach by management acting unilaterally as the legislation enabled it to do (Chem1, Chem2, Fin1 and Retail). Here, management sought the formal protection provided by concluding PEAs, which allowed them to avoid the more stringent statutory requirements applicable under the ‘negotiated agreements’ option or the application of the ‘standard provisions’. The concern that employees or trade unions would proactively use the legislation to request the establishment of I&C arrangements if management did not act was clearly expressed by management in all non-union firms, that is, Fin2, Fin3 and Retail.

The process for the establishment or amendment of the agreements – the drafting of the agreements, selection of methods of approval and details of the final agreements – was led by management in several cases (Chem1, Chem2 at some sites, Fin1 and Retail). On the other hand, trade union influence over the substance of the agreement was reported in cases where established structures had already been in operation (Fin2 and Fin3) and where trade unions had developed an active role in the introduction/amendment of I&C arrangements (Chem2 at some sites).

Abstracting from the information set out in Table 2 concerning the structural and operational aspects of the agreements (see Table 2), an emergent ‘basic

model' of I&C arrangements can be identified. This is one in which the I&C structure was composed as a joint management-employee body chaired by management, with competences limited to information and consultation and not extending to any co-decision rights. There is some evidence of a 'statutory model effect' concerning mainly the scope of application of agreements, employee coverage, and the processes of selection of employee representatives, indicating 'bargaining under the shadow of the law' (Bercusson, 1992), similar to studies of the implementation of the European Works Council ('EWC') Directive (Gilman and Marginson, 2002: 49). We also see some evidence of a 'learning effect' in those cases where I&C agreements were re-negotiated, suggesting that, as in the case of EWCs, 'the parties are developing a momentum of their own, in which good practice progressively evolves. Periodic review and renegotiation of agreements means that the scope of learning is ongoing' (Gilman and Marginson, 2002: 50).

Table 2. Structural and Operational Aspects of the I&C Agreements

Firm	Definition of consultation	Scope of information and consultation	Issues excluded	Confidentiality provision/ agreement	Facilities	Dispute resolution procedures
Chem1	Engaging in discussion, allowing an opportunity for timely input...before final decisions are made	Changes to pay, benefits and working practices; employee welfare, people practices or policies; investment decisions and changes to business strategies; redundancies and transfers of undertakings	Not specified	Not specified	The management will provide appropriate training, time and resources to employee representatives	Not specified
Chem2^{xxiii}	The forum will facilitate dialogue and communication ^{xxiv}	Major changes to the business or the organisation; potential impacts on employment; work organisation; contractual relations	Individual issues; disciplinary issues; matters that are part of collective bargaining arrangements and collective agreements	Maintenance of confidentiality where for commercial/legal reasons, information may not be shared immediately outside of the meeting	Time-off for representatives to perform their duties; reimbursement of costs; no detriment as a result of the representative's role	Not specified
Fin1	Dialogue and exchange of views and a debate undertaken in good faith	Collective issues; transfers of undertakings; collective redundancies ^{xxv}	Individual issues, individual grievances, pay and remuneration issues ^{xxvi}	Undertaking to treat as confidential information identified as such; extensive confidentiality provisions	Provision of full-time forum chair and forum coordinator; no discrimination/damage through membership; indemnity provision	Internal procedure with access to ACAS as last resort
Fin2	Both parties' views are stated and heard, before a decision is made. The perspective of each party is understood by the other, not necessarily agreed between them	Business issues; issues of interest to Fin2 people brought to the forum by employee representatives; individual issues brought to an employee representative by an employee; safety of employees; facilitation and promotion of communication between the firm and employees ^{xxvii}	Not specified	Undertaking to treat as confidential information identified as such; extensive confidentiality provisions	Provision of full-time employee chair and two employee representatives; budget agreed between the forum and the employee chair; reasonable time-off for representatives' duties; utilization of expertise and experience of recognized third parties; participation in discussions with recognized third parties; no disadvantage of employee representatives	Not specified

Fin3	An exchange of views and the establishment of dialogue between the parties. It goes beyond merely providing information and must take place before any final decision is taken ^{xxviii}	Employment prospects; decisions likely to lead to substantial changes in work organisation or contractual relations, including redundancies and transfers; health and safety; pensions arrangements; salary structures; pay and benefits; employment policies and procedures	Exclusion from the joint review of pay and benefits of senior managers; exclusion from collective representation of employees covered by union recognition agreements	Undertaking to treat confidential information identified as such; requirement to enter into confidentiality agreements from time to time	Provision of five full-time office bearers and two appointed individuals; budget agreed between the forum and the employees; reasonable time-off for representatives' duties; training; access to employees	Internal procedure with access to ACAS as last resort
Retail	Not available	Business, employment and contractual relations issues	No issues specified	Undertaking to treat confidential information identified as such;	Provision of two full-time employee representatives and a full-time project coordinator; pre- and after-consultation meetings among representatives	Internal procedure

4.2 The ‘Opportunity’ Aspect: Restructuring as an Issue for I&C Arrangements

We now turn to the ‘opportunity’ aspect of the I&C arrangements, and to an evaluation of the actual means the collective actors had at their disposal and the actual use of such means for the development of their role. We will look at the experience of the case study firms by reference to their sectoral contexts.

4.2.1 Chemical sector

Both firms in this sector recognized that effective employee communication and consultation could offer a number of benefits, including improved employee commitment and a more flexible working environment. The relationship between management and the recognized trade unions was characterized as a ‘partnership’ by management and the unions in both firms. In Chem1 traditional union-management collective bargaining and negotiation procedures had been set aside in 1989 and replaced by what management defined as ‘continuous consultation and cooperation’, that is, ‘talking about changes that we are looking to make on an ongoing basis’ (management rep, interview notes). Employee forum meetings were held regularly. While employee representatives had the right to bring forward issues for discussion, the forum agenda was mostly management driven. The forum dealt mostly with the ‘social aspects of the firm’ such as workforce motivation and morale.

In Chem2, collective bargaining and negotiation took place at all unionized sites. Management and trade unions held regular meetings to discuss the company’s current economic situation as well as the prospects of the individual sites, including any possible ‘anticipatory’ measures taken in response to possible employment reductions. This dialogue was intensified during periods of economic difficulty for the firm. In addition, weekly meetings would be held at site-level. These provided the occasion for the provision of information concerning any changes to the sites’ production, operation time, costs and orders, and their implications for employee relations. In addition to these meetings, a regional forum met three times per year and site-level meetings between management and site forums were held on a more regular basis.

At both firms, the unions trained their own representatives, while the non-union representatives and managers received no training. Management at Chem2 contemplated the use of ACAS training. Non-union representatives indicated that they would have liked specific, structured training on canvassing employees’ opinions and creating a relationship with them. Interviewees were generally satisfied with respect to the nature and extent of information provided to the I&C forums. However, concerns were expressed by employee representatives with respect to their ability to interpret complex information provided by management in some instances.

4.2.2 Financial sector

The financial firms we studied shared a number of common elements with respect to the ‘opportunity’ aspect of their I&C arrangements, for example concerning the provision of training and facilities of representatives. The forum at Fin1 had a management-appointed, full-time administrator. Training – including sessions that were available only for senior managers – was provided to all representatives at the establishment of the forum and later by external organizations and in-house specialists. The majority of agenda issues came from the management side.

The Fin1 forum held bi-annual formal meetings attended by the CEO, other executive members and the HR director. Strict adherence to the confidentiality provision in the I&C agreement was required.^{xxix} During discussions, justifications were advanced for restricting information disclosure concerning threats to jobs and the related ‘anticipatory’ measures that could be taken by the employer. There were also instances where, while under the scope of the agreements employee representatives had the right to be informed and consulted, management chose to bypass them and consulted solely with *ad hoc* committees.

At Fin2, a budget was allocated to the employee forum and representatives benefited from training provided by in-house lawyers, solicitors and external consultants and from developing networks with other firms with I&C arrangements. The ‘professional’ stance of the employee representatives was positively commented upon by the employer’s HR managers, who claimed that they were in a better position to understand the organizational culture of the firm than trade unions. The forum meetings were jointly chaired by the CEO and the employee chairperson. Management shared sensitive information with employee representatives concerning the future of the business, such as the sale of the company by the majority shareholder in 2004, before disseminating such information to the stock market. They attributed their willingness to share information in this way to the cooperative relationship between senior management and the employee side.

As in the case of Fin2, a budget was provided to the employee forum in Fin3. The importance of the independence of the employee forum constituted a running theme in the communications and actions of the Fin3 forum. The latter was member of several ‘best-practice’ organisations, including the Finance Industry Staff Organisations and Alliance of Finance. The Fin3 arrangements operated at three levels: strategic, operational and local. An issue that was raised was the need for independent research into the implications of corporate decisions to be conducted by the employee forum. The development of such a facility would, it was suggested, grant the forum a greater level of autonomy from the employer, and consequently enhance the quality of the relationship

between the employee representatives and the firm. At strategic level, the forum met the group executive or its nominated team on a regular basis to be briefed on strategic plans and business progress. At operational level, a formal monthly meeting between the group HR director and his/her team and employee representatives was held. At local level, meetings were held between area representatives and local managers.

4.2.3 Retail sector

The promotion of the I&C arrangements at the retail firm in our study was seen as a major component in a corporate effort to maintain an ‘employer of choice’ reputation amongst its employees and customers. As in the case of some other large retailers in the UK market, the firm had resisted a number of attempts by independent trade unions to obtain recognition for collective bargaining purposes. Although no union was recognised at this company, there was a far from insignificant union presence among its employees. As part of its strategy of resisting unionisation, the firm invested significantly in the amendment of its pre-existing I&C arrangements in 2006. At that point the company had several thousand employee representatives covering six divisional and a few hundred store-level employee forums, in addition to a national-level forum. In order to provide for consistency in how employee representatives discharged their roles, management offered workshops and emphasised the importance of proactive feedback.

Bi-annual meetings were held between the CEO, members of the executive board and the employee forum. In addition, monthly meetings were regularly held with management representatives below chief executive and board level, that is, at regional and site levels. Information at national level was provided concerning the firm’s business, financial and employment situation and prospects and was considered ‘very satisfactory’ (employee representative, interview notes). While confidentiality agreements were in place, sensitive information was only made available to representatives after its dissemination to the Stock Exchange. There was no evidence of employee representatives challenging the indicators that management used to compare and/or describe the firm situation. Although the employee forum was sometimes involved in consultation concerning certain aspects of the bonus scheme there was no desire on the part of the representatives to develop a more active role concerning the salary scheme (employee representative, interview notes). More generally, there was evidence of a strong emphasis on shareholder value, consistent with the values of ‘investor capitalism’ (Khurana, 2007; Dore, 2008; Capelli, 2009), in the governance of the firm. Management engaged in the series of regular share buy-backs (2002, 2004, 2007 and 2008) as part of capital reorganisations.

4.3 The ‘Process’ Aspect: the Influence of I&C Procedures on Restructuring

We now take a closer look at the dynamics of social dialogue, as developed and formalised between management and the employee-side of the I&C arrangements during restructuring, and the influence of the I&C arrangements on the process, substance and/or implementation of management decisions.

4.3.1 Chemical sector

At Chem1 the employee forum was the formal consultation group concerning restructuring and collective redundancies. But concerns were expressed on the employer side concerning the development of employee participation in other firms in the sector:

‘We are a little bit wary of some of the things other chemical companies talk about, you know, the leader of the EWC now has more information than the president of the European area...Some companies have got a German works council and have now adopted a European-wide model [the European Company]...We are not unduly concerned about that as a company but when you hear a tale like this you think, hell. We don’t actually see our works council necessarily going that way as long as we operate proactively’ (management rep., interview notes).

In the early 2000s, the employee forum, which had been recently established, was involved in consultation during a series of restructuring waves and workforce reduction. Management involved the employee representatives in order to ‘make it as humane as possible’ (management rep., interview notes). Employee representatives did not participate in the development of the selection criteria for redundancies, but in building an understanding of the criteria for the purpose of informing employees. The employee representatives decided not to insist upon the 30-day consultation period required by redundancy consultation legislation in respect of one of the waves of restructuring. A management representative explained:

‘They [employee representatives] said “let’s not have too much dialogue on it [restructuring] for the next 30 days, it’s going to happen”. I said, ok, as long as you are ok with that...That was almost them saying “to hell with all this legal stuff, can we bypass it because we want to get to the point where people know what’s going on, we don’t want 30 days of clouds and misery and stuff”...If we could have bypassed the 30-day consultation we generally would have but on that case we couldn’t but at least they understood why and they worked with us to get to the end point as quickly as possible, which was an interesting step really’.

In all the instances of restructuring at Chem1 that we could observe, the trade unions, where recognised, decided that there was no need for parallel consultation with them and the all-employee representation body, on the grounds that a significant level of trust existed between them and the management, but also because of a perception on the part of the union that these restructurings had little impact on employees covered by the collective agreements.

The level of at which managerial decisions were taken, and its relationship to the I&C procedures in place at UK level, crucially affected the development of the 'process' aspect of restructuring. In Chem2, a multinational firm with its headquarters outside the European Union, a decision on possible restructuring options was conducted at US corporate level and was only discussed with the UK management when the suggested plans and their potential impact on the UK sites were established. It was only at this point that management at the UK was prepared to consider the substance and process of consultation with employee representatives at UK level. Proposed changes to the firm's redundancy compensation schemes were discussed at the Chem2 regional forum. There was pressure from the US headquarters to reduce the amount of redundancy compensation paid in its European operations. The UK management was in a situation of 'trying to represent to the employees something that's fair but not as good, but also trying to represent to the US management something that's fair but not as low as they would like it to be' (management rep., interview notes).

During the 2008-2009 economic crisis, limited site closures and compulsory redundancies took place at Chem2. In contrast to the position to the 'standard provisions' of the I&C Regulations, which did not apply as Chem2 had a PEA, there was no prior discussion at the forum concerning these management decisions, which were communicated to the regional employee forum only shortly before the formal announcement of the decisions to the affected sites and employees. The subtle difference between the 'decisions' and 'conclusions' was highlighted by a senior manager:

'And some of it is about explaining to employees the business situation which is leading us to these conclusions, and I think there's a subtlety here about whether we're saying this is leading us to these decisions or whether it's leading us to these conclusions, and we like not to say decisions so that we can still give people a sense of you're involved in it. But there's a degree to which it is almost disingenuous because the decision's really been made, unless you actually come back with something which is compellingly different and we can't see what that would be like. But there is a lot of consultation that can then go on around, well, how are we going to do this.'

At site level, the employee forums and, where applicable, recognised trade unions were involved in consultation concerning the means of implementing management decisions, including, among other things, the process of collective redundancies and the relevant selection criteria. At a number of sites, there was evidence that as a result of deliberation between management and employee representatives, a range of solutions became available for the reduction of the firm's costs. This was mostly the case where management was keen to retain employee skills and where trade unions agreed to measures intended to increase organisational and labour flexibility. But there was absence of evidence of interaction between site-level unions for the purpose of information exchange, co-ordination of their actions and their interests and of lending each other indirect support. The regional employee forum did not appear to have opened up similar opportunities for interaction.

4.3.2 Financial Sector

The implications of the economic crisis were also clear in the case of the firms in the financial services sector. At Fin1, in restructuring exercises that involved collective redundancies, statutory consultation took place with both the union, where recognized, and the forum, albeit under separate channels. According to the firm's HR manager: 'We will listen, we will discuss, we will thrash out, but we won't seek agreement, and that to me is the essential difference between the union and the forum'. The need for consultation to take place at the relevant level of management was clearly illustrated. As senior management had only 'arm's length' involvement in the I&C arrangements, the scope for impact on corporate decision-making on the part of the forum was significantly constrained. For example, there was no consultation concerning the firm's decision to close offices at three sites that involving around 700 job losses over 2006-2008. However, as a result of consultation with both the union and under the I&C arrangements, which took place after this point, Fin1 agreed to the union's proposal to outsource part of the services, resulting in the transfer of 450 employees. The union's view was that the outcome of the discussions was predominantly a result of union organisation and activity, and that the forum's involvement was, as a result of management constraints and absence of sanctions, very limited.

The timing and formalization of the process of consultation seems to have had a significant impact on the effectiveness of the I&C arrangements. A so-called 'option-based consultation process' that was modelled on the Involvement and Participation Association (IPA)^{xxx} 'option-based consultation approach' was formally adopted by both management and the employee representatives in Fin2. The impact of early and meaningful consultation under the 'option-based consultation process' was exemplified in the handling of two separate restructuring waves, one in February 2003 and one in March 2005. In the first

case, which involved 100 collective redundancies before the ‘option-based consultation’ was established, the employee-side was only given 24-hour notice in advance of the public announcement of the redundancies. Employee representatives felt that their role was essentially confined to supporting the individuals affected. Negative repercussions in terms of employee morale levels and the organizational culture were later observed. In contrast, in the March 2005 restructuring exercise, employee representatives were informed three months in advance of the possibility of 55 redundancies. In line with the ‘option-based’ consultation process, they were involved in the definition and application of the selection criteria and drew up plans for the redeployment of employees. As a result of these plans, only 9 employees finally left Fin2 through the application of a voluntary redundancy scheme agreed between management and the forum.

A similar process had been developed in Fin3. From 2007, management worked closely with the staff associations to formalise the restructuring process within a ‘redundancy toolkit’. This comprised a collection of documents outlining the procedures that should be applied at each stage of a redundancy process, from consultation and selection through to redeployment and calculating severance terms. Having amended the I&C arrangements in 2007, the firm and the employee forum started developing an ‘option-based’ consultation approach, similar to the one adopted in Fin2. In December 2008, management announced a restructuring of its sales department that would result in around 100 collective redundancies. Consultation with the forum started one month before the announcement was made and 90 days following the announcement. Significant information concerning the volume of sales, the cost of running the units and the comparison with the competitors was shared with the employee representatives. While there were no challenges concerning the rationale for the restructuring, the forum challenged the implementation of the programme, including the number of posts being made redundant. As a result, 90 posts, ten fewer than originally intended, were finally made the subject of redundancies.

Challenges arising from the relationship between the employee forum and the union were highlighted when management decided to reduce the costs of a new acquisition by making redundant around a tenth of the workforce and transferring part of the work in question overseas. As a union was recognised for collective bargaining in the newly acquired firm, management went into consultation at an early stage with both the union and the employee forum ‘at the same table’ (management rep., interview notes). There was evidence of competition between the two employee representation channels, on account of the enhanced rights that the union enjoyed in comparison to the limited forum’s rights. But there was also evidence of cooperation between them. The consultation process lasted 45 days and employee representatives came up with a number of alternative options for consideration, concerning a different

structure of the business and a merger of specific job roles. Management provided a reasoned response to both proposals and agreed to the merger of the roles. Further, redeployment was considered and career counselling and support were offered to employees being made redundant.

4.3.3 Retail sector

A common language of ‘inform, consult, involve’ was part of the I&C arrangements at the retail firm. This was intended to establish a make the workforce aware of the firm’s business priorities. In this context, the representatives were extensively involved in restructuring, where their role was to minimise the number of job losses. The chair of the forum stressed the need for understanding ‘the commerciality’ of the restructuring plans and referred to the I&C agreement, which talked clearly about adding shareholder value.

In the first months of 2008, the firm’s profits were seen to have been severely affected by the economic crisis. The then HR director maintained that there would be no job losses. In summer 2008, the firm published plans to cut back redundancy pay. Drawing on employee feedback, employee representatives warned the management board that the proposed changes had caused ‘an unprecedented level of feedback, concern and anger’ among employees. A company representative said that the new proposals put the group in line with other retailers, but added that the new terms were still more favourable than most of its rivals, and insisted that there were no plans to cut jobs. Following consultation with the I&C forum, the firm softened its approach towards the calculation of redundancy pay, raising the proposed payout cap from 52 to 62 weeks’ pay. The participation of the forum in the discussions was criticised by the union on the basis that the majority of employees were against the proposal. The employee representatives made counter-proposals which involved accepting, in essence, the reduction in redundancy compensation.

Despite the earlier statements by the HR director, in January 2009 substantial restructuring plans were announced. The firm’s decided to close down 25 underperforming outlets, out of a total of 350, and two main chain stores, with a loss of several hundred jobs. Several hundred more would go from its head office, a figure representing about 15% of the workforce there. The cuts also involved changes to the firm’s final-salary pension scheme – capping workers annual increases in pension pay to 1% – and altering early retirement benefits for those who joined the scheme before the mid-1990s. According to the employee chair of the forum, the employee forum led the consultation process for stores and head office. The national forum set up a support system for the regional representatives to ensure that they were supported and that the restructuring was delivered in a consistent way. All affected stores were visited on a number of occasions so that the national representatives had direct contact with both the store-level forums and affected employees. In addition,

national/regional employee representatives were removed from their day to day duties to allow them to devote themselves full time to the consultation. In the discussions concerning the closure decisions, management produced a business case for each of the affected stores, assessing sales, profitability, market data and demographics, which were shared with the employee representatives. The forum's role was seen as being to understand the business case and to challenge it by making counter proposals where appropriate. Reportedly, there was no challenge on the part of the forum concerning the indicators management had used for reaching its decisions. An employee representative commented: 'having looked at this data it became very clear to us why the business had proposed these stores for closure'. Counter proposals were submitted about structures, numbers, roles, timescales and selection criteria that were accepted by the business and resulted in changes to firm proposals.

On the other hand, the restructuring exercise was met with significant resistance by the union. On the basis of a 'legal mobilisation' strategy (Colling, 2006), union officials accused management of running a 'sham' consultation process for some staff affected by store closures. Concerns were expressed that the firm would try to take a 'short cut' and treat each store as a separate workplace, and thereby give only 30 days' notice of any redundancies as opposed to the longer 90 days required if more than 100 employees were affected. In this context, the union stated that they would be ready to take these cases to employment tribunal for a 90-day protective award. A company representative dismissed the allegation concerning its attempt to evade the statutory consultation period. The union also accused management of not adhering to statutory Code of Practice issued by the Advisory, Conciliation and Arbitration Service ('ACAS') on dealing with redundancies. The union alleged that the employer was failing to call for volunteers from locations across the firm who wished to be considered for voluntary redundancy. More generally, the effectiveness of the consultation process in its entirety was called into question by the union on the basis that the consultation exercise had not led to any reduction in the number of stores closing.

5. Assessment and Conclusion

In this paper we have sought to move beyond an assessment of the formal text of the I&C Regulations to study their impact on the practice of employee voice in a range of companies which adopted I&C arrangements in the mid-2000s. The recognition of the employer's obligation to enter into processes of information and consultation with employee representatives had the potential to institutionalise a role for permanent employee representation in corporate decision making structures. In particular, an evolution away from the traditional British model towards a continental European model that stressed consultation and social dialogue over adversarial bargaining and enhanced the opportunities

for the integration of employee interests into organisational decision making was possible. As we saw, the flexible legislative framework of the UK I&C Regulations offered a range of strategies for employers and posed a number of options for trade unions. Under these circumstances, the extent to which the introduction of information and consultation rights could act as a ‘social conversion factor’ was crucially dependent on the response of the main industrial relations actors.

The UK legislation drove the spread of voluntary arrangements as employers sought to forestall the possibility of more stringent rules being imposed upon them through negotiated agreements or the operation of the Regulations’ standard provisions. At the same time, the leeway given to employers to frame PEAs with only minimal regard to the terms of the standard provisions, and in isolation from trade union involvement, created a risk of producing I&C arrangements that would fail to promote the exercise of employee voice. In practice, while the I&C agreements in our study did not predetermine the actual operation of the arrangements, they did exert a tangible influence over the consultation process through the stipulation, among other things, of the areas over which information and consultation should take place, and of the facilities that should be provided to employee representatives.

Once the new procedures were in place and began to operate, it became clear that there were divergent interpretations of what was meant by consultation. Management used the term ‘consultation’ to describe cases that ranged from serious efforts to address employee interests in management decision-making (Chem1, Chem2, Fin2, and Fin3) to instances where the employee representatives acted in essence as ‘focus groups’ for the collection of feedback from employees (Fin1 and Retail) (see also Koukiadaki, 2010). Management reiterated, in certain cases, the lack of a legal obligation on their part to seek to reach an agreement with the employee representatives under the I&C model of consultation. Conversely, the absence of sanctions was particularly emphasized by almost all the employee-side interviewees. The inability of the employee side to enforce information and consultation rights in case of disagreement within the context of PEAs limited significantly the possibility of them being used as ‘instruments of change’ (Hepple, 2002: 255).

In almost all cases where the I&C arrangements were involved in restructuring instances, decisions to proceed to restructuring were made by management, and consultation with employee representatives took place only with regard to the process of handling job losses and not on the wider principles of restructuring. This is a pattern familiar from the experience of union consultation under earlier UK legislation (Hall and Edwards, 1999, Daniel 1985, Turnbull 1998, Wood and Dey 1983). Even in cases where I&C forums received advance information that restructuring plans were contemplated by management, the impact of the

I&C arrangements on corporate decisions on these questions was not significant. I&C arrangements were not seen by management as having a role in strategic decision-making. In most cases, the formal announcement of management proposals for restructuring signaled the start of the consultation process, thereby excluding any possibility for consultation to take place at a point when proposals had still been at a formative stage. In a number of cases, there was no attempt by employee representatives to question the rationale for the business decisions that led to or influenced the restructuring, and it was not clear that this had been among their objectives. This was particularly apparent where representation through an I&C forum was operating as an additional layer to the existing *ad hoc* committees that were established for the purpose of redundancy consultation.

As Hall and Edwards (1999: 312) found in their study of consultation under the pre-I&C régime, employee representatives described the outcomes of consultation as ‘ranging from mutually acceptable arrangements through “acceptance of the inevitable” to a feeling among employees that managerial prerogative has been imposed on them’. Opportunities for employee representatives to open up new areas of social dialogue with management that could include discussion of reorganisations on an on-going basis were limited, as were attempts to develop an integrated organisational approach to staffing arrangements for the purpose of avoiding collective redundancies, again repeating earlier experiences of consultation in UK workplaces (Turnbull and Wass, 1997).

The denial of a preferred role for trade unions in the agreement and operation of I&C procedures threatened to reduce the possibilities for creating ‘thick interactions’ (Davies and Kilpatrick, 2004: 128) between the union channel and the newly created universal channel of employee representation. Across the unionised case study firms that we looked at, the I&C structures existed in parallel with established collective bargaining arrangements, and the range and type of autonomous employee representation structures had implications for the role and impact of I&C arrangements in restructuring. Where trade unions had an established role in discussions with management, the I&C arrangements tended to adopt the unions’ approach towards the implications of restructuring for the workforce. At the same time, in some of the cases that we studied, the introduction and/or amendment of I&C arrangements in the light of the legislation created new sources of influence for trade unions. Some I&C arrangements enabled trade unions to address a broader agenda than had previously been the case, and to secure better information about organisations’ business plans.

The case studies also suggest that I&C procedures can offer potential gains for employers. As we have seen, there is evidence of deliberation producing cost

savings for employers and mitigating the impact of restructurings on workforce morale. In addition, there was evidence of I&C arrangements contributing to a longer-term perspective on skills in some firms. There was evidence of deliberation through I&C arrangements encouraging employers to acknowledge the need to avoid collective redundancies during the economic crisis of 2008-9 out of concern for their possible negative impacts on skills and on worker morale and commitment.

The introduction of permanent employee consultative arrangements in the UK through the I&C Regulations could no doubt have supported the development of social dialogue procedures in the context of restructuring much more proactively than it did. The possibility, under the PEA option, for management to exclude information and consultation on a range of workplace and organisational issues, and to limit the resources available to I&C arrangements, constrained the opportunities for employee voice. Yet, the case studies that we have reported here suggest that there is as yet unfulfilled potential in the I&C route. Social conversion factors located at different levels, that is, at the level of the legal system, the sector and the firm, could in principle operate in conjunction with each other to develop employee consultation arrangements into a meaningful basis for a learning process and, more generally, to promote capability for voice in UK workplaces.

Notes

¹ Now contained in sections 188-198 of Trade Union and Labour Relations (Consolidation) Act (TULRCA) 1992, as amended.

² Directive 75/129, now Directive 2001/23.

³ Case C-382/92 *EC Commission v United Kingdom* [1994] IRLR 392 (transfers) and Case C-383/92 [1994] IRLR 412 (collective redundancies).

⁴ SI 1995/2587 amending TULRCA 1992, s. 188 and the TUPE Regulations 1981, reg. 10.

⁵ SI 1999/1925.

⁶ See now TULRCA 1992, s 188 (1B)(b).

⁷ TULRCA 1992, s 188(1).

⁸ TULRCA 1992, s 188(2).

⁹ *UK Coalmining v. NUM UK Coalmining v. NUM* [2008] IRLR 4.

¹⁰ For instance, under German law, a special form of redundancy programme is drawn up by management and the works council in a legally binding agreement designed to 'compensate or reduce economic disadvantages for employees in the event of a substantial alteration to the establishment (Weiss, 1992: para 657).

¹¹ TULRCA 1992, s 193.

¹² TULRCA 1992, s 189.

¹³ TULRCA 1992, s 189(4).

¹⁴ Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community.

¹⁵ SI 2004/3426.

¹⁶ According to reg 8(1), In cases where there are written agreements in place in respect of redundancy consultation bodies, the latter are capable of amounting to a PEA provided the agreements satisfy the requirements set out in reg 8.

¹⁷ I&C Regulations 2004, reg 8 (1)(d).

¹⁸ I&C Regulations 2004, reg 22(1), (3).

¹⁹ This is also the case concerning the 'negotiated' agreements and the 'standard' information and consultation provisions.

²⁰ I&C Regulations 2004, reg 16(1)(f).

²¹ I&C Regulations 2004, reg 20(5).

²² The group operated as a mutual firm until 2006 when its members voted to demutualise and float the firm on the stock exchange.

²³ The information concerns the firm-wide employee forum.

²⁴ At site level, consultation is defined as 'oral or written exchange of views and dialogue between the management and employee representatives within the terms of reference.

²⁵ There is no distinction between topics for information and topics for consultation.

²⁶The agreement further provides that: ‘If the company chooses to discuss matters which are outside the scope of the forum on occasions, this will not mean that such matters will always be discussed.’

²⁷ There is no distinction between topics for information and topics for consultation.

²⁸The agreement also specifies collective bargaining as ‘the method by which an employer recognises, and enters into dialogue with, a body representing a group of employees. Commonly this would be for the purposes of reaching an agreement on a pay award or changes to employee terms and conditions’.

²⁹ According to government guidance on the I&C Regulations, ‘neither the UK Listing Rules, nor the City Code on Takeovers and Mergers prevent a company sharing price-sensitive information with representatives of employees before it is disclosed to the market, as long as those representatives are subject to an obligation of confidentiality’ (DTI Guidance, 2006, para 77), a position also understood to apply to statutory consultation on collective redundancies.

³⁰ The IPA is a voluntary organisation based in the UK that deals with the promotion of partnership and employee involvement in organisations in the public and private sector.

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ANNEX

ANNEX

Table 1. Information, consultation and negotiation

Firm	Informational basis	Conversion of information	Agenda setting for deliberation	Deliberation and collective bargaining	Path dependence
Chem1	Mostly adequate and timely provision of information concerning business, financial and employment (but not on anticipatory measures) to the employee forum and trade union	Limited ability of representatives to interpret the data and challenge management indicators	HR-led agenda, rather passive consultation arrangements that allow management to determine the course of action	Deliberation without bargaining and lack of consultation in collective redundancies with the agreement of the trade union	Moving away from negotiation to 'continuous consultation'
Chem2	Mostly adequate and timely provision of information concerning business, financial and employment (but not on anticipatory measures) to the employee forum and trade union	Varied ability of union representatives to interpret the data and challenge management indicators	Active I&C arrangements (where unions are involved) and capacity to jointly construct the agenda for consultation	Deliberation and bargaining operating interchangeably	Maintenance of collective bargaining structures and development of consultation with non-union sites
Fin1	Limited and <i>ad hoc</i> provision of information on business, financial and employment issues	Limited ability of representatives to interpret the data and challenge management indicators	HR and middle management-led, passive arrangements that allow management to determine the course of meetings	Arrangements limited to consultation concerning the implementation of management decisions	Apprehensive management stance to unions; employee consultation as a means to legitimise change
Fin2	Adequate and timely provision of information concerning business, financial and employment to the employee forum	Ability of representatives to interpret the data and challenge management indicators	Capacity to jointly construct the agenda for consultation, option-based consultation (with exceptions) active I&C arrangements and systematic consultation instances	Deliberation with consultation but not collective bargaining	Non-union management stance; employee consultation as a means to support employee involvement
Fin3	Adequate and timely provision of information concerning business, financial and employment to the employee forum	Ability of representatives to interpret the data and challenge management indicators	Capacity to jointly construct the agenda for consultation, option-based consultation (with exceptions) active I&C arrangements and systematic consultation instances	Deliberation with consultation but not collective bargaining	Non-union management stance; employee consultation as a means to support employee involvement
Retail	Sometimes limited provision of information on business, financial and employment issues	Limited ability of representatives to interpret the data and challenge management indicators	HR management-led issues for discussion	Arrangements limited to consultation concerning the implementation of management decisions	Non-union management stance; employee consultation as a means to legitimise change

Table 2. Globalisation

Firm	Relationship between capital and management	Relationship between labour and labour	Relationship between capital and labour	Relationship between international and national management	Relationship between international management and labour
Chem1	Enlightened shareholder approach	Cooperation between representatives in different UK sites; formal meetings with representatives from other EU sites (EWC)	Transformation of social dialogue due to multiple management decision-making levels	Scope for regional diversity	Mediation of employee interests through UK management
Chem2	Enlightened shareholder approach	Absence of cooperation between union representatives from different sites/regions; formal meetings with representatives from other EU sites (EWC)	Transformation of social dialogue due to multiple management decision-making levels	Scope for regional diversity	Mediation of employee interests through UK management
Fin1	Enlightened shareholder approach	Limited cooperation between representatives in different UK sites; formal meetings with representatives from other EU sites (EWC)	Influence of offshoring, as an instance of globalisation, on management-union relations	Not applicable	Not applicable
Fin2	Enlightened shareholder approach	Cooperation between representatives in different UK sites	No evidence of transformation in collective consultation	Not applicable	Not applicable
Fin3	Enlightened shareholder approach	Cooperation between representatives in different UK sites; formal meetings with representatives from other EU sites	Impact of demutualisation on the role of the employee forum	Not applicable	Not applicable
Retail	Shareholder primacy approach	Cooperation between representatives in different UK sites; formal meetings with representatives from other EU sites	Re-iteration of non-union strategy	Not applicable	Not applicable

Table 3. Role of public actors

Firm	Role of the UK	Role of related States
Chem1	No involvement of public actors	Indirect influence of the US labour market regulation
Chem2	State support for investment in Northern Ireland	Indirect influence of the US labour market regulation (e.g. redundancy payment)
Fin1	No involvement of public actors	India: low labour costs
Fin2	No involvement of public actors	Not applicable
Fin3	No involvement of public actors	India: low labour costs
Retail	No involvement of public actors	Not applicable

