



CONSULTATION DOCUMENT

Workplace representatives:
a review of their facilities
and facility time

JANUARY 2007

WORKPLACE REPRESENTATIVES - A REVIEW OF THEIR FACILITIES AND FACILITY TIME

CONTENTS

	Page
Executive Summary	5
Chapter 1 - Introduction	13
Chapter 2 - The characteristics of representatives	19
Chapter 3 - Time off for representatives	25
Chapter 4 - Training and time off for training	31
Chapter 5 - Facilities for representatives	37
Chapter 6 - Guidance for representatives	41
Chapter 7 - The regulatory framework	47
Annex A : Focus group report	57
Annex B : Benefits and costs of workplace representatives	77
Annex C : The legal framework	105
Annex D : Central government guidance on the law relating to workplace representatives	111
Annex E : List of consultees	113
Annex F : Code of Practice on Consultation	117

EXECUTIVE SUMMARY

In June 2006, following prior consultation, the Government launched a review of the facilities and facility time provided to workplace representatives. This consultation document presents the first findings of that review.

The basic issues which the review addresses are :

- whether new methods of working at the modern workplace seriously affect the ability of workplace representatives to function well; and
- whether the effectiveness and efficiency of workplace representatives can be enhanced in order to optimise the net benefits they bring to employees, employers and society more generally.

There are over 350,000 workplace representatives, quite evenly split between union and non-union representatives. Union representatives are more active and perform a wider range of functions. Their numbers, though large, may be declining relative to the increased size of the workforce. However, an estimated 47 per cent of the employees work at workplaces with an on-site representative. Representation is much more marked in the public sector.

Workplace representatives tend to be quite old. Women, though an increasing proportion of the total, are under-represented. There is evidence to suggest that union representation is thinning out. Union representatives are aged 46 on average and there is evidence that unions are finding it difficult to recruit new and younger members as representatives.

Time off

Senior union representatives at recognised workplaces spend an average 12.5 hours a week on their union duties. Most is taken during working time though a significant amount is taken in the representative's own time, probably at their homes. A large

minority of union representatives spend little time on their duties. But non-union representatives spend much less time on their duties.

Data show that the amount of time off taken by representatives has not declined, and may have increased, since 1998. However, many union sources argue that representatives are under increasing pressure and are failing to take sufficient time off at work to undertake their functions effectively. In particular, the absence of cover, the negative attitude of middle managers and the increasing pressures on representatives to service their members off-site or on complex issues are cited as problem areas.

These problems, together with privacy concerns, are allegedly resulting in more representatives using their own time for union business.

Training

Most union representatives receive training in their functions. But only about a fifth of non-union representatives are trained. Union representatives report that they are usually paid when they are trained but over one in seven say that they never receive payment. There are grounds to believe that taking time off for training is more difficult for representatives to obtain because it typically involves lengthy absences from the workplace.

For many years there has been a well-organised system of trade union training in this country. Over 40,000 students attended TUC-organised courses in 2005. There are a wide range of courses, including core training for shop stewards and short courses on specific topics. The latter are becoming increasingly significant. The TUC plans to make all its courses available on-line in 2007.

The state spends about £10m each year in supporting trade union training. The evidence suggests that these courses are well taught in educational terms though there is much less evidence about the impact of such training back at the student's workplace.

The Government values the training which representatives receive and wishes to promote a public debate about the future direction of trade union training, including the expanded use of on-line training methods.

Facilities

Most representatives have access to basic office facilities, enabling them to communicate with their constituencies. A major change since 1998 is the increasing proportion of representatives with access to a computer at work.

It is thought, however, that certain categories of representative are missing out on this positive development because of their occupation. This may create a two-tier system of representation with some representatives enjoying the significant advantages of using a computer to communicate and access information, whilst a minority works without such equipment.

Representatives also report that they chose not to use workplace computers because of security and privacy concerns. Consequently, a significant minority prefer to use their own computers, thus increasing the tendency to use their own time for their trade union duties.

Guidance for working with representatives

There are a wide range of materials produced by different Government Departments and agencies on the rights of workplace representatives. These materials could be more useful and accessible if some guidance were consolidated or a single portal created to access all the guidance available.

There may also be advantages if another piece of guidance were produced providing a guide to the law on all types of workplace representative.

The Advisory, Conciliation and Arbitration Service (Acas) and the Health and Safety Commission (HSC) also produce three Codes of Practice on workplace representatives between them. These Codes have special legal status, and the HSC

Codes in effect establish legal norms for the treatment of safety representatives. These Codes have not been significantly revised since they were first published in the mid 70s.

The Government considers that the Acas Code needs to be updated to reflect changing patterns of work and modern workplace behaviours.

Unions and employers also produce their own guidance to representatives and managers. Sometimes that guidance in the form of facilities agreements is a joint document. It is believed that much of this local guidance is long-standing and may not itself have been revised for many years. The Government therefore calls on parties to examine whether their in-house guidance materials need to be updated.

Legal entitlements for representatives

There are at least 15 different sets of legislation covering the various categories of workplace representative. Some have existed for over 30 years, whilst a range of others have been introduced since the late 90s, often in response to EU regulation.

Formal complaints to the employment tribunal about alleged breaches of these laws are low, and have been stable over time.

Some workplace representatives – including most non-union representatives and the representatives of non-recognised unions – have no statutory rights, or enjoy very limited entitlement.

There are also big differences in entitlement among those representatives which have statutory underpinning. Some have no entitlement to facilities whilst others do. Some have rights to time off for training whilst others do not. And one category has no entitlement to any time off at all.

In addition, the wording used in statute to express the same entitlement varies from one piece of legislation to another, without any obvious rationale. These differences appear small but they could potentially produce different effects. It is possible that

this body of law could be helpfully consolidated or simplified, and more consistent wording used across these closely related entitlements.

Entitlements to time off are often subject to a “reasonableness test” or its equivalent. This has led some parties – both employer and trade union – to suggest that a greater certainty should be introduced into the entitlement.

The Government asks respondents to consider these and other suggestions to change the legal framework, though, on the evidence so far available, it does not see a compelling case for change.

Benefits and costs

In its initial findings, the review makes no recommendations to change the legislative framework. This document does not therefore contain a Regulatory Impact Assessment. Annex B to the consultation document presents a detailed assessment of the benefits and costs of the existing regulatory framework.

The DTI estimate that workplace representatives bring an identifiable range of benefits worth £476 million - £1,133 million annually, in addition to which there may be significant other gains from increased productivity. The costs to their employers of providing paid time off and facilities ranges between an estimated £407 million to £430.4 million annually.

Representatives spend large amounts of their own time – estimated to value £115 million annually – on their duties.

Next Steps

Respondents should reply by 29 March 2007 to :

Harjinder Kaur
Employment Relations Directorate
Bay 3124
Department of Trade and Industry
1 Victoria Street
London SW1H 0ET

Email : harjinder.kaur@dti.gsi.gov.uk
Fax : 0207 215 0227

The Government will then respond to the consultation and conclude the review by the summer 2007.

Consultation questions

This consultation document presents the following questions for consultees to address:

Question 2a - In the light of the data and trends described in Chapter 2, what is the future of workplace representation and the expression of employee voice on unchanged policies ?

Question 2b - Is workplace representation sufficiently diverse and, if not, how can the under-representation of women, ethnic minorities and younger workers be addressed ?

Question 2c - What benefits do workplace representation bring, and how can those benefits be realised more fully ? Do the estimates in Annex B provide a broadly acceptable basis for quantifying the existing benefits ?

Question 3a - Do you agree that any or all of these five issues discussed at paragraphs 3.11 – 3.20 constitute a significant problem for representatives, and if so, how should they be addressed at the workplace or through other initiatives ? Do you know of any innovative approaches adopted by employers and others - via, say, extra management training or the adjustment of workplace objectives - to overcome this type of problem?

Question 3b - Do the estimates in Annex B provide a broadly acceptable basis for quantifying the existing costs to employers and representatives of time allocated at work and at home on the duties of representatives ?

Question 4a - To what extent do problems with securing time off for training exist and how best should they be addressed to ensure that the needs of both the representative and the employer are met.

Question 4b - How should the increasing availability of online training be best exploited to provide more flexible training for workplace representatives ?

Question 4c - How should the content of trade union training courses be shaped to deal with the key issues facing workplaces in the coming decade ?

Question 4d - Is there a need for the impact of trade union education to be assessed and, if so, how should an impact assessment be devised and implemented ?

Question 4e - Do consultees consider that the absence of training of non-union representatives constitutes a problem and, if so, what are its principal causes and what ought to be done to alleviate the problem ?

Question 5a - Is limited availability to email or the internet at the workplace leading to two tier representational arrangements, and, if so, what practices or remedies could be adopted to harness the benefits of ICT working for those representatives who cannot use such equipment in their normal jobs ?

Question 5b - Do you consider that the use of workplace ICT equipment by representatives is seriously jeopardised because of a perceived lack of privacy, and if so, how do you think the necessary degree of privacy could best be achieved without threatening the legitimate security interests of the employer ?

Question 6a - Do you think that the Acas Code of Practice needs to be updated to reflect modern circumstances especially the points raised in paragraphs 6.14 and 6.15?

Question 6b - Should the many sources of guidance be rationalised and, if so, how ? Is there a demand for a new guidance publication containing guidance on all types of workplace representative, and is there a need for a portal to be created on the DTI website, creating a comprehensive set of links to all the main pieces of separate guidance relating to workplace representatives ? Do you have any views about the quality and style of the guidance produced by central government and its agencies ?

Question 6c - Are line managers adequately trained and advised about their management of workplace representatives, and if not, what initiatives could be undertaken to rectify any deficiency ?

Question 7a - Should the law on workplace representatives be revised to deal with any of the issues a –e discussed in Chapter 7 and, if so, what sort of revision should be made?

CHAPTER 1: INTRODUCTION

The review's terms of reference

1.1 In March 2006, the Government published a major policy document entitled *Success at Work* which set out a number of initiatives to improve workplace performance and employment relations. It announced that the Government would undertake a review of the facilities and facility time available to workplace representatives.

1.2 In June 2006, the Government formally launched the review and published the following terms of reference :

‘ The Government recognises the valuable role played by workplace representatives, both trade union and non-trade union. This review will assess whether representatives have sufficient access to facilities and facility time to enable them to carry out their functions efficiently and effectively, bearing in mind the needs and resources of modern workplaces. It will also assess whether there is a need to clarify or simplify the relevant statutory rights governing facilities and facility time, and whether there is adequate practical guidance provided to help parties apply those entitlements at the workplace.

The review will be carried out by the DTI, in cooperation with DfES, DWP, the Health and Safety Commission, Health and Safety Executive and other Government Departments, through full consultation with interested stakeholders.

The Government aims to complete the review by spring 2007 and any recommendations will be implemented before the end of this Parliament. ’

1.3 Since launching the review the DTI has held informal consultations with a number of interested organisations including the CBI, the TUC, the Engineering Employers Federation (EEF), and the Chartered Institute of Personnel and Development (CIPD) to help identify the issues and assemble information about the position of workplace representatives.¹ With the assistance of the TUC, the DTI has also held three focus groups of trade union representatives to learn more about the direct experiences of such representatives in their everyday work. A report summarising those discussions is appended at Annex A. In addition, the review has examined the main sources of information about the position of workplace representatives, especially the 2004 Workplace Employment Relations Survey (WERS 2004).

¹ These bodies and a small number of other organisations also took part in some preliminary consultations during 2005 before *Success at Work* was drafted.

The scope of the review

1.4 This review examines the position of all workplace representatives. There are different types of workplace representative ranging from shops stewards and convenors through to health and safety representatives and union learning representatives (ULRs). Most analyses focus on trade union representation, though a large proportion are non-union, particularly among those individuals who represent employees in consultative forums. Some representatives perform an ongoing role, and the analyses reported in this consultation document mainly feature this group. But other representatives are appointed for a finite period to complete a set task such as a consultation about collective redundancies or a business transfer, and they too are within the scope of this review.

1.5 Most workplace representatives are underpinned by statutory entitlements to time off and their key functions are set out in statute. Those legal entitlements have increased since 1997: for example, ULRs were given an entitlement to paid time off in the Employment Act 2002 and the Information and Consultation of Employees Regulations 2004 assigned time off rights to workers formally appointed under those Regulations to act as Information and Consultation Representatives (I&C Representatives). However, other categories of representative - for example, equality and environmental representatives appointed by trade unions - are relatively recent phenomena and there are no specific statutory entitlements covering their activities.

1.6 Reflecting the diverse tasks of representatives, different Government Departments or agencies take an interest in their work. For example, the Health and Safety Executive and the Department for Work and Pensions are closely involved with the work of health and safety representatives. And the Department for Education and Skills take the lead policy responsibility for ULRs. The DTI has therefore set up a working group of officials from these various Departments to pool knowledge, and to help steer the review and the drafting of this consultation document.

1.7 There are hundreds of thousands of workplace representatives. They perform vital roles, and can contribute a great deal to workplace life, benefiting both employees and employers. But the Government recognises that workplace life has changed considerably over the last decade or more. Information technology is now widely available and can potentially transform the way representatives perform their duties. Other changes - for example, the wider diversity of the workforce and the increasing complexity and pressures of workplace life - are perceived by many representatives as presenting significant challenges to their ability to perform well. These and other difficulties are thought to dissuade younger employees from volunteering to become workplace representatives. The central issues which the review therefore addresses are:

- whether these changes seriously affect the ability of workplace representatives to function well ; and
- whether the effectiveness and efficiency of workplace representatives can be enhanced in order to optimise the net benefits they bring to employees, employers and society more generally.

1.8 This consultation document examines both the regulatory and non-regulatory issues relating to workplace representatives. Among the regulatory issues which the review will address are the consistency and adequacy of the rights to paid time off and facilities enjoyed by the various categories of workplace representative. This review does not generally look at the specific statutory functions assigned to the different types of workplace representatives.² So, this review does not assess whether the functions of union equality or environmental representatives should be placed on a statutory footing.

1.9 Workplace representation is not the only way to engage a workforce. Direct forms of employee engagement usually operate in combination with indirect methods of workplace representation. And many employers use direct communication only. The Government recognises that all types of employee engagement can work very effectively in the right context. It is not therefore the purpose of the review to assess the relative merits of these different approaches. Instead, the focus is to examine how representative systems can function more effectively, where parties chose to use that form of engagement.

Structure of this consultation document

1.10 This consultation document sets out the information provided during the initial consultations and presents the evidence available and the opinions expressed to us. The issues are organised as follows:

Chapter 2 - The characteristics of representatives

Chapter 3 - Time off for representatives

Chapter 4 - Training and time off for training

Chapter 5 - Facilities for representatives

Chapter 6 - Guidance for representatives

Chapter 7 - The regulatory framework

In each chapter, the consultation document poses questions for consultees to address. For convenience, these questions are also set out at the end of the Executive Summary. At this stage in the review, the Government has not reached conclusions on the actions and measures, if any, which it or others should take. This consultation document therefore contains no recommendations to change the regulatory framework. It follows that this document does not contain a Regulatory Impact Assessment. However, Annex B contains some estimates of the costs and benefits of the existing legislation relating to workplace representatives.

² It is worth noting that the Health and Safety Commission has itself undertaken its own consultation in 2006, looking at a wide range of issues about worker participation including the role of health and safety representatives.

Next steps

1.11 This consultation lasts for three months. The DTI will then examine the responses received and issue a response to the consultation document. It is the Government's intention to implement any recommendations which fall to it to progress in the life of this Parliament.

How to respond to this consultation

1.12 Please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who or what the organisation represents and, where applicable, how the views of its members were assembled. Please submit your response to this consultation by post, email or fax to:

Harjinder Kaur
Employment Relations Directorate
Bay 3124
Department of Trade and Industry
1 Victoria Street
London SW1H 0ET

Email : harjinder.kaur@dti.gsi.gov.uk
Fax : 0207 215 0227

Closing date

1.13 Responses must be received no later than 29 March 2007.

Confidentiality

1.14 All information, including personal information, provided in responses to this consultation may be subject to publication or disclosure in accordance with freedom of information legislation. If you wish that any other information you provide should be treated as confidential, please inform the DTI accordingly. You should be aware that under the Freedom of Information Act 2000, there is a statutory Code of Practice with which public authorities must comply and which, amongst other things, deals with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we then receive a request for disclosure of this information we will take full account of your explanation but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

List of consultees

1.15 A list of those organisations to whom we are sending this consultation document is provided at Annex E. If you have any suggestions about other organisations or individuals with an interest in this review, please let the DTI know and we will ensure they have access to this document.

Additional copies

1.16 Additional copies of this consultation document may be made without permission. Further printed copies may be obtained by post from DTI publications:

DTI Publications Orderline
ADMAIL 528
London SW1W 8YT
Tel: 0845 015 0010
Fax: 0845 015 0020
Minicom: 0845 015 0030
Web: www.dti.gov.uk/publications

Electronic versions may be viewed on the DTI web site at:
<http://www.dti.gov.uk/employment/whats-new/index.html>

Help with queries

1.17 If you have questions about any of this issues discussed in this document, please contact Harjinder Kaur by telephone (020 7215 6171) or by email (harjinder.kaur@dti.gsi.gov.uk).

Complaints about this consultation

1.18 The Code of Practice, with which this consultation should adhere, is set out in Annex F. If you wish to make a complaint about, or comment on, the way in which this consultation has been conducted, please contact:

Mary Smeeth
Consultation Co-ordinator
Better Regulation Team
Department of Trade and Industry
1 Victoria Street
London SW1H 0ET

Telephone: 0207 215 2146
Email: Mary.Smeeth@dti.gsi.gov.uk

CHAPTER 2 – THE CHARACTERISTICS OF REPRESENTATIVES

2.1 The 2004 Workplace Employment Relations Survey provides the best source of statistically reliable data on workplace representatives. The WERS series dates back to 1980 and each survey contains a set of interviews with a workplace manager and the senior union representative, where present, at the workplaces surveyed. The 2004 WERS went further and questioned both the main union representative and the main non-union representative at workplaces where they were present. An important feature of WERS is that the interviews with representatives focus on the most senior representative only: this means that in workplaces with several representatives, a fairly common occurrence, the position of more junior representatives is not reported. Some allowance for this fact is therefore needed when interpreting WERS information.

2.2 This chapter describes the basic personal and other characteristics of workplace representatives using WERS data as the main source of information. To facilitate comparisons between the 1998 and 2004 WERS surveys, the data cover workplaces employing 10 or more people, unless otherwise stated. Workplace representatives tend to be found in larger workplaces: so the WERS analyses cover the bulk of them.

The numbers of workplace representatives

2.3 Workplace representation can be union or non-union. In the former category we find shop stewards, union health and safety representatives and union learning representatives (ULRs), as well as union members who act as representatives on joint consultative committees (JCCs). Non-union representatives generally perform consultative functions, sometimes as members of JCCs and sometimes in settings without formal consultative machinery. Some workplaces have both union and non-union representatives on-site, though it is more usual for workplace representation to be union only or non-union only. It is common for union representatives to perform several roles simultaneously : for example, the same person can be a shop steward, a JCC member and a ULR.

2.4 Using WERS as our basis, DTI estimates that there are 322,000 representatives on-site at British workplaces in 2004, excluding representatives who deal exclusively with health and safety issues. This number is divided almost equally between union and non-union representatives. WERS is not an ideal source to estimate these numbers, and we have needed to rely here on the management interview to identify the number of representatives at the workplace.

2.5 It is difficult to reproduce these estimates for earlier years because the questions used in the 1990 and 1998 WERS were different and they do not allow consistent estimates to be made.³ But WERS does provide circumstantial evidence suggesting that numbers of representatives are in decline. For example, in 2004, just 45 per cent of workplaces where management recognises a union had on-site union

³ However, it is possible to estimate in both the 1998 and 2004 WERS the number of on-site representatives of recognised unions at workplaces employing 25 or more people. These suggest a decline from 156,700 in 1998 to 137,000 in 2004, though that change is not statistically significant.

representation. In 1998, the corresponding figure was 55 per cent. Though this fall was compensated by an increase in off-site union representation, it is a notable development and strongly suggests that union representation is thinning out. As regards non-union representation, it is difficult to be certain whether it is moving upwards or downwards. However, it is worth noting that the proportion of workplaces with JCCs fell from 20 per cent in 1998 to 14 per cent in 2004. Much of this decline was concentrated in workplaces which did not recognise trade unions

2.6 Representatives are located within 14.5 per cent of workplaces employing five or more people. But they are concentrated in larger establishments. Consequently, 47 per cent of all employees working in workplaces with five or more employees work at establishments where there is at least one on-site representative.

2.7 There are sharp differences between the private and public sectors, largely reflecting the much higher concentration of union membership in the public sector. 77 per cent of public sector employees work at establishments where there is an on-site representative, whereas 37 per cent of private sector employees work at workplaces with on-site representation. Union representatives are found in about the same number of workplaces in both the private and public sectors. In contrast, over 80 per cent of the all workplaces where there is non-union representation are found in the private sector.

The personal characteristics of representatives

2.8 According to WERS 2004, union representatives tend to be male (56 per cent are male), relatively old (78 per cent are 40 or over, and the average age is 46) and work full-time (92 per cent are full time employees). In addition, ethnic minorities are under-represented: just four per cent are non-white.

2.9 There have been some interesting changes over time. For example, the proportion of female representatives has increased quite sharply: in 1998, just 35 per cent of union representatives were female. Workplace representatives who are responsible for new areas such as union learning are more likely to be drawn from a wider background than traditional representatives. Research into the characteristics of ULRs shows that many had not held a position in the union previously. In comparison with traditional representatives, they were also more likely to be women, to come from an ethnic minority background and to be young.

2.10 The characteristics of union representatives also varies a lot by sector. Seventy two per cent of union representatives in manufacturing were male, white, aged 40 or over and worked full-time. But in the public sector and private services sector, there was more diversity with 36 per cent and 35 per cent respectively exhibiting this profile. In part, this pattern reflects differences in the composition of the workforce unions represent. The 2004 WERS suggests that union representatives tend to reflect the gender of the employees they represent. Eighty per cent of union representatives were typical of at least 40 per cent of their constituents in terms of their gender.

2.11 Union representatives have been in position for eight years on average. This is higher than the six years reported in 1998, and implies that union representation is ageing.

2.12 Non-union representatives, especially those who are members of JCCs, share many of the personal characteristics of their union counterparts. But there are some notable differences, especially among that group which are not members of JCCs and are classified in 2004 WERS as “non-union stand alone representatives”. That group are predominantly female (73 per cent) and, perhaps as a result, a higher proportion (28 per cent) are not full-timers. Both types of non-union representative - JCC members and “stand alones” - tended to be younger than union representatives and they have been in post for shorter periods (five years on average).

What do representatives do ?

2.13 We will discuss time off for representatives in the following two chapters. But it is worth noting here that union representatives devote significantly more hours to their duties than non-union representatives. According to 2004 WERS (which, to repeat, principally covers senior representatives), about 10 per cent of workplace representatives work full-time on their representative functions. Of this group, the vast majority - 93 per cent - are union representatives, most of whom are found in health or other parts of the public sector. It follows that most representatives work part-time on their duties, but in this group, too, union representatives spend on average much more time than non-union representatives on their duties (6.3 hours a week compared against 2.5 hours a week).

2.14 Workplace representatives undertake many types of task when discussing issues with the employer or other employees. The 2004 WERS does not give us precise estimates of the actual amount of time spent on their activities. But the survey shows that most representatives spend time on issues relating to terms and conditions, welfare issues such as health and safety and on staff selection and development. Union representatives were much more likely than non-union representatives to spend time on personal cases such as disputes about individual grievances or disciplinary matters. WERS also suggests that union representatives tended to spend time on a wider range of issues than their non-union counterparts. Union representatives are also involved in the organisation and running of their trade unions.

2.15 The Government considers there is a strong business case to engage employees in the running of their employer’s organisation, and most good employers involve their workforce in one or more ways. Many businesses are successfully run without formal representative structures, and choose instead to engage directly with their workforce. This type of communication is growing and is the dominant form of employee engagement in many parts of the economy. That said, there are many potential benefits that representatives bring to the workplace and society more generally. For example, accident rates can be lower because representatives provide better information about workplace risks so that they can be adequately assessed and more effective remedial measures put in place. Good representation also help resolve workplace disputes more easily, resulting in fewer employment tribunal cases. There is also evidence that unionised workplaces have better training policies and ULRs have successfully introduced many thousands of employees to training which has

enhanced their productivity. Annex B estimates some of these benefits as ranging between £476m and £1,133m annually.⁴

2.16 At their best, representatives provide a very effective form of employee voice to the workplace. The existence of employee voice can help smooth the running of businesses and adaptation to change. Issues can be fully explained and adequately explored as a result, drawing on the knowledge and experience of a workforce. Because individual workers may feel reluctant to express their views to their employers, especially on sensitive issues, good representative structures can result in more input by workers in such decision-making. Thereby, employer decisions are improved and difficult decisions can be implemented with less resistance and have greater legitimacy than would otherwise be the case.

2.17 Equally, it must be recognised that representative structures can malfunction and lead to more disagreement and conflict at the workplace. And the evidence suggests that representatives function least well where employers resist their involvement and where the climate of employment relations is anyway poor. Annex B does not attempt to estimate the possible size of these potential benefits and disbenefits, but they are likely to be significant.

2.18 The Government favours a partnership approach in the workplace and encourages employers, employees and representatives to work together constructively to address workplace challenges. The DTI's Partnership Fund explored areas in which employers and representatives can work together. The Union Modernisation Fund has also focussed on helping union representatives to develop a wider dialogue with employers through better use and understanding of their information and consultation arrangements. Research shows that employee attitudes are conducive to partnership working, and employees are generally put off by confrontational approaches. If representatives want to engage more with their fellow employees, and if more representatives are to be recruited (especially among women and the young) then the Government considers that the adoption of more cooperative styles of working may assist.

2.19 Young people are interested in equality and environmental issues, but they are less likely to join a trade union. By taking forward their work in these areas, unions can demonstrate to young workers that they are relevant to their working lives and concerns. It would also help unions to recruit the next generation of representatives in the same way that issues around union learning has brought new representatives into the union movement.

Question 2a - In the light of these data and trends, what is the future of workplace representation and the expression of employee voice on unchanged policies ?

Question 2b - Is workplace representation sufficiently diverse and, if not, how can the under-representation of women, ethnic minorities and younger workers be addressed ?

⁴ Annex B also estimates a more general gain of £3.4 – 10.2 bn from increased productivity. This is a speculative calculation, but its magnitude implies that the benefit is potentially very great.

Question 2c - What benefits do workplace representation bring, and how can those benefits be realised more fully ? Do the estimates in Annex B provide a broadly acceptable basis for quantifying the existing benefits ?

CHAPTER 3 - TIME OFF FOR REPRESENTATIVES

3.1 Workplace representatives need time away from their normal job to undertake their duties as representatives. Consequently, most representatives enjoy statutory rights to time off with pay to perform their central functions. Many representatives also spend their own time on their duties. This chapter examines how time off is being taken, and discusses whether the modern workplace practices have affected the ability of representatives to devote sufficient time to their duties.

Time spent on representative functions

3.2 Most representatives spend relatively little time on their union duties, as the Table 3.1 shows. The median amount of time off for all representatives is three hours a week, and a significant proportion, even among union representatives, spend an hour or less a week on their duties. Mindful of the fact that these WERS data relate to senior representatives only and junior representatives are likely to spend less time on their duties, the figures imply that a sizeable proportion of representatives are quite inactive.

Table 3.1 Time off for Representative Duties

Hours per week spent on Rep Duties	Union Reps	Non-Union JCC Reps	Non-Union Stand Alone Reps	All Workplace Reps
1 hour or less	24	53	66	34
2 – 4 hours	33	28	25	31
5 or more hours	43	19	9	35

Source : WERS 2004. Note : Workplaces employing 10 or more. WERS 2004 codes replies to the nearest whole hour.

3.3 As noted in the previous chapter, non-union representatives spend significantly less time on their functions. This perhaps reflects the narrower range of duties which such representatives perform and the fact that they do not have to spend time on recruiting or organising, and they typically spend less time on communicating with their fellow workers. Representatives in the private sector tend to spend less time on their duties. This is not just the result of the fact that non-union representatives are concentrated in the private sector. The average amount of time spent on union duties by the representative of a recognised union was 7.9 hours a week in the private sector, compared against 13.3 hours in the public sector.

3.4 In the 2004 WERS, 89 per cent of trade union representatives report that they were paid by their employer for carrying out their workplace duties and this increases to 91 per cent at workplaces where unions are recognised. In contrast, 74 per cent of non-union representatives also receive payment for carrying out their duties. Representatives are also more likely to be paid the more representative work they carry out. All full-time representatives (i.e. employees who work full-time on

representative activities) and 95 per cent of those who carry out five hours or more on duties are paid by their employer.⁵

Unpaid time spent on representative duties

3.5 Many representatives report they spend their own time on their duties. Most union representatives attending our focus groups reported that they regularly used their own time and facilities to prepare for their functions and to give direct advice to union members. However, there is a dearth of precise, and statistically representative, information about the amount of time spent by representatives on their trade union duties at home. WERS does not explicitly ask questions about this issue but it contains other information on which to base assumptions about the level of home working. Annex B estimates that 10 per cent of total time spent by representatives on their work takes place in their own time.

Cost of time spent on representative activities

3.6 As reported in Annex B, our estimates suggest that the total cost to employers of giving paid time off for trade union activities is around £400 million annually. That represents about 0.07 per cent of the annual pay bill. Much of that cost is actually borne by public sector employers, given the numbers of union representatives in that part of the economy and the greater amount of time they spend on their representative functions. The annual cost of time off for the private sector is estimated to be £175 million.

3.7 The work undertaken by representatives in their own time also has a value. This can be estimated by calculating the additional earnings they would have received had they spent the same amount of time in paid employment. Annex B uses this approach and values this homeworking at around £115 million a year. This substantial sum is a cost to the representatives but it represents a significant benefit to workers, union members and to the employers who employ them.

Issues arising

3.8 At first sight, it appears from the figures available that the position of representatives in relation to their time off has not deteriorated over recent years. The data from the 1998 and 2004 WERS surveys imply that union representatives spent less time on their duties in 1998 than in 2004. For example, 44 per cent of them reported that spent five or more hours a week on their duties in 2004 whereas only 24 per cent did in 1998. At the other end of the distribution, 52 per cent of union representatives in 1998 said they spent less than two hours a week on their duties compared against 24 per cent in 2004. It should also be noted that the constituencies of union representatives has not changed much between 1998 and 2004. For example, the representative of a recognised union represented 22 workers on average in 1998 and 24 workers in 2004, a rise which is not statistically significant.

⁵ Other sources of information suggest that payment for time spent on union duties may be less prevalent, especially if more junior representatives are taken into account. A TUC survey showed that nearly one third of representatives in the NHS have no paid time off for representative duties.

3.9 Our focus groups and our other consultations with trade unions suggest that position of workplace representatives may not be as benign as these bare figures imply, and representatives may find genuine difficulty in obtaining the amount of time off they need to perform their functions adequately. These potential problem areas are discussed below.

(a) Pressures of the job

3.10 There are always strong pressures on employers to keep costs under control and to deliver a good service to customers. But these pressures are thought to be intensifying. There are also more demands placed on the public sector to improve the standards of service to the public within tight budgets. At many workplaces teams have become more streamlined. Both teams and individuals operate within strict performance targets. Against this background, the loss of one member of staff for a number of hours each week, especially when deadlines have to be met, can have a significant effect to a team's performance. These pressures are the greater if the team cannot secure cover from other colleagues to help meet these demands.

3.11 Our informal consultations among trade unions and our focus groups have raised this issue as the main difficulty which lay representatives face when obtaining time off. This may take the form of a reluctance by line managers to give time off. It can also take the form of other work colleagues putting pressure on workplace representatives not to take time off. Representatives report that their work loads are rarely reduced when they take time off. So, when faced with these conflicting pressures, representatives simply do not take time off or devote insufficient time to their trade union duties. In a survey undertaken between 1998 and 2000 involving three unions (MSF, GMB and AEEU)⁶, 80 per cent of representatives reported that their role as a union representative had become much difficult owing to increased work pressure.

3.12 The Government recognises the multiple demands on scarce staff resources that many organisations face. Different organisations are likely to have established various and sometimes innovative approaches to resolve these conflicts.

(b) Middle managers

3.13 Our initial consultations suggest that, where representatives operate, senior or specialist HR managers are rarely hostile to their work: they usually appreciate the potential benefits to the organisation as a whole if they operate efficiently and effectively. Such managers are often prepared to enter time-off agreements with their recognised trade unions.

3.14 But management is an increasingly devolved activity. Middle managers are responsible for team performance, and their status and earnings can be closely linked to the achievement of team goals. According to our informal discussions, the attitude of those middle managers who act as line managers for workplace representatives is often crucial to the successful running of time-off arrangements. It is reported that

⁶ Upchurch, Martin; Danford, Andy and Richardson, Mike, "Research note: profiles of union workplace representatives: evidence from three unions in south-west England" in *Industrial Relations Journal*, Vol 33:2, June 2002.

middle managers can frustrate the smooth implementation of time off agreements through ignorance of the role of representatives and the arrangements made for them. In particular, there may be little incentive for middle managers to release a colleague for their representative duties because they experience no direct benefit as a result or because their team's objectives are not adjusted to take account of commitments to those representatives.

(c) Complexities of the role

3.15 Over the last 20 years or more, there has been a steady increase in the number of employment rights and case law has grown. General employee awareness of those rights has also expanded. These developments have changed the demands placed on workplace representatives, especially union representatives who advise on personal cases. Our focus groups reported this trend as a significant influence on their work. They also reported that their fellow workers also tended to ask them for legal advice or counselling on non-employment issues as well. These developments require representatives to spend more time keeping abreast of employment law and researching relevant issues.

(d) Off-site representation

3.16 As we have seen, a larger proportion of union representatives are responsible for several workplaces and not just the workplace where they are normally based. Where this occurs, representatives need to be able to take more time off to travel to and from their own workplace to visit other sites. They may also need to understand the conditions in other workplaces with which they are not familiar.

(e) Implications for work-life balance

3.17 Many representatives spend a significant amount of their own time on their duties as representatives. In part, that might be the result of the factors mentioned above or it might be because the wish to undertake duties which carry no right to paid time off. Also, some representatives actually wish to spend their leisure time on such activity because they enjoy it. Our focus groups identified some additional reasons. For example, representatives may prefer to work on their home computers to avoid the perceived lack of confidentiality when using workplace computers. Also, some representatives reported that the increased diversity of working patterns meant that they were rarely at work during the same hours as some members of their workplace constituencies. So, servicing their needs in their own time was often the best option available, when issues arose.

3.18 Undertaking some or all of their representative duties at home will have an impact on the representative's work-life balance, especially if he or she has caring responsibilities for an elderly relative or young children, for example. It also makes it more difficult for trade unions to recruit and retain new representatives, especially among women and the young. Our focus groups pointed to the difficulty of finding volunteers among the young to sustain representative arrangements.

Question 3a: Do you agree that any or all of these five issues constitute a significant problem for representatives, and if so, how should they be addressed at the workplace or through other initiatives ? Do you know of any innovative approaches adopted by employers and others - via, say, extra management training or the adjustment of workplace objectives - to overcome this type of problem ?

Question 3b - Do the estimates in Annex B provide a broadly acceptable basis for quantifying the existing costs to employers and representatives of time allocated at work and at home on the duties of representatives ?

CHAPTER 4 – TRAINING AND TIME OFF FOR TRAINING

4.1 Training is an important way in which representatives are able to gain the knowledge that they need to carry out their representative functions. Trained representatives are able to offer a better service to their constituents and can carry out their work more quickly and with greater confidence. TUC research on health and safety training showed that 96 per cent of representatives found training helpful in enabling them to undertake their duties when they returned to the workplace.

4.2 The Government recognises the significance of training for representatives in delivering gains at the workplace. This chapter looks at representatives' access to training and the types of training typically provided.

Patterns of training

4.3 According to the 2004 WERS, formal training is quite a common experience for representatives. Sixty three per cent of all representatives had received some training for their role as a representative. One third of representatives had undergone training in the previous 12 months.

4.4 Union representatives are much more likely than non-union representatives to receive training. Three quarters of trade union representatives had received training at some point in the past compared with one fifth of non-union representatives. There are various explanations for this disparity. First, there is an established culture of training and a system of support for it within unions, backed up by statutory rights to time off for training. Second, the role of the non-union representative is generally more limited, and it might be expected that their training needs are less pressing, and their demand for training is less pronounced.

4.5 Representatives are also more likely to have received training in larger workplaces and less likely to have received training in single independent establishments or in organisations where there are fewer than 100 employees.

Time off for training

4.6 Many union representatives - shop stewards, ULRs and health and safety representatives, for example - have a statutory right to reasonable time off with pay to undertake training which is related to their core functions. These rights also extend to representatives who are formally consulted by law about collective redundancies or business transfers. Employers may of course voluntarily give paid time off for training in other circumstances. And most non-union representatives must rely on this approach when meeting their training needs.

4.7 Where training takes place, employers usually provide paid time off to attend courses. The 2004 WERS shows that 82 per cent of union representatives received paid time off to attend training all the time and a further 3 per cent were sometimes given paid time off. A significant minority - 15 per cent - were not paid for any of the time off they took to attend training courses. Since 1998, there has been a slight increase in the proportion of union representatives who say they do not receive paid time off for training.

4.8 Compliance with the various statutory requirements appears high and there are very few complaints to employment tribunals alleging breaches of the time off rights. Our focus groups and informal consultations suggest that problem areas exist. Representatives report there can be more difficulty in gaining time off for training - an activity which often entails time away from the workplace - than it is to gain time off to perform duties at the workplace. It can be problematic for managers and fellow workers to provide cover for a representative's absence of a week or more away from the workplace. So, the difficulties discussed in the previous chapter about obtaining sufficient time off for duties can surface in a more acute form when the representative is seeking time off for training. Some employers may be very resistant to any training for union representatives which is not covered by the statutory entitlements. In this respect, trade unions point to the difficulties which shop stewards or dedicated environment representatives face when seeking to attend union courses about the environment or greening the workplace.

4.9 In Annex B, estimates are made of the cost to employers of provided time off for training. These range from £7.1 million to £10.7 million annually, about two thirds of which would fall in the private sector.

Training provision

4.10 For union representatives, there is a well-established system of training, backed by significant public support. The backbone of that system are courses devised and organised by the TUC. The TUC, via its educational arm unionlearn, run five core training courses for shop stewards, health and safety representatives and ULRs, as well as over 30 "short courses" that cover a range of work-related issues from employment law to tackling racism and workplace accident investigation and reporting. The core courses can last for ten days while short courses normally last for between two and three days. The TUC develops its own training courses which the Qualification and Curriculum Authority checks to ensure they meet the required educational standards. Representatives who successfully complete TUC courses achieve credits that can lead to level 2 and level 3 qualifications, and some take "access" courses which are recognised qualifications for entry to university level study.

4.11 TUC courses are mainly delivered through Trade Union Education Centres based in further educational colleges in England, Wales, Scotland and Northern Ireland. There are currently around 70 such centres, and most representatives should live within easy travelling distance of one or more. The TUC has a hand in selecting and training the trade union tutors who provide the training. A key selection criterion for tutors is experience of working within trade unions, often as representatives, and most have significant exposure to workplace life. Unions affiliated to the TUC send their representatives to attend TUC training courses, but some affiliates choose to deliver their own training at their own education colleges, local offices or in hotels and conference centres. These courses generally offer the same training as the TUC courses.

4.12 Over 3,000 students take the core course for shop stewards each year and over 4,500 students undertake the Health and Safety courses. There has been an increase in the number of short courses that are provided since 1997 and in 2004 over 27,000

students attended them. In total, just over 42,500 students took core courses, short courses and other TUC-run training in 2004.

4.13 The evidence suggests that the quality of trade union courses is high. The Office for Standards in Education and the Adult Learning Inspectorate inspect Trade Union Education Centres. Many Centres have been awarded a “Grade 1” score (“outstanding”) for the quality of teaching, student retention and course pass rates. These inspections generally measure the standards in the classroom: they do not measure the effect the training has on the representative’s performance at the workplace.

4.14 In contrast, there is no system in place to meet the training needs of non-union representatives. Where it occurs, training is usually provided on a customised and ad hoc basis to meet particular needs. Because employers would typically pay for the training of non-union representatives, it often takes the form of joint learning events for both managers and representatives. This sort of training could be provided by commercial trainers but the Advisory, Conciliation and Arbitration Service (Acas) also offers a number of options which are available in both unionised and non-unionised settings. For example, Acas run Joint Employee Representative and Management Training that aims to build effective employee forums. The Engineering Employers Federation (EEF) also runs training courses for its members and their workplace representatives on effective functioning of employee councils. It should also be remembered that an employer has a legal duty to provide – and pay for – the training of a new employee (i.e. non-union) safety representative. There are many different kinds of training course available. Popular ones include courses run by the Institute of Occupational Safety and Health (IOSH) and the Royal Society for the Prevention of Accidents (RoSPA).

Public funding and support for training representatives

4.15 Successive governments have placed importance on trade union education. For many years, therefore, there has been significant financial support for trade union training, though that support has taken different forms down the years. Currently, the Learning and Skills Council (LSC) in effect meets the cost of the fees of learners on an accredited TUC course in England. In Scotland and Wales, the TUC in effect receives a grant from the Devolved Administrations for courses that are delivered in their respective territories. In 2004, approximately £10 million was made available from these three sources, of which £8.1 million supported training in England.

4.16 The Union Modernisation Fund (UMF) has been used to support innovative training initiatives pursued by unions. Round One of the Union Modernisation Fund was held in 2005 and 35 projects received financial support totalling £3.3 million. Of those, around a dozen projects had a training dimension. For example, the UMF supported a project run by the TGWU to train officials and representatives in understanding the implications of the Information and Consultation of Employees Regulations 2004. Round Two of the UMF was launched in November 2006, and it is expected that unions will again submit projects which relate in some part to the training of representatives.

Issues arising

(a) Difficulties in securing time off

4.17 We discussed in the previous Chapter the problems which representatives may encounter – absence of cover and the negative attitude of middle managers – which may present difficulties in securing adequate time off for representatives to undertake their functions. Those issues may surface even more markedly in relation to time off for training, where prolonged or repeated absences from the workplaces might be involved.

Question 4a – To what extent do problems with securing time off for training exist and how best should they be addressed to ensure that the needs of both the representative and the employer are met ?

(b) Online training

4.18 An increasing number of courses are available online, allowing representatives to be trained on a flexible basis using workplace computers. At present, three of the five core TUC courses and four short courses are available online. The TUC plans to have all its courses available online in 2007. In order to ensure that representatives are able to draw upon the experience of other workplace representatives, online courses contain discussion forums for group members that replicate classroom-based discussions. Those who take courses online still produce a portfolio as they would in a classroom-based course and receive the same qualification.

4.19 Representatives taking a course online still need to be able to devote time in order successfully to complete the course: normally between three and four hours a week. Ideally, representatives should be able to devote a morning or afternoon to their studies and pre-courses in IT are offered to representatives who may need to develop their IT skills in order to do so. The advantage of online courses is that they can be undertaken for relatively short periods without being absent from the workplace. Everybody has preferred ways to learn about new issues. Some representatives enjoy classroom based learning and discussion, but others may prefer to undertake an online course at home or at their place of work as this may better fit their other work and home commitments.

4.20 The Government considers that online training is a very helpful addition to the options available for representatives, though it recognises that it will not be attractive to all learners or employers. In particular, the usefulness of this option depends on a representative's access to computers at work and the permissions given to use that equipment for this type of purpose. Online training should not be used as a means to press representatives to use their own time and their own computers to undergo essential training.

Question 4b - How should the increasing availability of online training be best exploited to provide more flexible training for workplace representatives ?

(c) Course content

4.21 It is mainly the role of trade unions to determine the content of courses. They know the needs of their representatives best. The Government recognises that fact and does not wish to direct unions in the way they organise themselves. However, the use of public funds and the availability of nationally recognised qualifications means that there is a legitimate role for others to comment on course content and course standards.

4.22 The content and style of courses have changed greatly over the years. The TUC is alive to the possibility of arranging new short courses which address emerging needs or issues. Often, but not always, those emerging issues concern changes to employment law. The Government recognises the strides made by trade unions in modernising their educational services. But it wishes to encourage a wider and forward-looking debate among trade unions, employers and training specialists about the types of training which should form the basis for the training for representatives over the next decade. For example, that debate could assess whether the balance within courses correctly reflects the increasing interest in dealing with workplace diversity and the impact of workplaces on the environment. There are three broad areas, each of which is covered to some degree by existing courses, where debate could focus :

- First, are so-called “soft” skills provided to representatives to listen and relate to others - either employers or their fellow workers - adequately covered ?
- Second, given the future availability of online learning, are IT skills, and IT-related research skills, adequately taught ?
- Third, are problem-solving and other partnership skills adequately taught as a complement to negotiating skills to help representatives clarify issues, maximise common ground and defuse situations before problems arise ?

4.23 The Government considers that this debate could achieve long-lasting gains. The intention is to create a broad consensus about the future priorities for trade union education, thereby ensuring a longer-term commitment and support among employers and others for trade union training.

Question 4c - How should the content of trade union training courses be shaped to deal with the key issues facing workplaces in the coming decade ?

(d) Evaluating the impact of training

4.24 There is ample evaluation of the delivery of training and the practical running of courses both by Office for Standards in Education (OFSTED) or learners. But there is less known about the ways in which that training is put to use at the workplace. In other words, there is little known about the beneficial impact of training on the effective functioning of representatives and climate of employment relations at the workplace.

4.25 That in turn makes it difficult for the designers and planners of trade union education to assess whether the training provision actually meets the longer term needs of representatives and, by extension, the organisations for which they work. It also makes it difficult for the Government to assess whether the considerable financial support for this training provides as good a return as possible. The Government therefore considers that DfES, the TUC and the Devolved Administrations should draw up an evaluation strategy which would systematically assess the impact of the training on workplaces.

Question 4d - Is there a need for the impact of trade union education to be assessed and, if so, how should an impact assessment be devised and implemented ?

(e) Training provision for non-union representatives

4.26 This Chapter has demonstrated that most non-union representatives receive no training to carry out their functions, even though their work as representatives often calls on them to demonstrate different skills than they would normally use in their jobs. This may reflect an inadequate level of demand among those representatives and their employers for training. But it might also reflect gaps in training provision.

4.27 There are a large number of such representatives and they are particularly prevalent in the private sector. Most undertake the sort of broad consultation function as is prescribed by the Information and Consultation of Employees Regulations 2004 (the ICE Regulations). The Government is a strong supporter of greater workplace dialogue, and the principles underpinning the ICE Regulations. In view of low union membership across much of the private sector, it is inevitable that the onus will often fall on non-union representatives when employers choose to develop dialogue through employee forums and other indirect means. Systematic training can provide both managers and representatives with an important means to consider and understand each other's perspective and thereby gain the maximum advantage from workplace dialogue. It is therefore a matter of concern that training is the exception rather than the rule.

Question 4e - Do consultees consider that the absence of training of non-union representatives constitutes a problem and, if so, what are its principal causes and what ought to be done to alleviate the problem ?

CHAPTER 5 – FACILITIES FOR REPRESENTATIVES

5.1 This chapter looks at the access of workplace representatives to facilities – for example, computers, email, meeting rooms and other equipment – in the workplace and how emerging technologies have affected the way workplace representatives operate.

5.2 Good facilities enable workplace representatives to communicate more effectively and efficiently with their various interest groups such as their fellow workers or the employer. Representatives also need to communicate with parties outside the workplace. This is most obvious when union representatives want to discuss issues with full-time officers or with other lay representatives. But representatives may also need to use internet facilities to research workplace issues. Most major unions now have internet sites offering a variety of information for representatives. About half of the 35 projects supported by the first round of the UMF contained some element of planned improvement to union internet communication.

Access to facilities – the current law

5.3 Statute provides a patchwork of rights to workplace facilities. Trade union health and safety representatives and employee safety representatives, as well as representatives who need to be consulted under the law on collective redundancies and business transfers, all have statutory rights to facilities. That is, the law states that employers are under a duty to make facilities available to them so that they can undertake this work. No other trade union or employee representative - shop stewards or ULRs, for example - enjoy this legal entitlement. It follows that the majority of union and non-union representatives rely exclusively on the employer and not the law for access to workplace facilities.⁷

Access to facilities

5.4 The 2004 WERS shows that most representatives had some access to facilities, but union representatives had greater access than their non-union counterparts. Only 9 per cent of trade union representatives and 14 per cent of stand alone non-union representatives had no access to any facilities. Sixty two per cent of trade union representatives and 42 per cent of non-union representatives have access to email. Relatively small numbers of union and non-union representatives have access to an intranet site: 22 per cent and 4 per cent respectively.

5.5 The 2004 WERS reported that representatives had access to more facilities in larger companies. Those representatives who were more active and spent more time on their duties also tended to have access to more facilities. The climate of employment relations was also associated with access to facilities. Where

⁷ The Acas Code of Practice “Time off for trade union duties and activities” provides guidance for representatives and employers on access to facilities:

‘Employers should consider making available to officials the facilities necessary for them to perform their duties efficiently and communicate effectively with their members, colleague lay officials and full-time officers.’

The Code of Practice then gives a number of examples that employers should consider making available ‘where resources permit’.

representatives reported that management was supportive of their role, they also tended to report greater access to facilities.

5.6 Annex B estimates the cost of providing workplace facilities. These are thought to be fairly low, given the low opportunity costs involved in forsaking the use of rooms or equipment for other purposes. Annex B tentatively puts the costs between £4.9 million and £24.7 million annually, 44 per cent of which falls in the private sector.

5.7 When comparing the results of the 1998 and 2004 WERS surveys, there is no significant change in access to meeting rooms, office space or use of telephones, though representatives of recognised unions reported increased access to photocopiers.

5.8 A notable finding is that, for representatives of recognised unions, access to computers increased substantially between the two surveys with 39 per cent having computer access in 1998 and 67 per cent in 2004. WERS is unable to tell us whether this increased computer access also shows increased access to email communication with other workers or space on the employer's intranet, as such detailed questions were not asked in 1998. A TUC report entitled 'Supporting Union Reps' confirms the widespread use of computers by representatives. The report shows that, in 2005, 45 per cent of representatives used the internet daily at work and at home, with 32 per cent using it for their representative duties and 24 per cent of representatives using it for other union activity.

Issues Arising

(a) Differential access to ICT facilities

5.9 The Government wants to encourage greater access to ICT throughout the country, and these technologies have a vast potential to transform ways of working. It is therefore encouraging that representatives now use ICT so extensively where few did a decade ago.

5.10 The use of ICT and access to computers are a pervasive feature of many jobs. But it should be remembered there are still many occupations and jobs where this is not the case. Many people on the factory floor, at the construction site or serving customers in retail do not have regular access to computers, email and the internet in the same way that an office employee does. Representatives who work in such jobs will generally find it more difficult to harness such technologies to ensure that they work effectively and efficiently. The Government is keen to avoid a situation arising where access to new technologies in effect create a two-tier representation. Indeed, it is possible that the lack of ICT facilities at work may encourage some representatives to spend even more of their own time on their duties because they possess the necessary equipment at home.

5.11 As some jobs do not entail normal or regular access to communication tools, specific arrangements may need to be considered so that representatives can leave the work area, for the necessary amount of time, in order to undertake their duties at a workstation with ICT facilities. These arrangements already exist within some

organisations. During our initial consultations, Usdaw told us that they often negotiate with employers to provide ICT facilities for their representatives to carry out their duties.

Question 5a - Is limited availability to email or the internet at the workplace leading to two-tier representational arrangements, and, if so, what practices or remedies could be adopted to harness the benefits of ICT working for those representatives who cannot use such equipment in their normal jobs ?

(b) Confidentiality

5.12 Representatives deal with confidential matters including the conduct of collective bargaining and the handling of disciplinary cases. Our initial consultations and focus groups have shown that most representatives are confident in using email and internet at work. However, some representatives believe that their employers monitor their use of email and the internet, or, just as importantly, they could monitor those communications, if they chose to do so. Members of the focus groups reported that they often preferred to use their home, rather than workplace, computers for such work, a factor which adversely affected their work-life balance.

5.13 The Government recognises the legitimate needs of employers in ensuring that their email and internet systems are used appropriately. Many employers will have a staff handbook or guidelines that define the ways ICT should be used for business and private purposes. Though many employers allow employees to access outside internet sites in rest breaks and at other times, others have strict rules prohibiting access to ensure security for their own ICT systems. Workplace representatives need to abide by these rules.

5.14 The TUC has argued that there should be formal legal protections safeguarding the privacy of electronic communications involving representatives, and imposing restrictions on the ability of employers to place those communications under surveillance. The Government is not persuaded that such measures are needed or appropriate, not least because of the difficulty in distinguishing between an individual's communications as a representative and the same person's communications as a worker. Also, some surveillance can be justified on security grounds. It appears to the Government that this matter should best be addressed through agreements between employers and representatives specifying how ICT equipment should be used and the monitoring arrangements. Many facilities agreements are old documents and probably need to be re-visited to make allowance for the recent and rapid uptake of new technologies.

Question 5b - Do you consider that the use of workplace ICT equipment by representatives is seriously jeopardised because of a perceived lack of privacy, and if so, how do you think the necessary degree of privacy could best be achieved without threatening the legitimate security interests of the employer ?

(c) ICT training

5.15 Access to ICT equipment can save representatives a lot of time in performing their duties. This in turn can benefit employers. But the availability of such equipment does not mean that it is used efficiently by representatives. There is therefore a need for representatives to be adequately trained in its use for their particular functions. The previous Chapter raised this matter in the context of trade union training and sought views on the extent to which ICT proficiency and internet research skills are adequately addressed in courses.

CHAPTER 6 – GUIDANCE FOR REPRESENTATIVES

6.1 This chapter looks at the guidance on good practice and the law relating to workplace representatives. Such guidance is produced by Government departments and Non-Departmental Public Bodies (NDPBs) such as Acas and the Health and Safety Commission (HSC). It can also be replicated, refined and disseminated by other interested parties including trade unions, employers organisations' and individual employers.

Guidance issued by central government, its agencies and NDPBs

6.2 The Government recognises it has a role in explaining the law on workplace representatives to interested parties, helping them to understand and implement the law. However, there are many different types of workplace representative and many different parts of employment law which define their various rights and protections. The DTI is the responsible Department for much of this law but other departments, notably DWP and DfES, are also involved. There are therefore a large number of guidance materials produced by central government on those rights. A list is provided at [Annex D](#). It is generally the case that the responsible department produces guidance on these various pieces of law. There is no single publication which covers all the rights.

6.3 This type of guidance aims to describe the relevant law in a more readable and accessible form than the statute itself. As the rights for workplace representatives are usually embedded within a broader body of law, the guidance on representatives is often located within publications dealing with a broad strand of employment law. For example, a description of the protections and time off rights for I&C representatives is found within guidance on the Information and Consultation of Employees Regulations 2004, and in fact constitutes a relatively small part of that publication. These arrangements often make sense, as readers are usually interested in the broad topic and not just the rights of representatives.

6.4 The guidance is often available in a printed form and all or nearly all is available online. But, increasingly, the printed form of guidance is being phased out in favour of the exclusive use of electronic versions of the publications.

6.5 Information about workplace representatives is also available in summary form on other important Government-funded websites. For example, Business Link provides practical help for small and medium sized businesses, and its website includes materials dealing with the role of employee representatives and the representation of individual employees. Directgov provides a wide range of public service information online. Its website has an employment section for workers and this provides advice on trade unions (including the right to time off for union duties and activities) and health and safety (including the role of health and safety representatives).

6.6 This type of guidance usually contains little information on good practice, though the approach does vary from one publication to another. Whereas these guidance materials should help parties understand and therefore comply with the law, they do not branch out more widely and explain how the law should be applied in

different workplace settings or how, more generally, relations between employers and workplace representatives should be conducted. That form of guidance on good practice is found in the various Codes of Practice, which are discussed below.

6.7 In contrast to the Codes of Practice, these guidance materials have no legal force or status. Their contents do not therefore refine or interpret the law for the tribunals or the courts, and these judicial bodies are not obliged by statute to take these materials into account when considering individual complaints.

Codes of Practice

6.8 There are three Codes of Practice that cover the work of trade union representatives :

- The Acas Code of Practice No 3 on *Time off for trade union duties and activities* ;
- The HSC Approved Code of Practice on *Safety representatives and safety committees*;
- The HSC Approved Code of Practice on *Time off for the training of safety representatives*.

It is worth noting that the Acas Code of Practice No 1 on *Disciplinary and grievance procedures* also contains guidance of relevance to workplace representatives as it covers the role of the companion (who is often a union representative) at disciplinary and grievance hearings. The Code also contains guidance on the disciplining of a worker who is a union representative.

6.9 The Acas Code of Practice sets out the entitlement of representatives of recognised trade unions for time off for undertaking duties, training and activities. It was revised in 2003 to provide practical guidance on the time off and training entitlements of ULRs working in recognised workplaces. The Code describes both the legal entitlements and the ways in which those entitlements can be applied in practice. It particularly helps parties to interpret whether their time off arrangements are “reasonable” and what types of training may be appropriate. Sections of the Code also provide guidance on issues such as access to facilities where there is no statutory entitlement. The Code is the principal source of guidance on good practice for shop stewards and ULRs. Statute expressly states that the tribunals and courts may take the Code into account when considering complaints.

6.10 The two HSC Approved Codes of Practice are closely linked and they provide guidance on applying aspects of the Safety Representatives and Safety Committees Regulations 1977. The first Code mainly describes the functions of the safety representatives and the information which employers should provide them. The second Code deals with the training needs of safety representatives and the time off which they need for such training. These HSC Codes of Practice have a higher legal status than the Acas Code. Employers need to demonstrate that they have either followed these HSC Codes or that they have made alternative arrangements that are either the same or better than those set out in Code.

6.11 The HSC Codes are quite narrowly focused and they do not therefore give explicit guidance on the time off which safety representatives may need to carry out their functions and they do not give guidance on the facilities which safety representatives should be able to access under their statutory entitlement. In that sense, they do not cover the same ground as the Acas Code. However, the Health and Safety Executive (HSE) produces its own guidance to accompany the two HSC Codes and that guidance, which has no legal standing, does cover wider issues. All three Codes deal with the representation of recognised unions; none mentions the position of non-union representatives.

Guidance issued by trade unions, employers and others

6.12 Government departments and agencies are not the only organisations that issue guidance on the law or good practice for representatives. There is no information available measuring the amount of such advisory material in existence but it is likely to be large. For example, trade unions have a clear incentive to brief their lay representatives on their entitlements and working methods. This sort of guidance is often available on individual union web sites. Model agreements on facilities and facility time may also be developed by unions to help their representatives to negotiate time off arrangements. Employers – sometimes supported by their representative organisations – also have a need to ensure that managers and other employees actually comply with the law and faithfully apply the terms of any agreements about facilities and facility time. In larger organisations, HR departments may produce this sort of advice in circulars or staff handbooks. Smaller organisations that do not have HR departments are more likely to operate without formal agreements or written guidance for line managers and other staff, and such organisations may prefer to deal with individual situations as they arise.

6.13 For obvious reasons, guidance issued by central government and its agencies is pitched at a high level of generality. But employers function in different ways due to the size of the organisation, the sector in which they operate and their individual operating requirements. There is therefore likely to be a need for employers and trade unions to provide local guidance geared to particular circumstances. Organisations are best placed to look at their own structures and organisation so that they can devise and implement policies that ensure managers and workplace representatives can work constructively together.

Issues arising

(a) Updating the Codes of Practice

6.14 The three Codes first came into force in 1978. The HSC Codes are unchanged from that date, though the HSE guidance accompanying them has been occasionally amended. The Acas Code has been revised a few times since then, most recently in 2003 when the main changes concerned the addition of advice relating to ULRs. In many respects, the original 1978 text remains in place.

6.15 It makes sense not to revise these Codes frequently. Their advice is often generally expressed and is based on sound principles about the fair management of industrial relations which are unlikely to change much over time. Also, employers and

trade unions rely on the Codes and they often seek to establish stable arrangements which they do not need to review frequently in response to new versions of the Code.

6.16 Much of the advice in these Codes is now almost 30 years old, however and the workplace has changed a lot in the interim as this consultation document has pointed out. The HSC has recently carried out its own consultation exercise on issues surrounding worker participation and, as part of that, it raised the issue of whether its current suite of guidance on health and safety representatives (includes the Approved Codes of Practice) was still appropriate, HSC expects to consider the results of that consultation in February 2007. The Government believes it is time for the Acas Code to be re-visited to see if its contents still address all the main aspects of representatives' work and the difficulties that they and their employers may encounter. In particular, there may be benefits if the Code dealt in more detail with a number of issues highlighted in this report, including :

- the provision of cover for workplace representatives in streamlined, performance-orientated teams;
- the training and advice given to the line managers of workplace representatives;
- the impact of ICT technology on the work of representatives and the desirability of achieving privacy and security in its use;
- the need to respect the work-life balance of workplace representatives;
- arrangements for off-site representation;
- the possibility that the same individual may undertake many representative roles (i.e. a shop steward may also be a ULR); and
- the training needs of workplace representatives in an age of online learning.

Many facilities agreements are themselves long-standing and may not have been changed for some years. The Government considers that a significantly revised Code may act as a catalyst for parties to re-assess those agreements and encourage greater workplace dialogue about the way representatives should function.

6.17 The Acas Code is based on the requirement set out in section 199(2)(a) and (b) of the Trade Union and Labour Relations (Consolidation) Act 1992 that it should provide advice on time off for trade union duties and activities. Its focus is therefore on the position of shop stewards and similar lay representatives (as well as ULRs where there is a separate provision for guidance in the 1992 Act). These are very important groups of representatives. But the Code does not address the position of other types of representatives including the large group of non-union representatives and many categories of representative for whom statutory entitlements have been created since 1978. Acas is empowered under the general provisions in section 190(a) of the 1992 Act to provide practical guidance in the treatment and operation of other categories of representative. The Government seeks views on the desirability of widening the coverage of the Code so that it contains advice on other types of representative.

Question 6a - Do you think that the Acas Code of Practice needs to be updated to reflect modern circumstances especially the points raised in paragraphs 6.16 and 6.17 ?

(b) The accessibility and coherence of guidance

6.18 The list of guidance on the various rights of workplace representatives is long. Annex D just mentions the main pieces of guidance, but it could be longer still. Also, the guidance appears on different websites.

6.19 This situation raises at least two issues. First, the guidance may be spread across too many separate publications. It is possible that the guidance material could be rationalised somewhat to reduce the number of guidance materials in existence. As mentioned above, the HSE, which is responsible for producing three separate pieces of guidance, already raised this issue in its recent consultation exercise.

6.20 Most guidance on workplace representatives is usually located within guidance on the broader area of the law. There will always be a good case for separate advice on each broad areas of law : so the scope for consolidating guidance may not be great, unless the legal topics are very closely linked. An alternative option may be to produce an additional set of guidance which deals exclusively with the employment rights of all union and non-union representatives.

6.21 Second, the different numbers of departments and agencies responsible for issuing guidance may lead to difficulties in locating a specific piece of guidance that employees and employers want. It would be inappropriate for one government department or agency to be responsible for all advice on workplace representatives : guidance should continue to be issued by those who are responsible for the specific policy area. So, for example, the Health and Safety Executive should continue to issue the main guidance on health and safety representatives. However, there may be a case for having a specific website that contains information on what guidance exists and where it can be found. This could include a list of links to the relevant guidance on other websites. The portal could also contain other useful information, such as telephone helpline numbers.

Question 6b - Should the many sources of guidance be rationalised and, if so, how ? Is there a demand for a new guidance publication containing guidance on all types of workplace representative, and is there a need for a portal to be created on the DTI website, creating a comprehensive set of links to all the main pieces of separate guidance relating to workplace representatives ? Do you have any observations about the quality and style of the guidance produced by central government and its agencies ?

(c) Advice to line managers

6.22 Many new workplace representatives are appointed each year and the line managers of existing representatives can change because either the line manager or the representative has been re-assigned to new duties. In any one year, therefore, many thousands of managers with no prior experience of dealing with representatives can assume new responsibilities for acting as their line managers. This is potentially disruptive and, unless adequate training or guidance is provided by employers, it could lead to inconsistent treatment of representatives or to the sort of unhelpful attitude among middle managers which was noted in Chapter 3.

Question 6c - Are line managers adequately trained and advised about their management of workplace representatives, and if not, what initiatives could be undertaken to rectify any deficiency ?

CHAPTER 7 - THE REGULATORY FRAMEWORK

7.1 Many, though by no means all, workplace representatives enjoy statutory rights and protections to undertake their work. This body of law has developed gradually over the last 30 years, and the actual statutory entitlements are found in many different parts of employment law. This chapter identifies the main pieces of law and discusses whether changes are needed to reflect changing circumstances.

Legal framework

7.2 There are at least 15 different types of workplace representative who have statutory rights conferred on them. Table 7.1 identifies the category of representative and the main piece of primary or secondary legislation which regulates their activities. Annex C sets out the relevant law in greater detail.

TABLE 7.1 – The Legal Bases of Representatives’ Rights

Type of Representative	Act or Regulation
Shop steward or similar when undertaking trade union duties	Trade Union & Labour Relations (Consolidation) Act 1992
ULR	Ditto
Employee representative for consultation on collective redundancies	Ditto
Employee representative for consultation on TUPE transfers	Transfer of Undertakings (Protection of Employees) Regulations 2006
Safety representative (trade union)	Safety Representatives & Safety Committees Regulations 1977
Representative of employee safety (non-trade union)	Health & Safety (Consultation with Employees) Regulations 1996
Offshore safety representative	The Offshore Installations (Safety Representatives & Safety Committees) Regulations 1989
Information & Consultation (I&C) representative	Information & Consultation of Employees Regulations 2004
Transnational I&C representative	Transnational Information & Consultation of Employees Regulations 1999
Representatives for consultation about listed changes to occupational and personal pensions	The Occupational & Personal Pensions Schemes (Consultation by Employers & Miscellaneous Amendment) Regulations 2006
Working time	Working Time Regulations 1998
Maternity & parental leave	Maternity & Parental Leave Regulations 1999
Fixed-term employees	Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002
Employee representatives on Special Negotiation Bodies (SNB) for European Companies	European Public Limited-Liability Company Regulations 2004
Employee representatives for SNBs for European Cooperative Societies	European Cooperative Society (Involvement of Employees) Regulations 2006

7.3 These rights have grown over time. The basic provisions covering time off for trade union duties were introduced in the mid 70s and were later incorporated within the 1992 Act which consolidated trade union law. There has been a notable increase since 1998, most of which was the consequence of various EU directives. That process is ongoing : in 2007, another category of representative is likely to be created in UK law when the Cross-Border Merger of Limited Liability Companies Directive 2005 is transposed.

7.4 Table 7.1 does not refer to the legal entitlements of those workers who act as companions during disciplinary and grievance hearings. Such companions were given statutory entitlements to paid time off in the Employment Relations Act 1999. The role of this group is similar in some respects to those of other representatives listed in Table 7.1.

7.5 Some types of representative have no statutory entitlements. The representatives of non-recognised unions and non-independent unions generally do not enjoy any entitlements. Also, most non-union representatives – be they JCC members or “stand alone” representatives – operate without any statutory entitlement. Of course, individuals in those categories often receive paid time off, but such arrangements are entirely at the discretion of the employer.

7.6 The main difference between the various jurisdictions listed in Table 7.1 is the definition of the role performed by the representative in question. However, the nature of the rights themselves usually contain one or more of the following elements:

- paid or unpaid time off for undertaking the defined role of the representative ;
- paid or unpaid time off to be trained in undertaking that defined role ;
- access to facilities to undertake the defined role ;
- protection against dismissal or detriment for being a representative ;
- enforcement of those rights through the employment tribunals⁸ ; and
- compensation for a failure to respect the various employment rights.

7.7 There are major differences in the pattern of entitlement, with significant variations among the representatives. Table 7.2 sets out the basic distinctions in coverage.

⁸ However, it is a criminal offence for employers not to provide time off and facilities for safety representatives in accordance with the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989, and duty holders can be prosecuted in the courts for alleged breaches of those rights.

TABLE 7.2 - A Comparison of Representatives' Statutory Rights

<i>Representative</i>	Statutory Right to:				
	<i>Facility Time</i>	<i>Payment for facility time</i>	<i>Paid time off for training</i>	<i>Protection against dismissal and detriment</i>	<i>Facilities</i>
Shop Stewards and similar	✓	✓	✓	✓	X
Union Learning	✓	✓	✓	✓	X
Collective Redundancy	✓	✓	✓	✓	✓
TUPE	✓	✓	✓	✓	✓
Union Safety	✓	✓	✓	✓	✓
Employee Safety	✓	✓	✓	✓	✓
Offshore Safety	✓	✓	✓	✓	✓
I&C	✓	✓	X	✓	X
Transnational I&C	✓	✓	X	✓	X
Occupational/Personal Pensions	✓	✓	X	✓	X
Working Time	X	X	X	✓	X
Maternity & Parental	X	X	X	✓	X
Fixed-term Employee	X	X	X	✓	X
European Company	✓	✓	X	✓	X
European Cooperative Society	✓	✓	X	✓	X

Note : “✓” denotes the existence of a right and “X” denotes the absence of a right.

7.8 It is also important to note that the existence of a statutory rights does not mean that the right in question is the same across all representatives who have it. This is so because the various pieces of law express the right in different ways. For example, the three categories of safety representative each have rights to such time off “as is necessary” to carry out their functions. In contrast, most other representatives have rights to “reasonable” time off to carry out their functions. There are also differences in the wording used to specify where representatives may make a complaint to the employment tribunal for a failure to provide time off. In the case of an alleged failure to provide time off for shop stewards, ULRs, and safety representatives, the law provides that “an employee may present a complaint to an employment tribunal that his employer has failed to permit him” to take time off or undertake training. As regards collective redundancy and TUPE representatives, I&C representatives, transnational I&C representatives, and some other categories, the law specifies that “an employee may present a complaint to an employment tribunal that his employer has unreasonably refused to permit him” to take time off for his duties.

Employment tribunal caseloads

7.9 Statistics collected by the Employment Tribunals Service (ETS) provide some information on total caseloads for the major jurisdictions. The data are not however finely enough disaggregated to identify all jurisdictions separately, and the ETS's classification system has also changed over time, which makes it difficult to generate a consistent time series. Up to and including 2003, the ETS collected data on the number of complaints made under sections 168 and 169 of the 1992 Act (for failure to allow paid time off for trade union duties). Thereafter, the ETS changed its classification system and those jurisdictions were not separately identified in their figures. Table 7.3 provides data on caseloads in the periods immediately before the 2004 change in classification.

TABLE 7.3 – Complaints about alleged failures to provide paid time off for trade union duties

Year	1998	2002	2003
Number of cases brought	33	37	35
Outcome of case:			
Settled / withdrawn	12	18	22
Acas conciliated	5	5	8
Successful at hearing	3	0	0
Unsuccessful at hearing	4	7	2
Dismissed – out of scope	1	1	-
Disposed / other	-	-	2
Not allocated	8	6	1

Source : Employment Tribunals Service. Note : “Not allocated” means that the case was registered as having “no outcome” on the ETS database. This might have occurred for a variety of reasons, including the fact that the case was linked to others.

7.10 The number of cases is consistently low, and involve only a small fraction of all representatives – less than 0.03 per cent in any year. Indeed, the figures may somewhat mislead because a number of cases in any year might be closely linked. For example, six complaints were made in 2002 on behalf of several representatives from a single union at the same workplace. In common with other jurisdictions, most complaints were resolved without the need for a tribunal hearing. In the minority which did reach a hearing, the complainant in these three years tended to be unsuccessful.

7.11 These figures strongly imply that employer compliance with the existing jurisdictions is high. This inference is reinforced by reports from the ETS, Acas and the CIPD that they receive few queries on statutory rights for time off for representatives. However, in our initial consultations with trade unions, it was argued that too much should not be read into the ETS figures, because representatives and their trade unions are unwilling to make complaints because of their fear that industrial relations might suffer as a consequence. Indeed, it was thought likely that the making of a tribunal complaint was a strong indicator of poor industrial relations. Some attendees at our focus groups reported that they had experienced difficulties in

obtaining time off, but they were deterred from making a formal complaint because the law was generally worded and usually contained a “reasonableness test” which was intrinsically difficult to prove had been breached. They therefore favoured a clearer entitlement in law with a minimum amount of time off specified in statute.

Issues arising

(a) Simplification and inconsistent wording

7.12 There are numerous pieces of law on workplace representatives, and numerous pieces of separate guidance on them. In Chapter 6, this document discussed the case for consolidating and simplifying the guidance materials which central government issues. It is worth asking, in addition, whether the law itself should be simplified. In particular, there may be a case for more consistent wording to be used when defining those rights.

7.13 The laws governing different types of representative have been introduced over 30 years, involving different draftsmen and sometimes different Government Departments. Inevitably, different wording has been used, even though, in policy terms, the various rights are trying to achieve substantially the same effect. In particular, the law relating to paid time off is expressed in different ways, two of which we discussed above. In addition, there are two different ways to express the calculation of the monies to be paid to representatives when taking paid time off. Section 169 of the 1992 Act and other legislation⁹ express the calculation in one way, involving reference to comparable employees when calculating the average earnings of the representatives. In contrast, the ICE Regulations 2004 and certain other pieces of legislation¹⁰ follow a different approach based on the criteria set out in Chapter 2 of Part 14 of the Employment Rights Act 1996, which involves the use of 12-week reference periods for calculating hourly pay rates.

7.14 These differences in wording are small, and most practitioners and their legal advisers are probably accustomed to their use. There is no evidence to believe that these variations have caused difficulties for tribunals or the legal system more generally. However, there is no doubt that these differences in wording create complexity and may even achieve different outcomes at the margin, which may be difficult to justify.

(b) Time off for shop stewards to undertake trade union duties and activities

7.15 In our preliminary consultations, several issues have been raised about the definition of the various entitlements to time off for shop stewards and similar union representatives. Some employers and representatives have expressed unease with the general language used in statute, especially the inexactness involved with the

⁹ The Safety Representatives and Safety Committees Regulations 1977, Health & Safety (Consultation with Employees) Regulations 1996 and the Offshore Installations (Safety Representatives & Safety Committees) Regulations 1989 share the approach of s169 of the 1992 Act.

¹⁰ The Transnational I&C Regulations 1999 and the Occupational and Personal Pension Schemes (Consultation of Employees & Miscellaneous Amendment) Regulations 2006 follow the approach of the ICE Regulations.

“reasonableness test”. They have therefore suggested ways in which the law could be revised to give some clearer guidelines which applying the right in practice.

7.16 From the employers’ standpoint, there is some unease that there can be many union representatives at a particular workplace who may have an entitlement under section 168 of the 1992 Act to paid time off, even though the number of employees they each represent is low. Some employers have therefore suggested that there should be a minimum number of union members which each union representative should represent before they are entitled to paid time off. So, a representative should have a minimum constituency of, say, 25 workers or part thereof, before they would be entitled to time off. So, where there were 60 members of the recognised union, there would therefore be an entitlement for three shop stewards or similar representatives from that union to have reasonable time off for trade union duties. This suggestion does not stop the union from having additional shop stewards but those representatives would not be entitled to paid time off.

7.17 This proposal adds a degree of certainty to the law and potentially reduces the scope for disagreements to arise. However, the formula also adds an inflexibility into the statutory arrangement and may restrict the ability of parties actually to arrive at more sensible arrangements geared to local circumstances. For example, in some workplaces, either because individual representatives have specialist roles or because nobody is able to take a large amount of time off for their duties, a large number of part-time representatives are at work. A non-regulatory approach may be a better way to deal with this issue, though the Acas Code does not presently contain a formula of this type.

7.18 Members of our focus groups were critical of the “reasonableness test”, and proposed that statute should also set a minimum amount of time off per week - say, five hours or 10 per cent of working time – to which each representative should be entitled. To minimise the degree of inflexibility, this formula could be expressed as a minimum weekly entitlement averaged out over a reference period of, say, 12 weeks. That would ensure that the representatives are not encouraged to take time off in any week when they have few representative duties to perform.

7.19 The advantages and disadvantages of this proposal are similar to those mentioned in paragraph 7.17. The arrangement provides an apparent degree of extra certainty at the expense of inflexibility. Any minimum amount of time off may in effect also become the maximum amount of time off, or create difficulties for parties to agree what additional hours may be taken over the minimum. The idea probably also implies that parties would have to record time off more precisely than they currently do, a response which might add to the regulatory burden. Again, an alternative way to address this issue would be to ascertain if a figure could be inserted in the Acas Code as the usual minimum.

7.20 The current law on time off for shop stewards and similar officials is found mainly in sections 168 and 170 of the Trade Union and Labour Relations (Consolidation) Act 1992. Section 168 provides for reasonable paid time off in two circumstances mainly:

(a) where the time off relates to matters (as defined by the 1992 Act) for which the union is recognised for collective bargaining purposes ; or

(b) where the time off relates to the performance of certain other functions by the trade union to which the employer has given his agreement that the union should perform. Those other functions must be related to or connected with those matters which the 1992 Act specifies could be the subject of collective bargaining.¹¹

Section 170 provides an entitlement for shop stewards and similar union representatives to reasonable unpaid time off for trade union activities. Trade union “activities” are not defined but, subject to a couple of limitations, the term is likely to embrace most kinds of trade union work, including trade union recruitment and organisation or attending trade union conference and meetings of decision-making bodies of the trade union.

7.21 These pieces of statute, or their predecessors, were originally introduced over 30 years ago when industrial relations were very different from today and when shop stewards worked in different ways from now. In particular, collective bargaining was much more widespread in those days, and probably covered a wider range of issues. In contrast, individual employment rights are much more widespread today. It is therefore probable that many shop stewards are not so actively involved in collective bargaining as their counterparts were in the mid 70s. Indeed, the 2004 WERS data show that many representatives are not engaged in collective bargaining at all, or the union is merely consulted by the employer on a matter which could be the subject of collective bargaining. Also, a large proportion of union representatives are involved in the resolution of personal cases involving individual employment rights. Unions contend that the role of shop stewards has widened out in other ways and now involves issues such as greening the workplace or general consultation with the employer about workplace performance.

7.22 Given the changes in the nature of the work that representatives now undertake, the statutory functions as defined by section 168 may no longer be as relevant as when they were first introduced. As a consequence, representatives may increasingly rely on securing the employer’s agreement that they may perform a particular union function for paid time off or on the entitlement to unpaid time off as specified in section 170. It has also been argued by trade unions that the legal distinction between trade union duties and trade union activities is not very clear, and that imprecision can give rise to difficulties about an entitlement to paid or unpaid time off.

7.23 Though sections 168 and 170 may not have changed much since the mid 70s to reflect changing circumstances, many other pieces of law relating to workplace representative have been introduced. For example, the role of the ULR (which is often performed by shop stewards) attracts specific rights to paid time off.

¹¹ These matters are : Terms and conditions of employment, or physical conditions in which any workers are required to work ; Engagement or non-engagement, or termination or suspension of employment or duties of employment, of one or more workers ; Allocation of work or the duties of employment between workers or groups of workers ; Matters of discipline ; A worker’s membership or non-membership of a trade union ; Facilities for officials of trade unions ; and Machinery for negotiation or consultation, and other procedures, relating to any of the above matters.

Importantly, union involvement in personal cases is supported by rights to paid time off when acting as a companion at grievance or disciplinary hearings. It is not self-evident therefore that today's shop stewards have been left behind by the law and enjoy an inferior set of entitlements to paid time off than their predecessors.

(c) Time off for training

7.24 None of the legal entitlements of representatives provides for a set number of days off for training each year. Nor does the law suggest that representatives must undergo a particular type of training relevant to their duties (though it must be approved by the TUC or the representative's union). These arrangements broadly make sense because training needs will vary widely, dependent on the specific duties of the representative, their prior experience and the previous training they have undertaken. In our prior consultations with trade unions, it has been suggested that the position of new representatives should be highlighted in the legislation (especially in section 168 of the 1992 Act) to ensure that they receive training early in their term of office. This could be achieved by setting a minimum number of days off for training which a new representative should be entitled within, say, their first six months in post. Alternatively, statute could specify that within that period, time off should be given to ensure that new union representatives attend the basic shop stewards course organised by the TUC or their union. Currently, those courses last for ten days in total.

7.25 This proposal would ensure that all new union representatives are adequately trained and can fully contribute to workplace life at an earlier stage. The arrangement might also help prevent disagreements arising about the release of representatives to attend training. It is also worth noting that this type of proposal is already contained within the HSC Code of Practice on *Time off for Training of Safety Representatives*, which is an Approved Code and therefore has an enhanced legal effect. That Code states that "as soon as possible" after taking up their duties, new safety representatives should be given paid time off to attend "basic training" as approved by the TUC. It is understood that this aspect of the Code is working well. Against that, adding a similar entitlement in section 168 may create inflexibility. Also, such a legal requirement may be unnecessary, because access to basic training for new shop stewards is not reported as a significant problem.

(d) Facilities

7.26 It is difficult to discern a clear logic explaining why some workplace representatives have an legal entitlement to workplace facilities whilst others do not. For example, there is no reason to consider that, relative to others, those representatives with the entitlement particularly need facilities or would encounter more severe difficulties in obtaining facilities if there were no statutory right in place. This would suggest that the case should be examined to provide a consistent set of rights for all categories of representative.

7.27 Equally, there are no grounds to believe that, for most representatives, the absence of a right constitutes a problem as most representatives are voluntarily given access by employers to a range of workplace facilities. There is also no evidence to suggest that facilities would be withdrawn from representatives with a legal

entitlement if the existing rights to facilities were abolished. For example, the DTI is not aware of any complaint to a tribunal alleging that facilities are not provided in accordance with the law. It is worth noting, however, that poor facilities are associated with a general lack of support by the employer for the representatives and the union to which they may belong. In other words, the voluntary approach to the provision of facilities may not be working in a significant minority of cases where the overall climate of employment relations is poor. It could be argued that a statutory entitlement would help representatives in that position and provide more means for them to engage actively with the employer to improve that climate. The compliance costs of extending this entitlement would be low because the cost of providing facilities is low and because in most cases the employer already provides facilities.

(e) Multi-role representatives

7.28 Workplace activists tend to involve themselves in many issues. This document has therefore noted that one person could act as several different types of representative simultaneously. As the types of representative which receive explicit statutory backing has grown, it is becoming increasingly likely that the same individual will enjoy several different sets of parallel statutory entitlements. Yet none of the pieces of legislation makes specific reference to this possibility or states that the amount of time off or training which may be reasonable is influenced by the amount of time off or training the employer grants to the same person under another piece of law relating to workplace representatives. Of course, the general “reasonableness test” is capable of being read in this way, and it has been suggested in the previous Chapter that the Acas Code should be expanded to provide more guidance on multi-role representatives.

7.29 On the evidence so far available, the Government does not see a compelling case to change the law to reflect the points raised by issues (a) – (e). However, it would be interested in receiving the views of consultees on the matters raised.

Question 7a - Should the law on workplace representatives be revised to deal with any of the issues (a)–(e) above and, if so, what sort of revision should be made?

Review of Workplace Representatives' Facilities and Facility Time - Focus Groups on the experience of trade union representatives

Dr Sonia McKay
Dr Sian Moore
Working Lives Research Institute,
London Metropolitan University

1. Introduction

This report identifies the key themes emerging from three focus groups of workplace trade union representatives designed to explore representative experiences and attitudes.

Following the strategy paper 'Success at Work' (March 2006), the government launched a formal review to determine whether workplace representatives 'have sufficient access to facilities and facility time to enable them to carry out their functions efficiently and effectively'. The terms of reference highlighted the changing needs and resources of modern workplaces and suggested that existing statutory rights may need clarification or simplification. It also acknowledged the emergence of new types of employee representative, the Union Learning Representative and Information and Consultation representatives.

2. The Focus Groups

2.1 Organisation and selection of participants

Three focus groups were held in September 2006, in Manchester, Newcastle and London. The DTI worked closely with the TUC to prepare for and organise these groups and to establish their location and identify venues. Focus group participants were identified by the TUC through contacts with its affiliate members.

An invitation to participate in the focus groups was circulated by email to workplace representatives. Participants were then selected from the respondents to the email. Therefore it should be expected that representatives without access to email would be under-represented in the groups. Selection aimed to ensure that focus group participants were as representative as possible of workplace representatives in terms of:

- Role (Health and Safety; Shop Steward; Union Learning Representative)
- Gender (male; female)
- Ethnicity (Asian/Asian British; Black/Black British; Mixed (White and Black; White and Asian; any other mixed background); White)
- Age (30 and under; 31 – 49; 50 and over)
- Size of union (large; small)
- Profession (assembly; managers/senior officials; professionals; clerical)
- Sector (public/service; private/service; private/manufacturing; private/construction; private/broadcasting)

Prior to the focus groups a Participant Information Form was circulated to all participants, outlining the purpose of the research. This included a consent form, asking participants to give their signed consent to their responses being recorded and having these responses used verbatim in the report. It was made clear that responses would be anonymised and that none of the participants would be identified.

2.2 Conduct of the focus groups

The focus groups were run jointly by Sonia McKay and Sian Moore from the Working Lives Research Institute. Each group was held on a week day and began at 6pm, lasting two hours with a ten minute break for refreshments half way through the session. The group discussion was based around a semi-structured topic guide.

The groups opened with a brief overview of the purpose of the research and its context. Participants were informed that the proceedings would be recorded, but reassured about confidentiality. The focus groups began with a short 'getting to know you' session, in which the researchers introduced themselves and then asked participants to introduce themselves, giving details of their workplace, union and representative role.

3. The Characteristics of Focus Group Participants

Twelve participants were invited to each of the three focus groups in Manchester, Newcastle and London: overall 25 of these 36 invitees attended (69 per cent). It should be noted that each focus group covered a large geographical area and in some cases traveling times were not insignificant.

Overall, twelve of the 62 TUC unions were represented: Amicus (2); ASLEF (1); BFAWU (1); the FBU (1); the GMB (1); the NUT (1); PCS (5); the T&G (4); the TSSA (1); the UCU (2); UNSON (5) and USDAW (1). Thus there was a spread of unions, both small and large. A majority of participants (15 out of 25) were public sector representatives.

In terms of gender, at least three women representatives were selected for each group; overall nine women attended (just over one third of participants), although in one group there were only two women and in another four (with two from one workplace). In WERS 2004 44 per cent of the sample of union workplace representatives were female, although the survey is of senior representatives, who may be more likely to be male.

Attempts were made to ensure that there were at least two Black and Minority Ethnic (BME) representatives in each focus group, although it was only possible to invite five overall. In fact only two of the actual participants were BME union representatives (eight per cent of participants).

In terms of age the vast majority of participants were over 40. Attempts were made to ensure that two participants in each group were under 30, but only four in this age group were invited and only one actually participated. Overall it is estimated that three participants were under 40. All focus group participants commented that it was

extremely difficult to encourage younger workers to become representatives, and, in many cases, to actually recruit them.

Despite attempts to invite part-time representatives only two participants were part-time, while another was semi-retired. Four workplace representatives who participated were shift workers. Most of the participants were long-standing representatives of ten years or more; three had been in post for one year or less.

4. The Issues

4.1 The roles of workplace representatives

In terms of their activities as workplace representatives in two of the focus groups most of the participants took on multiple roles, as workplace representatives, health and safety representatives and, in a number of cases, as Union Learning Representatives. One Amicus representative reported that all workplace representatives were also health and safety representatives. The third focus group was distinctive in that fewer participants combined roles, they were more likely to be workplace or branch representatives, although one was a health and safety officer covering an education authority. Overall, seven participants had wider roles within the union as branch or regional officers. It appeared that the longer representatives had been in post the more likely they were to combine a number of roles and that those with full-time facility time tended to cover a range of responsibilities – in three cases full-time representatives also managed Workplace Learning Centres. One workplace representative felt he was a ‘jack of all trades, but master of none’. As a FBU representative put it:

‘It has been a case of you take on one role and you end up finding that you’ve got three or four. So you might start being health and safety, you know, but you end up looking at union learning and being the union learning rep and then you, all of a sudden, find yourself representing someone in a grievance, because there’s no one else to take that on board and invariably you end up swamped, that’s the experience that I seem to have at the moment’.

There was a consensus that it was extremely difficult to encourage new representatives, and that this meant existing representatives had to take on more roles, with implications for their effectiveness, but also the time available for training.

For the vast majority of participants their union work was dominated by individual representation and casework. A PCS representative, based at a call centre, reported that very high levels of staff turnover meant that she was continuously involved in disciplinaries, with individual cases ‘coming out of our ears’.

Workplace representatives were also engaged in discussions with management about issues affecting the workplace, in particular organisational change. Issues mentioned included the introduction of new sickness procedures, consultation on restructuring, changes to the staff handbook and in the case of a representative at an airport, discussions on heightened security arrangements. Only one representative mentioned involvement in bargaining over pay or terms and conditions. This may reflect the

sectoral distribution of the representatives or the role of full-time officers in negotiations.

Organisational Change

Focus group participants were asked in what ways the role of the representative had changed since they first took up the job. Overwhelmingly participants reported that organisational change had, and was continuing to have, an impact on their roles and workloads. There were specific issues in the public sector; for example the introduction of Agenda for Change in the National Health Service; changes to the structure of education; the privatisation of the rail sector (and subsequent negotiation of new company level agreements); and the introduction of performance management and targets. In the private sector the takeover or merger of companies generated new challenges for union representatives. Outsourcing was identified as a major issue for public sector unions, but also in the private sector - one representative working for a contractor reported that this meant that increasingly management could shift the responsibility for issues like health and safety. There was a view that the union role in assisting in change, and dealing with its consequences, needed to be acknowledged and that, in this context, consultation and information rights needed strengthening.

Both public and private sector representatives talked about the increase in the number of procedures that they had to be familiar with and the intensification of management systems, (for example, sickness absence) and the greater use of 'capability'. Participants identified an increase in stress amongst the workforce and in bullying and harassment issues, with implications for their representational roles. A number of participants mentioned reductions in staff, which increased pressure from both management and colleagues and meant that it was harder to be released for union duties.

There was a view that representatives were faced with an increased range of roles. One example was Union Learning, which existing representatives had either taken on as an extra role, or said they would like to have taken on, but were too overloaded. It was also felt that there were attempts to broaden the remit of the health and safety role (to include, for example, preventative initiatives on physical and mental health rather than safety). Representatives expressed the view that it was difficult to keep on top of new legislation, but also that there was an increased expectation from members that representatives would have legal expertise and higher expectations in terms of the legal advice representatives provided. These new or changed roles increased pressure on existing representatives and meant that there was less time for organising activity, seen as necessary, not only to sustain the union in the workplace, but also to generate new representatives.

Summary

The modern workplace generates new and increasing demands on workplace representatives, particularly in terms of individual representation. They are covering an increasing range of roles at a time when organisational change is making significantly more demands of them. This is occurring in a situation where there are fewer representatives, placing increasing pressures on a smaller numbers of existing representatives with implications for their effectiveness.

4.2 Training

Trade Union representatives in recognised workplaces have a statutory right to 'reasonable' paid time off to undertake trade union training. Health and Safety representatives similarly have rights to paid time off for relevant training. The Employment Act 2002 added a new right for Union Learning Representatives to take paid time off during working hours to undertake their duties and to undertake relevant training, but again only in companies with union recognition.

Only one of the focus group participants had not received any training for his role as a union representative. This was a UNISON representative from a local authority who had been in post for one year; he reported that he had been blocked from attending basic training by Human Resources. He felt strongly that this 'hampered the effectiveness of the union'.

All other participants had received training, although the extent of this varied, some had completed TUC Stage I and II training, others had also been on a range of different courses, including TUC 36 week courses and specific health and safety and Union Learning courses. One full-time union representative reported that she negotiated for new representatives to attend courses as soon as possible and had used Union Learning provision to ensure that one Polish representative had the language skills necessary to undertake union duties. In the case of UNISON it was reported that training was often provided at branch level, and there were sometimes courses at the workplace in work time. A new T&G representative had completed two out of four, four-day courses and described his union's training courses as 'excellent', they were provided by a University, with the possibility of accreditation towards degree level.

There was a view that residential courses were most productive, particularly for what could be learnt 'outside the formal classroom'. At the same time an NUT representative raised the problem that women may face in attending blocks of training; she reported that when there were five day training courses participants were generally male and women were less likely to attend, citing family responsibilities. Local modules had a better uptake and gender balance. There was, however, agreement that one benefit of attending courses was that representatives were able to share experiences and build up useful contacts.

However, participants also voiced difficulties faced by themselves and other representatives in gaining access to what they considered, adequate training. One ASLEF representative reported 'a major struggle' to get representatives on TUC Stage II courses. A GMB regional representative had no trouble with time-off for training, but he was aware that workplace representatives did. PCS representatives considered their union's training to be excellent, accommodating shift patterns, and providing follow up courses. However, they also reported that courses had been cancelled because representatives in other parts of the civil service had not been able to get time-off from management. An Amicus representative reported that one representative had been blocked from attending training by management, but the union had threatened to "take the company to court" and it had backed down. A T&G representative said he generally had no trouble securing time-off, but 'every now and then the employer puts up barriers', for example by making representatives use holiday for courses – his union had challenged this by threatening an Employment Tribunal. Another representative said that with legislation on health and safety and

Union Learning it should be possible to get time-off, but this was not the case. One participant stressed the importance of experienced representatives enforcing their rights, so as not to set weaker precedents for newer representatives:

‘The problem is, you’re obviously an extremely dedicated person to do this, to go through, oh, I’ll take a grievance and I’ll try and claim my holiday back. But it’s scandalous really, but how can we bring new people in? Because new people, you know, don’t have the depth of experience and dedication that you have and neither could you expect them to, we have just no hope of bringing people on’.

Overall managers were considered to be resistant to union training, particularly, the 36-week TUC training courses. There was a perception that management did not recognise that representatives had a right to time off for courses and it was difficult to justify training courses to them. Participants expressed the view that management would often support training, considered as directly work-related or beneficial to management, but not wider courses that might benefit the representative in their union duties.

Focus group participants reported that representatives working in certain jobs, which were tightly staffed and/or providing direct services to the public, found it harder to get time-off for training. Within local government, representatives in social services faced particular difficulties. An NUT representative said there were also problems with representatives in schools getting time-off, the provision of local training helped, but time-off in primary schools was difficult because of the cost to schools of teaching cover; representatives were wary about taking time-off because of commitment to pupils and also to colleagues who had to cover for them. She felt that representatives were concerned that asking for training would affect their career prospects, but also said that staff did not feel empowered to ask for training. A UNISON full-time representative agreed that school-based representatives from his union had difficulties.

There were also problems where there had been staff cuts, as one UNISON representative explained:

‘I’ve had stage one, but it’s been a case of the training is available, certainly if I want to go on training I could, but I think because the section has shrunk so much, I just feel that I can’t do that, I feel guilty taking a day off. But if I say I really need this training, they will be fine about it, but I just wonder what they say behind your back? So it’s basically a guilt thing that I don’t take it up, but it is available if I wanted to do it, I just basically do the basics, that I have to and learn most of it on the job, by speaking to the other reps’.

Elsewhere it was reported that stewards asked to go on weekend training because they felt they could not take time off for training in work time. A FBU representative recalled that historically there had not been problems getting time-off, but following staff reductions it had become more difficult, since if there was insufficient staff cover it was not possible to be released.

In some cases representatives felt pressure from colleagues that made them reluctant to pursue training. Participants said that attendance on union courses was often perceived by work colleagues as a 'good blag' or 'off on a jolly', particularly when courses were away from home; it was reported that members said they 'couldn't see the benefit'. One participant said that she produced leaflets for members outlining what she had learned on courses in order to demonstrate what she was doing when she was out of the workplace.

Although few representatives said that they had experienced barriers to initial training, a number suggested that there were problems in securing access to further and continued training:

'It's a retraining issue, that managers will let the people train but if they want to retrain and do the course update and so on, they're not so keen on letting people have time off. You know, "you've been doing it for years, what do you need to go and train again for?"'

One UCU representative had had no training in the last five years. An ASLEF representative reported that initial TUC training was not necessarily suitable for specific sectors, for example rail, and that additional training was required. A T&G representative said that managers asked him, 'when were these courses going to stop?' Participants identified a need to update their training and refresh their skills and stressed the importance of continued training in the light of legislative change and the need for some knowledge of case law for individual representation.

A small number of representatives also felt that unions could be reluctant to push for representatives to get time-off for training, in one case the union would not fund a course that a representative wanted to do. There was also a concern about the increased number of on-line courses and whether this meant that increasingly representatives were doing training in their own time.

What skills do representatives need?

Focus group participants were asked whether they felt that they had the appropriate skills to do their job as a representative effectively. The UNISON representative who had received no training felt that he did not have adequate skills, particularly on health and safety and legislation, and was 'ineffective'. One participant commented that representatives need skills to provide good representation, but much of what they have is 'home-spun' and not professional. Participants acknowledged the help that they received from other representatives and the importance of informal mutual support.

Focus group participants emphasised the range of skills that workplace representatives are expected to have. They agreed that members often go to union representatives before they go to managers, particularly with the disappearance of the traditional 'personnel' role and its replacement by Human Resources. One UNISON representative suggested that in terms of individual representation representatives are involved in crucial points in their members' lives, but they are not lawyers, counsellors or GPs, and they may have to refer members on to such professionals. One key area where representatives did not feel adequately equipped was in dealing with their members' stress and wider emotional and mental health problems. A PCS

representative reported that there are cases that representatives deal with where members get very upset, including cases where members appear suicidal. She suggested that representatives do not have the skills to deal with the personal side of cases, which demand a counselling role and proposed that there could be training to help representatives in such difficult cases or to deal with member stress. A T&G representative concurred that representatives are often 'social workers', but they are not equipped to deal with stress and there was a need to refer members to trained counsellors. In relation to this, participants acknowledged the stress experienced by the representatives themselves, which it was felt is often not recognised; 'unions do not look after their own very well'.

IT was another area where some representatives felt they needed to improve their skills, a number had such skills as part of their job, but for manual workers this was much more difficult, since some had no access to a computer at work. One UNISON representative reported that the branch had run an IT course in-house for representatives. A UNISON representative also suggested that representatives increasingly need financial skills to read balance sheets.

Summary

Although most participants had received initial training, there was a consensus that managers are resistant to further training. Both managers and work colleagues often did not understand the benefits to the organisation of trained representatives and the need for time-off for training. Representatives need to update their skills to deal with organisational and legislative change. Members expect representatives to have a wide range of skills and representatives are often dealing with workers' stress and wider emotional and mental health problems.

4.3 Time-off for union duties

Union representatives recognised by their employer are permitted reasonable time off during working hours to carry out certain trade union duties. Both Health and Safety and Union Learning Representatives are also allowed reasonable time off for their specific duties.

Two of the focus group participants, a BFAWU representative and a UNISON local authority branch officer, had full-time facility time. PCS representatives reported that the union applied for facility time at a national level, which was then divided between the branches, a similar situation was reported in the UCU. One GMB participant had 20 hours off as a regional officer, although 'management moaned and groaned'; he reported that other local representatives had between three and four hours a week. A number of other participants took time off 'as and when' they needed to. For example, a new T&G representative said that he took time 'as and when', it was sometimes easy and sometimes not, different managers had different responses.

However, participants also raised difficulties in securing paid time-off for union duties. The main barrier to time-off was the issue of cover and the pressures that it placed upon work teams and work colleagues. A representative from a small firm said it was a particular problem. An USDAW representative said that her union's agreement with a major retailer helped and that she got two hours a month paid plus

time for individual representation. However, she felt that the agreement could go further, when she was on union business her team was a team leader short and it was difficult to find cover. An FBU representative reported that the absence of cover meant that representatives in neighbouring brigades did not get time-off to represent individuals. The issue of cover was seen as a major barrier to recruiting and retaining new representatives, with the most common reason peer pressure from within the workplace. Recent workforce reductions were seen to increase pressures on staff and in the public sector the introduction of performance targets and indicators intensified this. As one participant put it, 'time spent on union duties is considered time lost'. A UNISON representative could take time off as and when needed, but said she 'capped herself', because of the pressure of her personal workload and deadlines.

The focus groups suggested that there were specific difficulties for shift workers. They often had to give up their own time to represent or deal with workers on other shifts and this was particularly difficult for those with families. One T&G representative reported having to go into work on his days off, his union role meant there were often shortfalls in staffing due to staff shortages, although management tried to cover through the use of overtime. In this case the representative was paid if he had to come into work outside his shift, there were other examples where representatives were not.

One Amicus representative said that management was reluctant to give time-off for anything not related to the workplace and that time-off for attendance at regional meetings could be problematic. Other representatives reported that the difficulty was convincing management that the activity was relevant. Issues such as health and safety and union learning were considered less of a problem, but on other issues, 'it's like drawing teeth, what management classes as a comfortable amount of time is totally different to what we know we need'. A T&G representative also reported that he was increasingly challenged by managers about time-off, but health and safety work was regarded as more legitimate. UNISON representatives in local authorities reported that their employers would not grant them time-off to represent members of their branches who had been transferred to other employers, through privatisation or outsourcing, or who worked in the voluntary sector.

Although participants generally got time off for formal representation and meetings with managers, many reported that they did not get time to talk to members about union or workplace issues, or in the case of Union Learning, individual learning needs. A UNISON representative reported that management differentiated between union duties and activities and when the union wanted to hold a briefing with members about reorganisation, had asked to see the meeting agenda – the union had in the past had to dress such meetings up as covering terms and conditions to satisfy management. Increasingly diverse working patterns and complex shift patterns made communication with members particularly difficult and were seen as undermining union organisation. There were also issues if workers were not in traditional workplaces (for example drivers or engineers working for large utility companies), where representatives were not in regular contact with members and had to use mobile phones. In a number of cases there was no time-off for meetings with members within work time and this was seen as denying workers their democratic right to hold the union accountable.

Union activity in representatives' own time

Across the focus groups it was clear that the vast majority of participants spent a substantial amount of their own time, outside work, undertaking union activities. In one group four participants agreed that they spent on average ten hours a week of unpaid time. One, FBU representative described how he worked 48 hours over eight days, but between 70 and 80 hours with his union role, and how he undertook union duties between night shifts. An USDAW representative said that she spent weekends and evenings on union business and went into work on her days off, in some weeks this could amount to several hours unpaid time, in others between one and two hours. An NUT representative reported that when she had been a school based representative she would do union work most evenings and at weekends. One representative had done a union course, which required two or three hours per night to complete assignments. The only exceptions to this trend were participants with full-time facility time.

Many representatives found that there were particular kinds of work that they tended to do at home, including preparing individual cases, producing newsletters and reading up on relevant issues, such as employment law. An Amicus representative said that 'in terms of putting things together after meetings' he did this at home, 'although he could use his office, there was management pressure to get back to work'. One GMB representative had no access to a computer at work and so worked at home. Other representatives suggested that they preferred working at home because 'they could take more time and management is not breathing down your neck' – they had more privacy. In another case a representative considered time working at home essential, since 'it was the only time you have to think'.

Focus Group participants reported that members expected them to be constantly available, including outside of work, and they themselves felt they had to be accessible at all times - 'you just do it'. As one put it:

'I come in from work and you know you go on the computer to check your emails and you're then having to make half a dozen phone calls because of the emails that are there and sometimes you don't even count the time, you know, the telephone call from a member on a Friday or Saturday night. We have a strange breed of member, I suppose, where they'll go into a night shift on a Friday or Saturday night and think that the union official has nothing better to do, he's got no social life, so he'll ring you with one of their issues and that's a regular occurrence'.

Many participants shared this experience of being contacted in the evenings and weekends. Only one representative (with full-time facility time) said that he avoided being contacted at all hours by restricting giving out his home telephone number.

In terms of work-life balance there was an absolute assumption by all participants that union activity had an impact upon this, but there was little discussion on it as it appeared to be taken for granted, or seen as a 'given'. On USDAW representative reported:

'Personally, my husband has banned anyone from using the home phone because when I'm at home, I'm at home. But then if I'm not on the phone

then I'm on the computer trying to research whatever it is I'm doing. Or emailing people because we haven't got that access at work and my mobile is always going. Sometimes they'll call me over the weekend. I've been on the nightshift; I've dropped everything and gone in first thing in the morning, even though I'm going off to do something. I'm in the store at six o'clock in the morning if they've had an issue go on overnight. And it's just... quality time rather than work life balance. It has an impact on quality time.'

A number of participants agreed that they often had union issues on their minds when at home. One representative was due to attend two union meetings during his annual leave (one on the new age discrimination legislation), because he felt that they were too important to miss.

The vast majority of focus group participants displayed high levels of commitment to trade unionism. In this they may be unrepresentative, but it also means that the levels of work outside working hours necessary to sustain their role as workplace representatives may discourage those with less commitment, or who could not or would not be prepared to accept disruptions to their work-life balance. One participant noted that whilst the gender balance on TUC Stage I courses was often fairly even, by Stage II there was an imbalance and many women had dropped out.

Summary

The major barrier to time-off for union duties is the issue of staff cover, which places both management and peer pressure on representatives. Partly as a consequence union representatives undertake a substantial proportion of their duties in their own time and are expected to be available to their members at all times. It is sometimes difficult for representatives to have time to consult with members in the workplace or work time, particularly with the increase of diverse working patterns and arrangements, whilst outsourcing presents a particular challenge for representation. The level of commitment which it appears that workplace representatives require is likely to deter new representatives from emerging, reinforcing pressures on existing representatives.

4.4 Facilities for trade union representatives

Employers are not required by law to provide facilities to assist most trade union representatives (the main exception being health and safety representatives) in carrying out their duties. The Acas Code of Practice (para 38) only states that employers 'should *consider* making available to officials the facilities necessary for them to perform their duties efficiently and communicate effectively with their members, colleague lay officials and full time officers.'

Almost all participants in the focus groups had access to notice boards. There was only one case where the union did not have access to a notice board for its own use. However, other facilities referred to in the Acas code were less frequently available, and in some cases, even where they were provided there were criticisms as to the nature of the provision.

Dedicated office space

Of all of the facilities listed in the Acas code, it was the question of 'suitable' accommodation that was most frequently raised by focus group participants and in particular the non-availability of secure accommodation where union business could be conducted in private. Only ten focus group participants had been provided with an office at work for union use. Those working for private sector employers were less likely to have been provided with accommodation than those who were in public sector organisations. Of the ten focus group participants representing workers in the private sector just two had been provided with office space. By contrast eight of the 15 representatives from the public sector had office accommodation. Overall, a majority (14) did not have any fixed accommodation. This meant that they did not have a secure space to house their paperwork and could not conduct phone conversations with members or with union officials without concern that these conversations might be overheard. This was particularly raised as an issue in relation to meetings with their members prior to disciplinary or grievance hearings. The desire for a 'secure and confidential' space was seen as very important for the proper conduct of union business. Focus group participants spoke of having to search for meeting rooms, of being disturbed when in meetings with members and of having sometimes to relocate after meetings had started to make way for colleagues, supervisors or managers who wanted to use the accommodation. One USDAW representative said that under their facilities' agreement representatives had the right to use a room if one was available, but she had recently been refused a room and had to use the canteen instead. A T&G representative spoke of having to 'book and grab' a room when needed for union meetings. There were also specific issues where workers were mobile. The fact that they had no fixed workplace – for example in the case of transport or other mobile workers – raised particular challenges in terms of the provision of space to undertake union duties.

A number of focus group participants accepted that it might be difficult for their employer to provide suitable accommodation for union representatives. In some cases it was recognised that organisations, which themselves had limited accommodation just did not have any available for union use – this was the case for one Aslef representative.

Access to telephones for union business

The majority of representatives said that they could use workplace telephones to conduct union business. Of the three that specified this was not the case, all were T&G representatives and in private sector workplaces, representing manual workers. However, access to telephones did not mean that there were no concerns as to their use. Many representatives, particularly those who did not have access to a union office in their workplace, did not feel that the phone system was sufficiently secure and confidential. A participant in one focus group explained:

'If you do work at home you don't have the fear of somebody standing over your shoulder, do you? That's why people do stuff at home, because you know that there is going to be nobody standing over watching you or saying who are you on the phone to or who's ringing you.'

A TSSA representative, for example, had access to a telephone at work, but confidentiality was seen as an issue, deterring him from using the phone. In some

cases representatives used mobile phones at work to conduct union business. In the case of an Aslef representative, senior union lay officers were provided with mobile phones. However they were not permitted to use them in the driving cabs or to leave them on to receive messages. There was also fear that as it was a company phone and management had access to phone records, they may check them. As a consequence it was a facility that was largely under-used.

Access to Information Technology

A clear majority of the focus group participants had access to email facilities at work and could use this facility for trade union business. However, in some cases emails were limited to the workplace intranet system. Thus representatives could contact their members at work but could not necessarily contact the union for advice or information. A PCS representative said that the union had access to internal email, but had no external email access. A GMB representative used his own PC, as work laptops could not be used for union business due to his employer's concern that viruses would enter the work system. An Amicus representative used his own laptop at work but had no Internet access. A BFAWU representative had been supplied with a computer by her union but was unable to contact her members by email, since few had private email addresses and none had workplace email addresses. One representative had access to the Internet and emails but only during lunch hours. However again, as a representative of manual workers, most of whom did not have Internet accounts, he could not use the facility to keep in touch with his members. In a few cases union representatives referred to Union Learning Centres which they were able to use in the conduct of union business. These were generally regarded as useful facilities.

An issue raised by two representatives, one from UNISON and the other from the T&G, related to the provision of internet and email access to some representatives and not others. It appeared that the employers had determined that only a certain number of representatives would be offered these facilities.

Some representatives indicated that even though they had IT access at work they did not use it, citing two main reasons. First a number of representatives said that they worked at home because they felt that there were particular time constraints about doing union business in working time. It was also the case that those who were less confident about using new technology preferred to work on their computer at home, where they could work at their own pace. The second reason for not using office technology was because they did not always trust their employers not to gain access to emails sent through the work system. A PCS representative spoke of being 'apprehensive' that email messages might be read by his management.

A minority of representatives did not have any email access at work. One union representative said that not only did she not have access to emails at work but also that the adoption of new technology was not at the forefront of her union's concerns, describing its position as being 'in the nineteenth century' with full-time officials themselves not using emails. A T&G representative had no Internet access and only limited email access, but felt that since his employers communicated with their employees via email union representatives should have the same access to their members.

Using information technology

A clear majority of the representatives in all of the focus groups used information technology extensively in their trade union work. All agreed that IT made representatives more effective. It should be noted that there might be some bias amongst the participants, since the invitation to participate in the focus groups was based upon an email communication from the TUC. However, amongst those selected, manual worker representatives were as likely to use IT and those who did not have access to computers at work were just as likely to use computers for union business at home.

The primary use of IT was for research and information, but also to contact members and communicate with other representatives. Many of the representatives made specific reference to IT in helping them to keep up to date with employment law and health and safety changes and the TUC and HSE websites were regarded as particularly useful. Some representatives found interactive websites, where they could post or answer questions, useful. IT could also be used to report the outcome of meetings to members who had not attended them and was seen as particularly useful in the context of a devolved workforce. An NUT representative provided the example of an accident in a school where through email she had been able to provide the local school representative with an immediate response and advice. IT was also of use in the production of union newsletters, in preparing cases on behalf of members and in assisting in the recruitment and organisation of new members. It could be used to keep records of members' subscriptions and to track members as they moved employers.

However, there were also downsides to their use of new technologies. In particular many of the representatives felt that their use of mobile phones and email made them available to members at all times. Representatives spoke of being contacted by members in the middle of the night, at weekends, when on holiday and that it was no longer possible to draw a clear line between work, union duties and private life.

In a few cases representatives expressed a preference for communication by more traditional means, such as posters and leaflets, as it was felt that members responded more readily to these forms of information and were more likely to ignore emails. For example, an ASLEF representative said that the union communicated with its members exclusively through 'snail mail'.

In some cases representatives acknowledged the fact that their IT skills were more limited than they would have desired. Not many had received union training to improve these skills, although in one case an Amicus representative had participated in joint IT training with management side members, who had organised an in-house course. A PCS representative said that she had improved her IT skills through an ECDL package run through Learn Direct.

The Acas code of practice merely suggests what appropriate facilities might amount to. In one of the focus groups the issue of wider facilities was discussed, in particular the right to be provided with information on new employees. A PCS representative complained that the union had no access to induction courses. In this case the representative was in a workplace experiencing exceptionally high turnover rates – a figure of 500 new staff a year was mentioned – and the lack of data from the

employer about new recruits was seen to make representation and consultation difficult.

Summary

Representatives voiced a strong desire for dedicated office space to carry out their union work and in particular for private space to allow them to conduct aspects of union work confidentially. Amongst participants there was widespread use of IT, which was seen as increasing effectiveness. In terms of access to employer email and intranet or Internet systems, there were some concerns regarding confidentiality, resulting in representatives restricting their use of employer-provided facilities.

4.5 Relations with management

Amongst focus group participants, there was a widely held view that managers did not appreciate the role union representatives played in the organisation or their rights to time-off to undertake their duties. An USDAW representative reported:

‘They [management] think it’s an excuse to get out of work. As I said before, “oh, are you off going on holiday again?” They just don’t see the relevance of the union rep, even though the majority of them are members and the majority of them will come to me and say, “oh, what do I do in this position?” They still think that for me to take time out from my job to go and do my role as a rep is an inconvenience and has no relevance’.

A T&G representative concurred that:

‘They just think you’re a nuisance, a few of them understand, but there’s not many, they definitely don’t understand that you have the right to reasonable time off’.

In most cases managers were not perceived to be actively seeking to dissuade workers from union activities, although a manager had told one representative that she would rather he did not become a representative, but ‘I can’t stop you’.

In the view of many representatives local managers were often unaware of the content of union agreements or of contractual or legal rights and the consequences could be poor relations between managers and unions. They felt that they were often seen as ‘trouble’ and viewed as constantly raising difficult issues, rather than as having a positive contribution to make to workplace relations. Some representatives felt that this lack of understanding was a result of managers not having had experience of dealing with unions. One representative described young managers as people ‘who don’t respect trade unions or trade unionists and the members because they’ve never known any better’.

A number of participants mentioned having to produce documentary proof before a claim for time-off would be conceded, with one reporting that his management required evidence ‘in black and white or they did not want to know’. An Amicus representative felt that if you did not quote the law to managers they would ignore entitlement and refuse time-off. An NUT representative felt that local managers (and head teachers in particular) did not understand unions and did not see them as

constructive. She pointed out that to compensate for local managers' lack of understanding, the union had not only negotiated an agreement on time off for representatives, but had also produced guidelines for head teachers on the agreement.

A few representatives were less convinced that the problems stemmed from a lack of awareness and that 'they [employers] understand the rights, it's just that they try to push it to the limit'. Some representatives referred to the existence of a 'blame culture' within organizations, which also led to high levels of stress amongst managers.

A number of representatives acknowledged distinctions between immediate supervisors who were seen as hostile to the union and more senior management who were perceived as supportive. One T&G representative spoke of having to bypass his immediate managers to secure an agreement on time off for training. Others also reported that for strategic reasons they might push items up the negotiating structure, so as to have them dealt with by senior managers. Participants admitted that on some occasions they were forced to go to formal grievances when it was not strictly necessary just so that they could access more senior managers.

Representatives expressed the view that they were often more knowledgeable about industrial relations, health and safety and employment law than their immediate supervisors or managers and that this could lead to resentment and obstruction:

'With some managers it is definitely a graded issue that somebody who isn't at their level is telling them that they're not doing their job properly and they don't like it. So perhaps managers should be trained up to our standards, as opposed to being downgraded to their standards.'

A T&G representative reported that her managers frequently conferred with her to get or verify information. A number of participants were strongly in favour of more training for managers, particularly in terms of raising awareness amongst middle managers of the union role and entitlement.

There was also a view that individual managers made a difference. A PCS representative, with a very supportive immediate line manager, was firmly of the opinion that the attitude of managers made the difference. An USDAW representative also pointed out that different management attitudes meant that the level of co-operation between management and unions varied between departments and stores.

Some representatives differentiated further, dependent upon the issue that the union was dealing with. There was a generally and widely held view that managers were more receptive to approaches regarding health and safety and that this was one area where a more positive dialogue could be sustained. As one representative expressed it 'health and safety gets support, there is no them and us, everything else is them and us'. There was a similar view with regard to Union Learning. Here too managers were seen as more receptive; a UNISON representative spoke of how with Union Learning there is 'a different dialogue' where employers are seen as co-operating positively with unions because they share a common agenda on learning. Yet at the same time, participants expressed frustration that management accepted that there should be 'a

partnership' on union learning and health and safety, but this did not extend to their general representative role.

Summary

There was a consensus that many managers do not understand or appreciate the role of workplace union representatives in their organisations and their entitlement to time-off for union duties. Management and union interpretations of what is 'reasonable' do not generally coincide. There could be particular difficulties with immediate supervisors or middle management. Union Learning and Health and Safety were considered less conflictual.

4.6 Increasing the effectiveness of representatives

There was a strong current of opinion that representatives were hindered in carrying out their duties because of the nature of their legal rights and particularly the fact that the rights were framed around interpretations of 'reasonableness'. Participants suggested that since the term is hard to quantify it made it easier for managers to turn down requests. One described the legislation as 'faulty really and it is allowing employers to get away with the situation, isn't it?' Many representatives wanted a legal framework in which time off was not subject to what seemed like arbitrary decisions by managers and were in favour of strengthening the legislation to require management to make provision. As one representative expressed it:

'But there should be better law, trade union law to allow rights to proper time off, that employers cannot say that you can't have it, and especially time to consult with your own members, you know, time to actually do the work in work time, not in your own time. Coupled with that would be the right in law to have proper facilities as well, like a room, computers, telephone and all that, you know, publishing equipment and stuff.'

It was widely felt that there were insufficient sanctions on employers who failed or refused to comply with time off rights and that there was a need for a more powerful enforcement and appeal mechanism. With regard to enforcement, one participant suggested a 'fast track' system open to trade union representatives who had been denied facilities to carry out their duties effectively, rather than the lengthy process of going to an Employment Tribunal.

Views differed over whether or not the law should specify the amount of time off that representatives should have. Those in workplaces where industrial relations were perceived as positive and where there were fewer difficulties in getting time off tended to favour their 'time off as and when required' arrangements. Others were keen to have some allotted time when it was recognised that they were absolved from having to perform their work duties so as to attend to their representative duties. Those in workplaces where employers were more reluctant to let representatives have time off tended to favour a legal requirement to provide a set amount of time off for union duties:

'I think there's got to be some attempt to protect a minimum time and say this is the bare minimum time, you know, in law, that needs to be provided'.

In discussing how to improve effectiveness there was a range of suggestions. A number of representatives wanted provision to consult with members in working time and one representative suggested an arrangement that would provide time off for surgeries, for example an hour set aside a day, when workers could come and meet with their representatives. This would ensure that representatives were aware of issues in the workplace which might be resolved at an early stage before they turned into larger grievances. Another representative, reflecting perhaps on the legal framework regulating access in the context of trade union recognition, argued that, in terms of the induction of new workers, unions in recognised workplaces should have the same rights of access to workers as did managers. Unions who had requested access rights were sometimes refused with managers citing the Data Protection Act as preventing the employer from passing on information about individuals.

Overwhelmingly participants in the focus groups felt that their role as a union representative was undervalued:

‘It would be nice if your managers and your employers took the time to realise that the work that we’re doing isn’t just for the benefit of all the membership, it should be seen as a benefit to the employer as well’.

In discussing the issues that discourage new representatives a number expressed a view that unless union activity was recognised as benefiting organisations and as legitimate, it would be impossible to encourage new representatives. One representative asserted, ‘the government should be less scared about stating the impact unions can have on working lives’. They also reflected on their sometimes weak bargaining power in the workplace, which deterred potential new representatives from coming forward. A number of participants argued for the repeal of ‘anti-trade union laws’ on the basis that legislative intervention had eroded the status of trade unions in the workplace and that repeal would confirm trade union legitimacy.

The focus group participants pointed to a ‘vicious circle’ wherein the amount of work for existing representatives increased, because they could not attract new representatives, who were deterred by evidence of the workload. In the view of one of the participants this resulted in representatives being perceived by workers as ineffective and ‘toothless’. Another issue seen to discourage new representatives was the perceived pressures from both managers and members:

‘But a lot of members turn around and say that they wouldn’t do a representative’s job for all the money in the world, because they just won’t put up with the hassle that you get from either side, because you are caught in the middle.’

An NUT representative felt that the only way out of this was to make it obligatory for every workplace to have union representatives, which would remove the fear factor from workers and would also establish that the union did have a role to play in the workplace. This would also overcome the unequal access to facility time and facilities within the same organisation: an USDAW representative pointed out that within the large retailer for whom she worked management offered much more full-time facility time to the mainly male warehouse staff, but did not extend this to the mainly female

shop staff. This question of inconsistency was also raised by a TSSA representative, who could not understand why in some depots union convenors got 100 per cent facility time while in others they did not.

There was also a perception that trade union activity had a negative impact on workers' careers, many saw their union duties as an impediment to career progression and some pointed out that union representatives were often selected for redundancy whenever there were job cuts. However, in a few exceptions individuals referred to the fact that a number of managers were ex-union representatives, so it could have a positive impact.

Given the age profile of the representatives attending the focus groups, and indeed the age profile of union representatives generally, it is unsurprising that one major concern for the future was involvement of younger workers. Yet participants also reported that part-time workers, shift workers, and younger female workers with caring responsibilities rarely volunteered to become representatives. One part-time representative wanted to give up the role, but felt she could not because there was no one to replace her. Casualisation has also affected, not just recruitment, but also the emergence of new representatives.

Summary

The participants felt strongly that their work as union representatives was not valued in the workplace and that this reflected the wider weakness of trade unions in the law and society. It was felt that there were problems with the interpretation of 'reasonable' with regard to time-off and that the law was inadequate in enforcing entitlement. The difficulties representatives faced in performing their duties effectively, along with high workloads, were seen as a deterrent to the generation of new representatives, particularly part-time workers and workers with caring responsibilities.

Benefits and Costs of Workplace Representatives

Introduction

The costs and benefits of workplace representatives are explored in this paper. As well as using data from the Workplace Employment Relations Survey (WERS 2004), the discussion will also draw upon findings from other useful surveys and the wider empirical literature.

The 2004 Workplace Employment Relations Survey (WERS 2004) provides a representative account of employment relations in Great Britain, covering around 700,000 workplaces and 22.5 million employees. As well as being a rich data source on the characteristics and activities of union representatives, WERS 2004 also looks at non-union representation, which has become more prevalent in recent years. The survey collected a wide variety of information, including what issues representatives spent their time on; how much time they spent conducting their duties; whether or not they were paid for their time and whether they were provided with access to facilities.

This paper is arranged as follows. The first section is an empirical ‘snapshot’ of employee representation as documented by the WERS 2004 survey, and other sources where appropriate. The benefits of employee representatives are discussed in the second part of the paper. Third, the WERS data is explored further to inform an estimate of the financial costs of employee representatives to the economy. Part 4 contains a summary of the paper.

1. Population and coverage of employee representatives

Population estimates of the number of on-site lay representatives in workplaces with 5+ employees (based on WERS 2004 Survey of Employee Managers) are described in Table 1. The mid-point estimate constitutes around 1 per cent of people in employment in 2004.

Table 1. Estimated number of employee representatives*

	Low**	Mid	High
Recognised TU reps	120,800	145,900	171,000
Non-recognised union	5,600	10,400	15,300
JCC reps***	68,300	93,000	117,700
Non-union stand alone reps****	51,100	73,100	95,100
Total	245,800	322,400	399,100

Source: WERS 2004 Cross Section Survey of Employee Representatives *On-site representatives in workplaces with 5 employees or more, Great Britain. Excludes representatives concerned exclusively with health and safety. ** Range of estimates based on 95% confidence interval. Rounded to the nearest 100. ***Joint consultative committees are committees of managers and employees that are primarily concerned with consultation rather than negotiation. ****Stand alone reps are defined as employees who's constituency is not determined by union membership, but who nonetheless perform some general representative function on behalf of their colleagues in dealings with managers.

The estimates described in Table 1 exclude representatives concerned exclusively with health and safety. Representatives concerned with health and safety and training and learning are discussed below.

According to WERS 2004, 46 per cent of workplaces¹² were covered by a form of representative voice.¹³ This equates to just over two thirds of all employees in these workplaces.

Table 2. Coverage of employee representation*

	Proportion	Number
Workplaces**	46%	321,000
Employees***	68%	15.3 million

Source: WERS 2004. *in workplaces with 5 employees or more. Coverage is defined as the presence of at least one of the following: a recognised union, a joint consultative committee (whether at workplace or at a higher level), a lay union representative or a stand alone non-union representative. **rounded to nearest 1,000. *** rounded to nearest 100,000.

Coverage varies by sector. Table 3 below shows that nearly all public sector employees (around 5.3 million) are covered by some kind of representative voice. The proportion of covered employees in the private sector is smaller, but this still constitutes around twice as many covered employees than in the public sector. Coverage is defined as representation either by a union, on-site representatives or by ‘distance reps’; e.g. in workplaces with recognised unions but without on-site reps, there is a lay representative of the same union at a sister plant who also covers their employees.

Table 3. Coverage of employee representation, by sector or ownership*

	Private sector	Public sector
Workplaces**	39% (237,000)	92% (83,000)
Employees***	59% (10.0m)	98% (5.3m)

Source: WERS 2004. *in workplaces with 5 employees or more. Coverage is defined as the presence of at least one of the following: a recognised union, a joint consultative committee (whether at workplace or at a higher level), a lay union representative or a stand-alone non-union representative. **rounded to nearest 1,000. *** rounded to nearest 100,000.

The incidence of *on-site* representation is described below, with estimates of the proportion of workplaces with union and non-union on-site representation. Numbers in parentheses show the estimated number of workplaces.

¹² A workplace is defined as comprising ‘activities of a single employer at a single set of premises’, e.g. a branch or a high street bank. The term ‘workplace’ and ‘organisation’ are therefore not interchangeable.

¹³ Coverage is defined by the ‘best general 2004 measure’ e.g. the presence of at least one of the following: a recognised union, a joint consultative committee (whether at workplace or at a higher level), a lay union representative or a stand alone non-union representative.

Table 4A. Proportion and number of workplaces with some form of on-site employee representation*

Presence of:	Private sector	Public sector
Union and non-union reps on-site	1% (6,000)	3% (3,000)
Union reps only	4% (24,000)	31% (28,000)
Non-union reps only	6% (36,000)	4% (4,000)
No reps on site	89% (540,000)	62% (56,000)

Source: WERS 2004 *in workplaces with 5 employees or more. Number of workplaces is an approximate estimation and rounded to the nearest 1,000.

Table 4B. Proportion and number of employees in workplaces with some form of on-site employee representation*

Presence of:	Private sector	Public sector
Union and non-union reps on-site	7% (1,200,000)	8% (430,000)
Union reps only	17% (2,910,000)	67% (3,620,000)
Non-union reps only	14% (2,390,000)	2% (110,000)
No reps on site	63% (10,770,000)	23% (1,240,000)

Source: WERS 2004 . *in workplaces with 5 employees or more. Number of employees is an approximate estimate and rounded to the nearest 10,000. Not all the estimated employees will have access to the on-site rep, as some reps may have specific constituencies e.g. members of their union.

Representatives concerned with training and learning

It is not possible to use WERS to meaningfully estimate the number of Union Learning Representatives.¹⁴ The Department for Education and Skills (DfES) collect data on the number of ULRs. The latest estimates from DfES are around 15,000 ULRs have been trained since the establishment of the Union Learning Fund in 1998. According to the WERS survey, managers in around 14,000 workplaces reported the presence of at least some on-site union representative that had specific responsibility for promoting training or learning. However, it is important to note that some of these will not necessarily be designated ULRs as the term refers to a specific role as outlined in legislation, and it is possible for union reps to promote training and learning without being an officially designated ULR.

In terms of coverage, 2.4 million employees (11 per cent of the total) were employed in a workplace where the manager reported the presence of at least some on-site union representative who has training and learning responsibilities. It is important to note that not all of these employees will have access to a learning rep, as they may not belong to the union in question. DfES estimate that around 250,000 people who have benefited from the activities of ULR since 1998.

¹⁴ Managers report the presence of a union rep that has responsibility for training and learning, but this does not have to be an officially designated ULR and union reps may play a role without being appointed or trained as a ULR. The TUC and DfES estimates are more reliable.

Representatives concerned with health and safety

It is not possible to use WERS 2004 to reliably estimate the population of representatives who are exclusively concerned with health and safety.¹⁵ There are no formal arrangements for training or registration with the Health and Safety Executive (HSE). However, the TUC keep records of safety representatives and estimate that there are around 150,000 trade union appointed safety representatives currently active, with a further 30,000 representatives of employee safety (RoES)¹⁶.

There is likely to be considerable overlap between these representatives and those estimated in Table 1, above. The number of reps estimated by the TUC could include multi-issue representatives concerned with health and safety as well as other matters, therefore already accounted for in the estimates. We can use WERS to estimate the proportion of workplaces and employees that have a dedicated health and safety representation (either a committee or a free standing representative). It shows that around 27 per cent of workplaces with 5+ employees had some form of dedicated health and safety representation, covering 65 per cent of employees.

¹⁵ Health and safety reps may either sit on a dedicated health and safety committee or hold a free-standing role concerned solely with health and safety issues. The WERS Management Cross Section Survey only asks about the presence of free-standing reps in the absence of a committee structure. Furthermore, WERS does not ask how many health and safety reps are present (either on the committee or in free-standing roles).

¹⁶ A RoES is an employee that is elected by the workforce to represent them in consultations on health and safety issues where there are no trade union appointed health and safety representatives, or the workplace is non-unionised.

Table 5A. Proportion and number of workplaces, by health and safety consultation arrangements

Arrangement	Proportion and number of workplaces*
Consultative committee concerned with multiple issues (including H&S)	6% (42,000)
Dedicated H&S consultative committee	8% (56,000)
Employee reps concerned with multiple issues (inc H&S)	3% (21,000)
Dedicated H&S reps	19% (132,000)
Direct methods	63% (439,000)
No arrangements	2% (14,000)

Source: WERS 2004 . *Workplaces with 5 employees or more. Number of workplaces is an approximate estimate and rounded to the nearest 1,000.

Table 5B. Proportion and number of employees, by health and safety consultation arrangements

Arrangement	Proportion and number of employees*
Consultative committee concerned with multiple issues (inc H&S)	16% (3.6m)
Dedicated H&S consultative committee	31% (6.97m)
Employee reps concerned with multiple issues (inc H&S)	4% (0.9m)
Dedicated H&S reps	14% (3.15m)
Direct methods	34% (7.65m)
No arrangements	1% (0.23m)

Source: WERS 2004 . *in workplaces with 5 employees or more. Number of employees is an approximate estimate and rounded to the nearest 10,000.

The tables show that there were around 132,000 workplaces that reported a dedicated H&S rep. Some of these may be 'distant' representatives therefore we should not assume one representative per workplace. Table 2 showed that 321,000 workplaces were covered by employee reps and Table 4A above showed that 15 per cent or 105,000 workplaces had reps onsite. This implies a ratio of 3.08 representatives per covered workplace. Applying this ratio to 132,000 workplaces gives an estimate of 43,000 dedicated free-standing health and safety representatives active in the WERS population. However, this is not a meaningful estimate of the population of dedicated health and safety reps, as it does not include representatives sitting on a dedicated health and safety committee. Furthermore, WERS only asked about free-standing reps in the absence of a committee structure.

We also want to account for those on a dedicated H&S committee, which are not concerned with matters in the workplace (therefore not captured by estimates in Table 1). WERS data shows that there were 56,000 workplaces that had such a structure. Unfortunately, it is not possible to estimate the number of people on these committees, nor how many of the members are concerned with other issues.

2. Benefits of Workplace Representatives

Estimating the benefits of employee representatives is somewhat less straightforward than estimating the costs. Representatives in the workplace facilitate the indirect, collective participation of employees in various aspects of their work. The 'pluralist' perspective of 'partnership' in industrial relations focuses on indirect forms of employee involvement via representatives. However, there are also direct methods of involving employees, such as team briefings, suggestion schemes, and quality circles (see Bryson, Forth, and Kirby (2005) for discussion). These can also bring benefits to the workplace. A hybrid framework recognises the importance of employee representation as well as direct participation. Through a 'mutual gains' framework, management and employees work together to ensure benefits for all concerned.

Here we do not focus on the distribution of benefits, which (as highlighted in the empirical literature) is not necessarily straightforward, and can be influenced by the nature of industrial relations, for example, productivity gains may lead to higher wages or increased profits.

Potential benefits are organised in the following categories: **skills and training; exit rates, labour turnover and dispute resolution; worker safety; and productivity.**

Skills and Training (Union Learning Representatives)

The relatively new concept of Union Learning Representatives (ULRs) (given statutory footing in 2002) has meant there is little empirical evidence on their impact. However, they bring benefits by helping individual employees develop their skills and thereby enhancing the contribution they can make at the workplace. The Department for Education and Employment (DfEE) estimated the benefits of ULRs to businesses (in the form of improved productivity) ranging from around £11m to £49m in the first year. This is under the assumption that 28,000-41,000 employees receive training as a result of access to a ULR.¹⁷

As reported above, reliable estimates from the DfES puts the number of ULRs trained since 1998 at around 15,000. This corroborates with data from the WERS survey in which managers in around 14,000 workplaces said that there was a presence of an on-site union rep with training and learning responsibility. Coverage extends to around 11 per cent or 2.4 million employees in these workplaces.

Although not all of these employees will have direct access to the ULR in their workplace, it is worth noting the evidence that ULRs are actively encouraging colleagues in the workplace to undertake training. An evaluation of the Union Learning Fund (ULF) between 2001 and 2005 conducted by DfES¹⁸ found that there had been over 153,000 learning opportunities delivered as a result of the ULF. 31 per

¹⁷ Regulatory Impact Assessment for Providing Statutory Backing for Union Learning Representatives, Department for Education and Skills.

¹⁸ <http://www.dfes.gov.uk/research/data/uploadfiles/RB789.pdf>

cent of learners surveyed stated that they found out about learning opportunities through their ULR.

Based on information on the activities of ULRs, the DFEE estimated that around 12 employees per ULR would complete their training and enhance their productivity as a result of the intervention of the ULR. Applying this assumption to an estimate of around 14,000 active ULRs, this gives a mid-point estimate 168,000 employees directly benefiting from the activities of ULRs in the workplace.

How these productivity gains are accrued (wages, profits) will vary according to the structure of the labour and product market, as well as the climate of industrial relations. However, if we assume a 3-5 per cent premium on the average wage of those who received additional training,¹⁹ this gives annual benefits in 2004 of **£94-£156 million.**²⁰

Exit rates, labour turnover and dispute resolution

The 'voice' mechanism that employee representatives can provide has been widely documented in the literature. Freeman & Medoff (1984)²¹ argued that representatives offer an alternative to 'exit' in voicing grievances. Kaufmann and Levine (2000) identify the benefits of employee representatives in so far as market imperfections cause firms to under-invest in dispute resolution, and opt for dismissal instead. However, the existence of negative externalities (involuntary unemployment, loss of skills) imply that this may not be the optimal outcome for society.

By reducing exit rates and labour turnover, employee representation can bring substantial benefits by avoiding costs such as support during job search (unemployment benefit); firm recruitment costs and a reduction in labour productivity (as a result of loss of job skills).

It is difficult to put a number on the extent to which the activities of representatives may lower exit rates and labour turnover. Fernie and Metcalf (1995) using WIRS 1990 data found unions were associated with a lower quit rate. Guest and Peccei (2001) found that direct and representative participation had a positive impact on employee attitudes and behaviour, which in turn improved labour retention and reduced absenteeism.²²

¹⁹ Evidence on effects on wage premium are mixed. Booth, Francesconi and Zoega give a wage premium for male workers of 13.3% . A. L. Booth, M. Francesconi and G. Zoega, *Unions, Work-Related Training, and Wages: Evidence for British Men*. Industrial and Labour Relations Review, 2003. Vol. 57, Issue 1, Article 4.

²⁰ Assumes wage premium gains from training accrue in same year as training (2004). Average gross annual earnings of all employees = £22,266 (Annual Survey of Hours and Earnings, ONS, 2004).

²¹ R. Freeman and J. Medoff, *What do Unions Do?* 1984. New York: Basic Books.

²² Improvements in employee attitudes and behaviour improved the composite measure of labour retention (5 point score) by approximately 50%; and lowered absenteeism score by around one third.

The WERS 2004 survey found the average **dismissal rate** (in the last 12 months) for workplaces with 5+ employees per 100 employees was 1.66.²³ Using the average, the estimated number of dismissals in the previous 12 months for WERS workplaces is therefore around 374,000.²⁴

The argument is that, in the absence of representative voice, the number of dismissals would be higher. Indeed, although finding no significant association between compliance with the right to be accompanied (in either disciplinary or grievance hearings) and the dismissal rate, Antcliffe and Saundry (2006) using the WERS 2004 data found union density had a significant negative effect on dismissal rates. They note that this suggests the day-to-day representation offered by union representatives could be more important than undertaking the role of the companion on a ‘one off’ basis.

According to WERS 2004, the dismissal rate in workplaces with some kind of representative voice was 1.53, compared with 1.96 for workplaces with no representative voice.²⁵ To illustrate potential benefits, if we assume that representation contributed to reducing the dismissal rate in covered workplaces by 5-10 per cent (or, in the absence of reps the dismissal rate in these workplaces would be 1.74-1.83), then the benefits translate to around 13,000- 25,000 fewer dismissals in these workplaces. If we take the average cost of recruitment per vacancy as around £4,200,²⁶ this equates to over **£107-£213 million** to firms as a result of fewer dismissals.

In line with the Freeman and Medoff argument, representatives can also reduce the **voluntary exit rate** in a workplace. Voluntary job separation is in some ways symptomatic of a healthy labour market, as workers move around to find better matching jobs. However, in some cases where representative ‘voice’ can play a part in mediating potential disputes, the avoided costs can be substantial for both the employer and the employee.

According to the Labour Force Survey, this was 3.3 per 100 employees in 2004.²⁷ Applied to the WERS 2004 population, this equates to around 740,000 voluntary exits per annum, or just over one voluntary exit per workplace (1.06).

WERS estimates that around 322,000 workplaces are covered by some form of employee representation. To illustrate costs, if representatives in these workplaces

²³ DTI estimates using WERS 2004 full dataset. Other estimates using this data include forthcoming paper by V. Antcliffe and R. Saundry ‘Employee Representation in Grievance and Discipline – Making a Difference?’ to be published as part of the DTI WERS 2004 Small Grants Fund. Other estimates of involuntary job separation rate – Heap (ONS Labour Market Trends, ‘Job Separations in the UK’) using the Labour Force Survey estimates 1.2 per 100 employees in 2004.

²⁴ (Calculation: number of employees in workplaces 5+ employees = 22,500,000/100)*1.66) rounded to nearest 1000.

²⁵ To infer causality, one would need to control for other factors. However, the empirical evidence to date is strong, and therefore the analysis is built on assumption that ‘voice’ and representation have a negative impact on dismissal.

²⁶ Source: CIPD surveys.

²⁷ D. Heap, ONS ‘Job Separations in the UK’ *ONS Labour Market Trends*, June 2005.

contributed to reducing the number of voluntary exits by 5-10 per cent, then the benefits translate to around 17,000-34,000 fewer exits.²⁸

Avoiding such exits will carry significant financial benefits. As above, recruitment costs for the employer could amount to **around £72 - £143 million**. Furthermore, there are substantial psychic costs for employees, including anxiety, stress and inactivity as workers become discouraged from participating in the labour force.

Since 2000, workers have had the right to be accompanied to disciplinary and grievance hearings. Employee representatives, who bring support and valuable experience to the process, can contribute to the equitable resolution of disputes. Antcliffe and Saundry (2006) using data from WERS 2004 found that establishments that fulfilled the requirement of accompaniment at grievance meetings reduced the Employment Tribunal (ET) application rate by 19 per cent.²⁹

The argument is that employee representation contributes to reducing the tribunal rate (number of tribunal applications per 100 employees) for covered employees. According to WERS 2004, the tribunal rate per 100 employees was 0.24 for employees in workplaces with 5+ employees.³⁰ If we assume that the representatives in covered workplaces (around 321,000 covering around 15.3 million employees) contributed to reducing the mean dismissal rate by 10-20 per cent (e.g. in their absence the rate would have been 0.26-0.29 per 100 employees), this translates as 3,600-7,300 fewer ET applications. If we assume that the average cost of an ET case to business is £4,900 and £990 to the Exchequer,³¹ this equates to annual savings in the region of **£22m-£43m** as a result of fewer ET applications.

Worker safety

Kaufman and Levine (2000) discuss how the public good nature of improvement in working conditions often discourages individual employees from contributing to a safer, efficient workplace. No single employee has the incentive to investigate and tackle hazardous or impeding conditions. Representation solves this problem by 'pooling' worker interests and encouraging workers to participate. This leads to more creativity and efficiency in devising and implementing health and safety measures in the workplace. The reasons worker involvement through representatives tends to be effective could include better quality of information available for decision-making, and where representatives have been involved in drawing up procedures, they help to ensure that they are practical and so reduce the number of safety rules broken.

The WERS 2004 survey captures the variety of ways that employers consult with their workforce on health and safety issues. Managers were asked if there was a

²⁸ Calculation – Assume 1.06 exits per workplace = 342,000 exits in workplaces with representation.

²⁹ In their analysis, accompaniment could be from either a fellow colleague or formal workplace representative.

³⁰ DTI estimates.

³¹ DTI estimates based on The Survey of Employment Tribunal Applications, (SETA) 2003. Rounded to nearest £1m.

committee present that dealt with issues of health and safety, either multi-issue or dedicated to H&S issues only. The findings are described in Tables 5A and 5B above, and show that around 27 per cent of workplaces with 5+ employees had some form of dedicated health and safety representation, covering 65 per cent of employees.

There is good evidence to suggest that H&S representatives make a valuable contribution to the workplace. One research study, which included a review of the empirical literature as well as original analysis of WIRS1990 and WERS 1998, concluded that their representation and consultation has a significant role to play in improving health and safety at work.³² A number of papers have used previous WERS surveys to find the impact of representation, one using WERS 98 data found that when there was a union presence in the workplace, the injury rate is 24 per cent lower than in workplaces where there is no union presence.³³ Another study by Paci, Reilly and Holl from 1994 based on WIRS1990³⁴, is also commonly quoted as saying that safety reps roughly halve injury rates. Walters et al tried to reproduce their analysis and could not establish evidence for the same scale of effects. We therefore need to be cautious about ascribing a particular numerical value to the effectiveness of safety reps.

According to WERS 2004, the average injury incidence rate (number of employees per 100 sustaining listed injuries in previous 12 months) was 0.57 for all workplaces with 5+ employees³⁵. To illustrate potential benefits, we assume that H&S reps contribute to reducing the injury rate in workplaces by 10-15 per cent. A mean ratio of 0.57 per 100 employees estimates around 128,250 injuries for the WERS population per annum. For workplaces where there is indirect H&S representation this ratio implies around 83,400 injuries in aggregate. If in the absence of representatives, the injury rate would have been 10-15 per cent higher (e.g. 0.63-0.66), then these benefits translate to around **8,000-13,000 fewer injuries** in workplaces where there is indirect H&S representation.

This constitutes significant financial and personal benefits to the employer, employee and society, including reduced lost earnings, avoidance of sick pay and compensation payments, as well as increased output. The HSE estimate that the full costs to society

³² Walters, D. et al., The role and effectiveness of safety representatives in influencing workplace health and safety, HSE Contract Research Report 363, 2005, <http://www.hse.gov.uk/research/rrpdf/rr363.pdf>. A comprehensive review of the literature is beyond the scope of this paper; see Walters et al for a fuller discussion.

³³ Litwin, A. S., Trade Unions and Industrial Injury in Great Britain, LSE, 2000.

³⁴ City University Dept of Economics Discussion Paper 31.

³⁵ The WERS data on injuries arises from questions IINJURY and INJUMINJ on p.112 of the WERS2004 Management Questionnaire. The HSE estimate an injury incidence rate of 1.33 per 100 employees from LFS data for 2003/04. This figure is based on 'reportable' injuries (i.e. the most serious injuries that have led to, or are likely to lead to, time off work, disablement or death).

In trying to explain the difference between the two figures, the two following factors could be influential: Firstly, one might expect some under-reporting in the WERS sample compared to the LFS: an employee is more likely to remember an injury that happened to them, whereas a manager might forget some incidents (and perhaps might also wish to limit the number they report so as not to appear to be a 'dangerous' employer). Secondly, sampling error should be considered. Only 8% of all workplaces reported any of the injuries listed in WERS, therefore the 95% confidence interval will be rather large (the LFS estimate is also likely to be subject to some sampling error, but due to a larger sample size, the confidence interval will be measurably smaller).

as a result of injury in the workplace to be £5.9-£10.7bn in 2001/02³⁶. There were 7.3 million working days lost in 2001/02, therefore the estimated cost to society per working day lost through injury in 2001/02 is £810-£1,470³⁷. Further work to refine this calculation would require taking into account that the costs per day could be dependent on the period of absence, and potential benefits would depend on the type of injury prevented.

The mean number of working days lost per reportable injury in 2004 was 19.2³⁸. Using this assumption, we estimate that the avoidance of 8,000-13,000 injuries is equivalent to around 161,000-241,000 fewer working days lost. Uprating the 2001/02 cost estimates to 2004 prices, this brings the potential range of benefits in this instance to **£136m-£371m**.

In a similar manner, we can calculate the range of benefits associated with reduced illness³⁹ rates due to the presence of H&S reps. According to WERS2004, the average illness incidence rate was 1.76 for all workplaces with 5+ employees. This implies around 257,000 cases in workplaces with indirect H&S representation.

There is very limited empirical evidence on the impact of H&S reps on the incidence of work-related illness. A majority of studies (e.g. Eaton and Nocerino, 2000)⁴⁰ generally support the idea that the presence of some form of H&S representation can reduce the incidence of work-related illness. However, in some cases, such as in analysis by Fenn and Ashby (2001)⁴¹, essentially the opposite effects are found, in essence, workplaces with some form of H&S representation (in this case, trade unions) reported a higher number of cases of work-related illness. One possible explanation for such results was that in workplaces where there was some form of H&S rep, employees were made more aware of their rights and therefore more likely to report work related illnesses. We should therefore make the cautious assumption that H&S reps contribute to reducing the illness rate in workplaces by 1-3 per cent. This translates to around **3,000 to 8,000 fewer cases of illness** in these workplaces.

³⁶ Interim update of the 'Costs to Britain of Workplace Accidents and Work Related Ill Health', 2004, <http://www.hse.gov.uk/statistics/pdf/costs.pdf>. The full breakdown of costs include costs to employees and dependents in the form of lost earnings, human costs (e.g. psychic costs due to pain and suffering); sick pay paid by employers (in addition to Statutory Sick Pay) and non-injury accident costs; and losses to society in the form of a loss of output, and medical treatment.

³⁷ HSE, Health and Safety Statistics Highlights 2001/02. <http://www.hse.gov.uk/statistics/overall/hssh0102.pdf>

³⁸ ONS, Health and Safety Statistics 2004/05. Using data from LFS, there were an estimated 363,000 reportable injuries, and 7 million working days lost through injury. $7m/363,000 =$ average 19.2 days.

³⁹ By 'illness' we refer to the list of illnesses, disabilities and other physical problems under the ILLNESS question on p.112 of the WERS2004 Management Questionnaire. According to the Health and Safety Executive's Statistics Highlights 2001/02 (see footnote 26), the most common types of illness were musculo-skeletal disorders, occupational stress, depression or anxiety, followed by breathing, lung and hearing problems.

⁴⁰ Eaton, A. E., Nocerino, T., (2000), The Effectiveness of Health and Safety Committees: Results of a Survey of Public-Sector Workplaces, *Industrial Relations*, vol. 39, Issue. 2, p. 265-290.

⁴¹ Fenn, P., Ashby, S., (2001), Workplace Risk, Establishment Size, and Union Density: New Evidence, *Centre for Risk & Insurance Studies, University of Nottingham*.

The HSE estimate that the full costs to society as a result of ill health in the workplace to be £11.3-£17.3bn in 2001/02. There were 32.9 million working days lost in 2001/02 through illness caused or made worse by work : therefore the estimated cost to society per working day lost through illness in 2001/02 is **£340-£530**.

The mean number of working days lost per new case of work-related ill health in 2004 was 48.6⁴². Therefore, the avoidance of 3,000-8,000 cases of work-related illness is equivalent to 125,000-375,000 fewer working days lost. Uprating the 2001/02 cost estimates to 2004 prices brings the potential range of benefits from avoiding work-related illness through the presence of H&S reps to **£45m to £207m**.

Productivity

The following discussion of productivity gains draws upon the framework adopted by Kaufman and Levine (2000)⁴³ in their economic analysis of employee representation. The theory is that representatives in the workplace can help reduce the transaction costs that arise when coordinating activities within a firm. Employee representatives can play a valuable role in disseminating important, strategic information from those 'at the top' to those below. The larger the firm, the greater the benefits will be. In addition, employee representation is a vital way in which managers can develop and maintain a sense of equitable treatment among the employees. They note that substantial evidence indicates that 'voice' via employment representation can enhance individuals' sense of procedural justice, in turn increasing their commitment and effort.

In a world with imperfect information, employee representatives can also reduce the scope with which supervisors or mid-level managers can pursue their personal interests against that of senior managers. Opportunism on behalf of supervisors can lead to reduced productivity. Furthermore by promoting 'voice' instead of 'exit', employee representatives can bring about improved productivity in so far as skill attrition is higher in workplaces with lower labour turnover.

Empirical evidence on the productivity impacts of employee representatives *per se* is mixed. Using data from the 1990 Workshop Industrial Relations Survey (WIRS) Fernie and Metcalf (1995)⁴⁴ examine the effects of representation on industrial outcomes. Joint consultative committees (JCCs) were found to have a weak but favourable association with productivity growth and the climate of employee-management relations. They note that JCCs facilitate information sharing between managers and workers, promoting best practice and faster productivity growth. However, in an update of their work using the WERS 1998 survey, Addison and

⁴² There were an estimated 576,000 new cases of work related illness and 28 million working days lost through such illness in 2004 (28m/576,000=48.6).

⁴³ B. Kaufman and D. Levine 'An Economic Analysis of Employee Representation' in B. Kaufman and D. Taras (eds) *Non-union Employee Representation: History, Contemporary Practice and Policy*, 2000.

⁴⁴ S. Fernie and D. Metcalf, 'Participation, Contingent Pay, Representation and Workplace Performance: Evidence from Great Britain' *British Journal of Industrial Relations*, September 1995, 33:3.

Belfield (2001)⁴⁵ found the reverse. Using the 1990 WIRS, Addison et al (2000) found that both information and consultation, and joint consultative committees had a significant, positive effect on labour productivity in non-union establishments. However, their findings were insignificant for unionised establishments. On the whole, employee involvement in unionised establishments was negatively associated with profits.⁴⁶

Guest and Peccei (2001)⁴⁷ using a survey of 54 organisations found a significant, negative relationship between representative participation in and sales/profits. However, combined with direct employee participation and other high involvement management (HIM) practices such as employee share ownership, they found a positive association with higher levels of internal organisation (productivity, output quality and innovation), which was then linked to improved profits and sales.

Updating Fernie and Metcalf's (1995) work using the WERS 1998 survey, Addison and Belfield (2002)⁴⁸ found no association between the presence of a European Works Council (EWC) and productivity. However, one explanation for the apparent neutral effects is that EWC legislation takes time to filter down. They do, however, find that workers covered by a EWC are more likely to speak highly of their establishment (e.g. feel loyal or share values of the organisation).

Also using WERS 1998, Bryson, Forth, and Kirby (2005) examine the affects of high-involvement management (HIM) practices, e.g. more direct employee participation. Although not identifying employee representatives specifically, they find a positive association between HIM and labour productivity. However, in contrast to Addison et al (2000) they found that productivity gains were restricted to unionised workplaces. Importantly, they also found no impact on financial performance in unionised workplaces, supporting the argument that unions convert productivity gains into higher wages, but in this case not to the detriment of profits. Using the same data, Peccei, Bewley, Gospel and Willman (2005)⁴⁹ found significant positive effects on organisation performance, depending on level of employee organisational commitment and the type of information disclosed (directly or indirectly).

It is difficult to quantify the potential productivity benefits because the empirical evidence on the impact of employee representation on productivity is mixed. It depends on how productivity is measured and how it is accrued.

⁴⁵ J. Addison and C. Belfield, 'Updating the Determinants of Firm Performance: Estimation using the 1998 UK Workplace Employee Relations Survey', *British Journal of Industrial Relations*, September 2001, 39:3.

⁴⁶ Their findings corroborate with the view that the presence of unions may significantly influence both the size of the 'gains', and the manner in which they are carved up (e.g. profits or wages). However, contrary to what was expected, they did not find significant relationships between measures of employee involvement and wages in union establishments. See section on distribution of benefits.

⁴⁷ D. Guest and R. Peccei, 'Partnership at Work: Mutuality and the Balance of Advantage' *British Journal of Industrial Relations*, June 2001, 39:2.

⁴⁸ J. Addison and C. Belfield 'What do we know about the new European Works Councils? Some Preliminary Evidence from Britain' *Scottish Journal of Political Economy*, September 2002, 49:4.

⁴⁹ R. Peccei, H. Bewley, H. Gospel and P. Willman, 'Is it Good to Talk? Information Disclosure and Organisational Performance in the UK' *British Journal of Industrial Relations*, March 2005 14:1.

For illustrative purposes, the following calculation indicates the potential dimension of an effect, if it exists. The average gross annual earnings for all employees according to the Annual Survey of Hours and Earnings 2004 (ASHE2004)⁵⁰ is £22,266. If we assume that employee representation converts productivity gains into wages⁵¹ which are 1-3 per cent higher, this equates to an additional £220-£670 per covered employee on average. This would gross up to a figure across the economy of an additional **£3.4bn to £10.2bn** in benefits. So, these calculations show that the potential gains may be very great, provided there were clear evidence of a direct link between representation and productivity.

⁵⁰ Office of National Statistics, Annual Survey of Hours and Earnings 2004, (ASHE).

⁵¹ The literature is inconclusive as to whether unions bargain productivity gains entirely into higher wages or whether they impose “mutual gains” on workplaces in the form of higher wages and profits. However, we make this assumption to come up with an estimate of the benefits.

3. Costs

Cost of time spent on representative duties

Representatives in the WERS 2004 survey were asked how much time, on average, they spent either at home or in the workplace on their representative duties. The full results are reported in the Annex. Note that the results are for those surveyed, and therefore representative of senior reps and *not* representatives of all status.

It shows that on average, representatives in all workplaces spent just over 10 hours a week on their duties. The median response was three hours. A low median relative to the mean (average) suggests that a few representatives spent significant amounts of time on their duties. This can be expected for senior reps, as a proportion of those interviewed will be full-time or close to full-time representatives.

On average, representatives in the public sector spent twice as much time on their duties than reps in the private sector (14.2 hours compared with 6.9). The majority of union representatives work in the public sector (56 per cent – see Table A1.1 in Annex), and they spend more time on their duties than reps of other status (on average 12.5 hours per week for reps from recognised unions, compared with 8.6 hours for JCC reps and 4.2 for stand alone representatives.). Because of the differences between representatives in public and private sector, costs for each sector are discussed separately.

To use this information to construct an estimate of the number of hours worked by representatives of all status, it is important to remember that the results are representative for senior reps only. To use the mean number of hours for this group as the basis for estimates is therefore likely to significantly overestimate the true number of hours.

The following estimates are therefore based on the assumption that each representative spends, on average, the **median** number of hours spent on representative duties as reported by the senior representatives surveyed in WERS 2004. The results reported in the main text are based on the mid-point estimates of the number of employee representatives as described in Table 1, above.

We must also make a further assumption that 10 per cent of all time spent on representative duties is spent working from home⁵². In the case of employees that answered “yes” to whether time spent on representative duties *at work* was paid by the employer, we can therefore assume that 10 per cent of their time spent on rep duties is unpaid.

⁵² In the WERS2004 survey, the respondent is not asked to separate the hours he spends on rep activities at home and at work.

Table 6 below reports the aggregate number of hours spent on representative duties applying the above assumptions.

Table 6. Estimated number of hours spent per week on duties, by sector of ownership*

Sector of ownership:	Total weekly hours		Total
	Not paid for by employers	Paid for by employers	
Public	100,000	440,000	540,000
Private	120,000	360,000	480,000
Total	220,000	800,000	1,020,000

DTI estimates based on WERS 2004 Cross Section Survey of Employee Representatives. *Rounded to the nearest 10,000.

The majority of hours (85 per cent) are paid for by the employer. Table A3.1 in the Annex shows that majority (86 per cent) of all representatives are paid for their time spent at work on rep duties, and that representatives of recognised trade unions were most likely to be paid for this time. The majority of these representatives are found in the public sector, and tend to work more hours than their counterparts in the private sector. Therefore, we find that the majority (55 per cent) of the hours paid for by employers were spent by representatives in the public sector.

Putting these numbers into context, the total number of hours spent on rep duties and paid for by employers, e.g. around 800,000 hours per week, constituted around 0.1 per cent of weekly hours worked in the whole economy in 2004.⁵³

To work out the ‘cost’ of this time as we do in Table 7, below, we use information on the occupation of representatives and the average earnings of those working in those occupations. Annex A4 reports the assumptions used in the cost estimates. The WERS survey shows that representatives were most likely to be in either the professional occupations (18 per cent) or managers or senior officials. However, this is not at all surprising given that respondents were the most senior representatives at the workplace. The distribution of occupations for reps of all status may therefore be quite different.

Taking this into account, in order to extrapolate values based on the responses of senior representatives, we use the median earnings of employees in these occupations, rather than the mean. The assumptions on hourly earnings are described in Table A4.2, and are from ASHE2004.

Using median earnings, rather than the mean (which is standard) goes some way in reducing the potential overestimate of costs that arise by using assumptions based on senior reps for reps of all status. However, for this reason it is likely that these estimates represent the upper bound range of costs.

⁵³ Average actual weekly hours in 2004 was around 910 million, Labour Force Survey Quarterly data, Office of National Statistics.

Table 7. Estimated weekly cost of employee representatives time spent on rep activities at work, by sector of ownership (mid point estimates)

	Cost of time paid for by employer
Public	£4.9m
Private	£3.7m
Total	£8.6m

DTI estimates, rounded to the nearest £100,000. Based on mid-point estimates of the number of employee representatives, assumptions on average number of hours worked and hourly earnings. A more detailed breakdown of costs is described in the Annex.

Consistent with the proportion of hours worked by public sector reps, the majority of costs (55 per cent) are paid by the public sector. Analysis by representative type (set out in Annex 5) shows that union representatives constitute a high proportion of the costs for public and private sector employers (around 87 per cent and 48 per cent of respective costs).

The weekly costs described in Table 7 above imply an annual total (based on 46 weeks noting that reps will not be at work for all weeks and they therefore cannot take time off in those periods) of £396m. Aggregate costs sound considerable, but are nonetheless reflective of the number of hours spent by representatives (around 0.1 per cent of total hours worked in whole economy). Indeed, the annual cost to employers constitutes just 0.06 per cent of the economy's annual wage bill in 2004.⁵⁴

Time not paid for by employers

Representatives also spent time on their duties but were not paid. Table 6 above shows that the amount of 'unpaid' time reps spend is around 220,000 hours per week. Although this time is not paid for by employers, it still has a value to the economy and to the individual workplaces where these representatives are employed. Using the same methodology as that used to construct the hourly wage costs to employers, the value of this time is around £2.5 million per week, and measures the opportunity cost to representatives. The opportunity cost for the representative can also be described as a form of benefit for the employer, who benefits from 'free' time from their workplace rep.

Cost of providing facilities

In the WERS 2004 survey, senior representatives were asked which (out of a list of 8) facilities they were provided by management for use as part of their duties. All types of representatives had similar access to office equipment and office space. However, non-union stand-alone representatives were less likely than other reps to be provided with rooms for meetings, access to email and space on the company's intranet. Below is a detailed list of facilities that senior representatives were asked if they were provided (in workplaces with 5+ employees):

⁵⁴ Office of National Statistics, Total compensation of employees (HAEA) in 2004: £648.7 billion.

Table 8. Proportion of reps reporting access to facilities

Proportion of reps with use of/access to:	All reps	Union reps	Public sector	Private sector
1) A telephone	84%	87%	86%	82%
2) An office specifically for representative duties	22%	25%	26%	18%
3) An office that is also used for other purposes	43%	39%	35%	50%
4) Use of rooms for meetings	68%	75%	80%	57%
5) Use of a photocopier	77%	82%	82%	73%
6) Use of a computer	66%	66%	70%	62%
7) Use of e-mail	64%	68%	72%	57%
8) Space on the company intranet	52%	26%	32%	20%
9) Some other facility (please specify)	12%	14%	11%	13%
No facilities	10%	7%	9%	10%
Number of observations	981	733	431	550

Source: WERS 2004 Cross Section Survey of Employee Representatives. Base: the most senior union and non-union employee representatives in workplaces with 5 or more employees.

The costs associated with the provision of facilities will be, in most cases, negligible in terms of their marginal cost. In most workplaces, these facilities will be in place already, and the implicit ‘rental’ of these facilities from time to time will be measured by the opportunity cost. Costs will vary by workplace according to the level of spare capacity – where facilities are otherwise ‘laying idle’ (e.g. meeting rooms) the marginal cost will be practically zero (there will be some costs associated with depreciation arising out of additional use). On the other hand, some workplaces may make specific investments for the purpose of providing representatives with the means to conduct their duties. For example, the most costly facility from Table 8 would be an office specifically for representative duties. Around a fifth of senior reps surveyed said they had use of such a facility, this rises to 75 per cent for full-time senior representatives. Interestingly, reps in the private sector were less likely to have an office specifically for duties, but more likely to use an office that is also used for other purposes.⁵⁵

Although the information provided by WERS is useful, it is difficult to translate the information into reasonable aggregate estimates as to the cost of facilities provided to all representatives in workplaces. Firstly, the survey was of senior representatives, who are likely to report greater access to a range of facilities than reps of other status. Furthermore, there will be large variation in marginal costs across workplaces. However, one method would be to identify a reasonable proportion of cost of employee representatives (as measured above) that captures the cost of the provision of facilities. This method will capture the positive association between time spent on rep duties and the number of facilities available to representatives found in WERS 2004.

Costs will also vary according to workplace characteristics. For example, there will be relatively large opportunity costs associated with the use of office facilities in a small

⁵⁵ The difference in rates of access to dedicated offices (26% and 18%) is only significant at the 10% level. The difference in rates of access to general offices (35% and 50%) is significant at the 1% level.

workplace in the manufacturing industry, compared with larger workplaces in financial services industry. However, it is also worth noting that access to facilities also varied with firm size, such that reps were more likely to have access to a wider range of facilities in larger workplaces.

The assumption of additional costs of 1-5 per cent of hourly earnings is a starting point. Such a low proportion is likely given that many of the facilities used by representatives will have practically zero marginal cost. Costs are incurred on top of wages paid for by the employer to the representative for time spent on duties (Table 7 above). By doing this we assume that representatives who are not paid for their time are also not provided with 'free' access to facilities.⁵⁶

Table 9. Estimated cost of facilities to employers, per week

	Cost of facilities, as proportion of hourly wage costs	
	1%	5%
Public	£53,000	£265,000
Private	£42,000	£210,000
Total	£95,000	£475,000

DTI estimates based on mid-point estimates of the number of employee representatives, assumptions on average number of hours worked and hourly earnings.

Time off for training

Reps were also asked if either they or a colleague (e.g. a rep of their union) had received training in the 12 months prior to the survey. 35 per cent of reps indicated that some training in this time had taken place.

They were also asked if they were paid for their time spent on the training courses.⁵⁷ In aggregate, the vast majority of those who attending training said that their employers' always paid for their time off to train (85 per cent). Just over 5 per cent reported they were paid for some of their time, and a further 5 per cent reported no payment whatsoever.⁵⁸

WERS did not collect data on the length of training courses therefore it is difficult to try to estimate the cost to the employer. Induction training could take a number of days for new reps, other training courses may run for half a day. If we assume an average of 8-12 hours training (1-1.5 days) per rep, the costs are illustrated below, using the same assumptions of occupations and wage costs as time off for duties.

⁵⁶ This is fairly reasonable assumption for public sector reps, as around 10% of senior reps in public and private sector were provided with no facilities, and 11% of reps in public sector were not paid for their time off. However, 17% reps in the private sector were not paid for their time, therefore this method may underestimate costs to the private sector.

⁵⁷ Payment for time off to train, as opposed to employers paying course fees, etc. Some unions will offer 'free' training courses to their reps. The WERS 2004 sourcebook reports that 77 per cent of training had been delivered by their union. Most non-union reps who had been trained in the last year had been trained by either their organisation (61 per cent) or an external training provider (35 per cent). WERS sourcebook (2006) p.158.

⁵⁸ The remaining trainees took part in courses that were not in work time.

Table 10. Annual cost of time off for training paid by employers, by sector*

Sector	Average time spent training in last 12 months	
	8 hours	12 hours
Public sector	£2,600,000	£3,900,000
Private sector	£4,500,000	£6,800,000
Total	£7,100,000	£10,700,000

DTI estimates based on mid-point estimates of the number of employee representatives training per annum, the average length of training worked and hourly earnings. *These costs do not include time off to those who were paid for 'some' of their time off – e.g. 5% of those who trained.

In thinking about costs, it is worth noting that reps in larger workplaces were more likely to report that they or their colleagues had received training, therefore we can think of these costs being distributed according to firm size.

4. Conclusions: Summary of Costs and Benefits

Table 11. Summary of potential benefits of employee representatives

Area of benefit	Assumptions	Value
Training and learning - Union Learning Reps	<ul style="list-style-type: none"> 14,000 active ULRs, 12 employees benefiting and increase marginal product as direct result of ULR 	<ul style="list-style-type: none"> Enhanced productivity. £94m-£156m to employers and employees
Representative 'voice' and impact on labour turnover and dispute resolution	<ul style="list-style-type: none"> Dismissals: Representation reduces dismissal rate in the workplace by 5-10%; average cost of each dismissal to employer £4,200; Voluntary exit: Exit rate = 3.3 per 100 employees, representation reduces voluntary exit rate by 5-10%, cost of exit to employer £4,200; Employment tribunal: 0.24 dismissals per 100 employees, representation reduced mean dismissal rate by 10-20%. Injury rate per 100 employees 0.57. Indirect H&S reps reduce injury rate by 10-15%. Various assumptions on number of working days lost per injury and cost of working days lost to society. 	<ul style="list-style-type: none"> Dismissals: 13,000-25,000 fewer dismissals, £107m-£213m to employers, unquantified benefits in form of avoided emotional and psychic distress to employees; Voluntary exit: 17,000-34,000 fewer exits, £72m-£143m to employers, avoided psychic costs to employees; Employment Tribunal: 3,600-7,300 fewer ET cases; £22m-£43m to business and exchequer 8,000-13,000 fewer injuries, equivalent to 161,000-241,000 fewer working days lost. Benefits range £136m-£371m to society.
Worker safety	<ul style="list-style-type: none"> Illness rate p. 100 employees 1.76. Indirect H&S reps reduce incidence of work related illness by 1-3%. Various assumptions on number of working days lost per illness and cost of working days lost to society. 	<ul style="list-style-type: none"> 3,000-8,000 fewer cases of work related illness equivalent to 125,000-375,000 fewer working days lost. Benefits range £45m-£207m to society.

Table 12. Summary of costs of employee representatives

Area	Assumptions	Cost
Cost to employer of time off to carry out duties	<ul style="list-style-type: none"> Data from WERS 2004 survey of Employee Representatives. Mid-point estimate of number of representatives - 322,400, median hours per week for each type of rep. Earnings data calculated from distribution of occupations and AHSE 2004. 10% of all hours worked are spent working from home and unpaid by employers. 	<ul style="list-style-type: none"> 800,000 hours per week paid for by the employer, total cost £8.6m per week (£4.9m to public sector, £3.7m to private sector). Total annual (46 wks) costs £396m
Opportunity cost to representatives of unpaid time spent on duties (benefit to employers of 'free' rep time)	<ul style="list-style-type: none"> See above. 	<ul style="list-style-type: none"> Around 220,000 hours per week are not paid for by employers. Using wage data this is equivalent to £2.5m per week (£115m annually) in opportunity cost to representatives. Employers do not pay for this yet are benefiting from the activities.
Cost of facilities	<ul style="list-style-type: none"> 1-5% 'wedge' on top of hourly earnings paid by employer to capture opportunity and depreciation cost of use of facilities. 	<ul style="list-style-type: none"> Weekly cost to employers of £95,000-£475,000 (£53,000-£265,000 Public, £95,000-£475,000 Private). Total annual cost (52 wks) £4.9m-£24.7m
Cost of time of for training	<ul style="list-style-type: none"> 35% of reps had 8-12 hours or training in past 12 months. Occupation and wage data same as above. 	<ul style="list-style-type: none"> Annual cost of £7.1m-£10.7m (£2.6m-£3.9m Public, £4.5m-£6.8m Private)

Annex

A1. Number of reps in public/private sectors

Estimates from WERS 2004 of the sector of ownership for representatives are shown below.

Table A1.1. Sector of ownership of senior employee reps

	All Reps	Rep of largest recognised trade union	Rep of the largest non- recognised trade union	Rep of JCC	Standalone non- union employee rep
Private sector	65%	44%	44%	91%	76%
Public sector	35%	56%	56%	9%	24%

Source: WERS 2004, full dataset, workplaces with 5+ employees. Number of workplaces is an approximate estimate and rounded to the nearest 1,000.

Based on this and the information on the number of reps in Table A1.1 above, Table A1.2 below estimates the number of reps in public and private sector (mid point estimate).

Table A1.2. Public/Private split – representatives (mid-point estimate)

	Rep of largest recognised trade union	Rep of the largest non- recognised trade union	Rep of JCC	Standalone non-union employee rep	Total
Private sector	64,000	5,000	85,000	56,000	209,000
Public sector	82,000	6,000	8,000	18,000	113,000
Total	146,000	11,000	93,000	74,000	322,000

Source: WERS 2004. Full dataset, workplaces with 5+ employees. Estimate of number of reps rounded to the nearest 1,000.

A2. Hours spent on rep duties, all workplaces; public and private workplaces.

The cost estimates are based on median hours spent by interviewed representatives. The full results for all workplaces and split by public/private are reported in the tables below.

Table A2.1. Mean and median hours spent on duties by senior representatives – All workplaces

		All Reps	Rep of largest recognised trade union	Rep of the largest non-recognised trade union	Rep of JCC	Standalone non-union employee rep
Average hours spent on rep duties, in workplace and home	Mean	10.2	12.5	2.6	8.6	4.2
	Median	3.0	4.0	1.8	2.0	2.0
Number of observations		976	698	30	180	68

Source: WERS 2004 Cross Section Survey of Employee Representatives. Base: the most senior union and non-union employee representatives in workplaces with 5 or more employees.

Table A2.2. Mean and median hours spent on duties by senior representatives - Private sector workplaces

		All Reps	Rep of largest recognised trade union	Rep of the largest non-recognised trade union	Rep of JCC	Standalone non-union employee rep
Average hours spent on rep duties, in workplace and home	Mean	6.9	7.9	-	9.3	4.1
	Median	2	3	-	2	2
Number of observations		547	315	-	156	56

Source: WERS 2004 Cross Section Survey of Employee Representatives. Base: the most senior union and non-union employee representatives in workplaces with 5 or more employees. '-' denotes information based on 20 or fewer observations. Information based on 20-49 observations should be treated with caution.

Table A2.3. Mean and median hours spent on duties by senior representatives - Public sector

		All Reps	Rep of largest recognised trade union	Rep of the largest non-recognised trade union	Rep of JCC	Standalone non-union employee rep
Average hours spent on rep duties, in workplace and home	Mean	14.2	15.3	-	4.4	-
	Median	5	5.7	-	3.3	-
Number of observations		429	383	-	24	-

Source: WERS 2004 Cross Section Survey of Employee Representatives. Base: the most senior union and non-union employee representatives in workplaces with 5 or more employees. – denotes information based on 20 or fewer observations. Information based on 20-49 observations should be treated with caution.

A3. Whether paid for time off, public and private sector reps

Table A3.1. Payment for time off – Reps in all workplaces (%)

		All Reps	Rep of largest recognised trade union	Rep of the largest non-recognised trade union	Rep of JCC	Standalone non-union employee rep
Are you paid by your employer for the time spent on rep activities while at work?	Yes	86	92	60	79	69
	No	14	8	40	21	31
Number of observations		982	703	30	181	68

Source: WERS 2004 Cross Section Survey of Employee Representatives. Base: the most senior union and non-union employee representatives in workplaces with 5 or more employees.

Table A3.2. Payment for time off - Private sector reps (%)

		All Reps	Rep of largest recognised trade union	Rep of the largest non-recognised trade union	Rep of JCC	Standalone non-union employee rep
Are you paid by your employer for the time spent on rep activities while at work?	Yes	83	94	-	78	68
	No	17	6	-	22	32
Number of observations		550	317	-	157	56

Source: WERS 2004 Cross Section Survey of Employee Representatives. Base: the most senior union and non-union employee representatives in workplaces with 5 or more employees. '-' denotes information based on 20 or fewer observations. Information based on 20-49 observations should be treated with caution.

Table A3.3. Payment for time off - Public sector reps (%)

		All Reps	Rep of largest recognised trade union	Rep of the largest non-recognised trade union	Rep of JCC	Standalone non-union employee rep
Are you paid by your employer for the time spent on rep activities while at work?	Yes	89	91	-	83	-
	No	11	9	-	17	-
Number of observations		432	386	-	24	-

Source: WERS 2004 Cross Section Survey of Employee Representatives. Base: the most senior union and non-union employee representatives in workplaces with 5 or more employees. '-' denotes information based on 20 or fewer observations. Information based on 20-49 observations should be treated with caution.

A4. Value of time of employee representatives

Table A4.1. Occupation of senior employee representatives

	Rep of largest recognised TU	Rep largest non-recognised trade union	Rep of largest JCC	Stand alone non-union rep	All representatives
Manager and senior officials	13%	5%	9%	29%	15%
Professional occupations	21%	42%	10%	10%	18%
Associate professional and technical occupations	18%	2%	13%	3%	14%
Admin and secretarial occupations	14%	3%	29%	1%	14%
Skilled trades occupations	6%		5%	19%	8%
Caring, leisure and other personal service occupations	3%	0%	3%	12%	5%
Sales and customer service operations	7%	13%	13%	11%	9%
Process, plant and machine operatives and drivers	10%	35%	10%	3%	9%
Routine unskilled occupations	7%		7%	13%	9%
Number of observations	698	30	181	68	977

Source: WERS 2004 Cross Section Survey of Employee Representatives. Base: the most senior union and non-union employee representatives in workplaces with 5 or more employees.

Table A4.2. Hourly earnings (excluding overtime) by occupation, 2004*

	Median	Mean
Manager and senior officials	£15.38	£18.72
Professional occupations	£17.05	£18.45
Associate professional and technical occupations	£12.27	£13.49
Admin and secretarial occupations	£7.98	£8.86
Skilled trades occupations	£8.94	£9.50
Caring, leisure and other personal service occupations	£6.71	£7.41
Sales and customer service operations	£5.52	£6.63
Process, plant and machine operatives and drivers	£7.55	£8.27
Routine unskilled occupations	£5.78	£6.78

Source: Office of National Statistics Annual Survey of Hours and Earnings 2004. *all employees. Data refers to April 2004.

A5. Cost of employee representatives time spent on activities at work

Table A5.1. Weekly cost of employee representatives time spent on activities at work – All reps

	Low*	Mid	High
Recognised TU reps	£4.4m	£5.3m	£6.3m
Non-recognised union	£0.1m	£0.1m	£0.2m
JCC reps	£0.9m	£1.3m	£1.6m
Non-union stand alone reps	£0.7m	£1.0m	£1.3m
Total	£6.1m	£7.7m	£9.4m

DTI estimates, rounded to the nearest £100,000. Based on mid-point estimates of the number of employee representatives, assumptions on average number of hours worked and hourly earnings. Public and Private sector are explored separately, and their sum does not match that for all reps as based on disaggregated estimates using WERS. *Range of estimates based on 95% confidence interval.

Table A5.2. Weekly cost of employee representatives time spent on activities at work – Private sector

	Low*	Mid	High
Recognised TU reps	£1.5m	£1.8m	£2.1m
Non-recognised union	£0m	£0.1m	£0.1m
JCC reps	£0.8m	£1.1m	£1.4m
Non-union stand alone reps	£0.5m	£0.7m	£0.9m
Total	£2.8	£3.7m	£4.5m

DTI estimates, rounded to the nearest £100,000. Based on mid-point estimates of the number of employee representatives, assumptions on average number of hours worked and hourly earnings. *Range of estimates based on 95% confidence interval.

Table A5.3. Weekly cost of employee representatives time spent on activities at work – Public sector

	Low*	Mid	High
Recognised TU reps	£2.2m	£4.3m	£5.0m
Non-recognised union	£0m	£0m	£0m
JCC reps	£0.9m	£0.2m	£0.2m
Non-union stand alone reps	£0.1m	£0.4m	£0.5m
Total	£3.2m	£4.9m	£5.7m

DTI estimates, rounded to the nearest £100,000. Based on mid-point estimates of the number of employee representatives, assumptions on average number of hours worked and hourly earnings. *Range of estimates based on 95% confidence interval.

The Legal Framework

This annex provides a summary of the statutory rights relating to the main different types of workplace representative.

Shop stewards, convenors, trade union collective redundancy representatives and trade union TUPE Representatives

Section 168 of **Trade Union and Labour Relations (Consolidation) Act 1992** gives trade union representatives the right to take time off during working hours to carry out any representative duties connected with collective bargaining or with the performance of other functions for which the employer has given his agreement, and to undergo training. All time off must be reasonable and agreed with the employer in advance. Section 169 states that the representative has the right to be paid for this time off.

A representative may present a complaint to an employment tribunal that an employer has failed to permit him to take paid time off under s168(4) and s169(5).

Section 170 permits trade union representatives time off for other union activities. There is no statutory entitlement to be paid for this time off.

Trade union representatives can accompany a worker at a disciplinary or grievance hearing under section 10 of the **Employment Relations Act 1999**.

Employers should provide the appropriate accommodation and facilities for collective redundancy representatives under s188(5A) of the **TU & LR (C) Act 1992** and for TUPE representatives under Regulation 13(8) of the **Transfer of Undertaking (Protection of Employment) Regulations 2006 (No. 246)**.

Sections 146 and 152 of the **TU & LR (C) Act 1992** gives protection against detriment and from unfair dismissal respectively.

The Acas Code of Practice *Time off for trade union duties and activities* provides guidance for employers, trade union representatives and members of trade unions. This guidance is approved by Parliament and provisions of the Code can be taken into account in determining any question arising during employment tribunal proceedings.

Union Learning Representatives (ULRs)

Section 168A of **Trade Union and Labour Relations (Consolidation) Act 1992** as inserted by section 43 of **Employment Act 2002** gives ULRs the right to take time off during working hours to carry out union learning functions and to undergo training. All time off must be reasonable and agreed with the employer in advance. Section 169 of the 1992 Act states that a Union Learning Representative has the right to be paid for time off to undertake duties or to undertake training.

A representative may present a complaint to an employment tribunal that an employer has failed to permit him to take time off for undertaking duties or training under s168A(9) and s169(5).

Section 170 permits Union Learning Representatives time off for other union activities. There is no statutory entitlement to be paid for time off for union activities.

Union Learning Representatives do not have a statutory right to facilities.

Sections 146 and 152 of the **TU & LR (C) Act 1992** give protection against detriment and from unfair dismissal respectively.

The Acas Code of Practice *Time off for trade union duties and activities* provides guidance for employers, union learning representatives and members of trade unions who wish to access the services of their union learning representatives. This guidance is approved by Parliament and provisions of the Code can be taken into account in determining any question arising during employment tribunal proceedings.

Non-Union Representatives for Consultation on Collective Redundancies and Business Transfers

Section 61 of the **Employment Rights Act 1996** gives employee representatives the right to reasonable time off during working hours to undertake collective redundancy or Transfer of Undertakings (Protection of Employment) (TUPE) duties or training. Section 62 states that the representative has the right to be paid for time off or training. All time off should be reasonable.

Employers should provide the appropriate accommodation and facilities for employee collective redundancy representatives under s188(5A) of the **TU & LR (C) Act 1992** and for TUPE representatives under Regulation 13(8) of the **Transfer of Undertaking (Protection of Employment) Regulations 2006 (No. 246)**. These two pieces of law also specify the roles to be undertaken by the representatives when consulted by the employer.

Employee representatives covered by this law may present a complaint to an employment tribunal under s63 of the **1996 Act** if their employer has unreasonably refused time off or failed to pay them for either their duties or training.

Sections 47 and 103 of the **Employment Rights Act 1996** give protection against detriment and from unfair dismissal respectively.

Union Safety Representatives

Employers are required to permit trade union safety representatives paid time off to undertake their duties and training under Regulation 4(2) of the **Safety Representatives & Safety Committees Regulations 1977**. The calculation of pay for time off is set out under Schedule 2 of the same regulations. The functions of safety representatives are set out in Regulation 4(1).

Employers should also provide facilities for safety representatives under Regulation 4A(2) of the 1977 regulations.

A union safety representative may present a complaint to an employment tribunal that an employer has failed to permit him to take time off or has failed to pay him under Regulation 11 of the 1977 Regulations.

Sections 44 and 100 of the **Employment Rights Act 1996** give protection against detriment and from unfair dismissal respectively for union health and safety representatives.

The Health and Safety Commission issue a Code of Practice for employers, employees and union safety representatives, 'Safety representatives and safety committees' (the 'Brown Book'). The Code has a special legal status. Employers need to demonstrate that they have followed its provisions or taken other actions to show that they have complied with the law in some other way if they are prosecuted for a breach of health and safety law.

Non-Union Safety Representatives

In workplaces without recognised trade unions, employers can choose to consult with each employee individually or with elected "representatives of employee safety". Regulation 6 of the **Health & Safety (Consultations with Employees) Regulations 1996** specifies the functions of non-union safety representatives. Regulation 7(1) sets out where an employer consults representatives, he should ensure that the representative is trained and is permitted to take time off with pay during working hours.

Employers should provide facilities to representatives under regulation 7(4) of the 1996 Regulations.

An employee safety representative may present a complaint to an employment tribunal that an employer has failed to permit him to take time off or has failed to pay him under Schedule 2 of the 1996 Regulations.

Sections 44 and 100 of the **Employment Rights Act 1996** give protection against detriment and from unfair dismissal respectively for safety representatives. This protection covers safety representatives operating on the offshore installations which are within scope.

Offshore Safety Representatives

Trade union and employee safety representatives who work on offshore installations are covered under the **Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989**. Employers should permit safety representatives paid time off for undertaking duties and training under Regulation 26.

Regulation 23 requires employers to make the necessary accommodation and facilities to representatives.

It is a criminal offence for the employer to fail to discharge these duties. Therefore, the courts, and not an employment tribunal, determines cases involving the breach of these rights.

Sections 44 and 100 of the **Employment Rights Act 1996** give protection against detriment and from unfair dismissal respectively for employee health and safety representatives.

I&C Representatives

The **Information & Consultation of Employees Regulations 2004** provide for representatives of the employees of an undertaking to be consulted on an ongoing basis by their employer about such matters as the situation and development of the undertaking and its activities. These individuals are usually referred to as I&C representatives. The Regulations also make provision for representatives to negotiate these consultative arrangements.

Regulation 27 provides a statutory right for Information and Consultation representatives to take reasonable time off during working hours to carry out their functions as a representative. The representatives' right to be paid for this time is set out under regulation 28. An I&C representative may present a complaint to an employment tribunal that an employer has failed to permit him to take time off or has failed to pay him under Regulation 29.

There is no statutory right for I&C representatives to have access to facilities.

Regulations 30 and 32 give protection from unfair dismissal and against detriment respectively for I&C representatives.

Transnational I&C Representatives

The **Transnational Information and Consultation of Employees Regulations 1999** provide for employee representatives to be appointed to European Works Councils (EWCs) in organisations employing at least 1,000 people in the EU and operating with at least 150 employees in at least two EU member states. These representatives are referred to as Transnational I&C Representatives. The Regulations also provide rights for representatives to negotiate the creation of these EWCs.

A Transnational I&C Representative is entitled to take reasonable time off to undertake his duties under regulation 25 of **Transnational Information and Consultation of Employees Regulations 1999**. Regulation 26 sets out the representative's right to be paid for undertaking his duties. Transnational I&C representatives do not have a statutory right to undertake training or to access facilities.

A Transnational I&C representative may present a complaint to an employment tribunal that an employer has failed to permit him to take time off or has failed to pay him under Regulation 27.

Regulations 28 and 31 of the **Transnational Information & Consultation of Employees Regulations 1999** give protection from unfair dismissal and against detriment respectively for I&C representatives.

Occupational Pension Representatives

The **Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006** provide for representatives of an affected workforce to be consulted by an employer about significant changes (termed “listed changes”) to their occupational or personal pension schemes. Those workplace representatives are entitled to reasonable time off with pay under the Regulation’s Schedule (paragraphs 2 and 3). Occupational Pension Representatives do not have any statutory right to time off for training or access to facilities.

Under paragraph 4 of the Schedule, representatives may present a complaint to a tribunal that an employer has unreasonably refused him to take time off or failed to pay him for this time off.

The schedule of the **Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006** give protection from unfair dismissal and against detriment.

Working Time Representatives

The **Working Time Regulations 1998** provide for representatives to negotiate workforce agreements with an employee, which may vary aspects of the standard treatment of working time under those Regulations. The Regulations do not provide any rights for representatives to time off, facilities or training.

Sections 45A and 101A of the **Employment Rights Act 1996** give protection against detriment and from unfair dismissal respectively for working time representatives.

Maternity and Parental Leave Representatives

The **Maternity and Parental Leave Regulations 1999** provide for representatives to negotiate workforce agreements which define employees’ entitlement to parental leave.

Under Regulation 19 of those Regulations, a representative of the workforce is entitled not to be subjected to detriment by any act, or failure to act, by her employer. A representative who has been unfairly dismissed for their representative work can appeal to an employment tribunal under Regulation 20.

Fixed-term Employees Representatives

Regulation 8 of the **Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002** provide for representatives to negotiate workforce agreements with an employer dealing with the arrangements which govern the offering of successive fixed-term contracts to the same individual.

Fixed-term Employees Representatives have the right not to be subjected to detriment or be unfairly dismissed for their representative work under Regulation 6 of the **Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002**.

Fixed-term Employees Representatives have no statutory right to take time off for training, to receive payment for undertaking their representative work or to facilities.

Under Regulation 7 a representative can make a complaint to an employment tribunal if his employer has infringed his rights as a representative.

European Company Statute Representatives

Under the **European Public Limited-Liability Company Regulations 2004** workplace representatives can participate in a Special Negotiating Body which will establish the employee participation and employee involvement arrangements for a newly-formed European Public Limited-Liability Company.

Under Regulation 39 of those Regulations a representative is entitled to take reasonable time off during working hours to carry out his representative functions. Regulation 40 states that a representative is entitled to be paid for this time off. Representatives have no statutory right to have time off for training or access to facilities under the Regulations.

Representatives may present a complaint to an employment tribunal that his employer has unreasonably permitted him to take time off or has failed to pay him for this time off under Regulation 41. Regulations 42 and 44 give protection from unfair dismissal and against detriment respectively.

European Cooperative Society Representatives

Under the **European Cooperative Society (Involvement of Employees) Regulations 2006** workplace representatives can participate in a Special Negotiating Body which will establish the employee participation and employee involvement arrangements for a newly-formed European Cooperative Society.

European Cooperative Society Representatives are entitled to take reasonable time off under Regulation 28. Under Regulation 29 representatives are entitled to be paid by their employer for time off. Representatives do not have a statutory right to take time off for training or access to facilities.

Under Regulation 30 representatives may present a complaint to an employment tribunal that his employer has unreasonably refused him to take time off or has failed to pay him for that time off.

Regulations 31 and 33 give protection from unfair dismissal and against detriment respectively.

Central Government Guidance on the Law relating to Workplace Representatives

The Department of Trade and Industry issues guidance on the following areas that the relevant workplace representatives (both union and non-union) may have an interest.

General trade union issues, including information for shop stewards, convenors
www.dti.gov.uk/employment/trade-union-rights/trade-unions/page16080.html

Collective Redundancies

www.dti.gov.uk/employment/employment-legislation/employment-guidance/page13852.html

Transfers of Undertaking (TUPE)

www.dti.gov.uk/files/file20761.pdf

Information and Consultation

www.dti.gov.uk/files/file26086.pdf

Working Time

www.dti.gov.uk/employment/employment-legislation/employment-guidance/page28978.html (sections 1 -- 4) and

www.dti.gov.uk/employment/employment-legislation/employment-guidance/page28979.html (sections 5 -- 11)

Maternity and Parental Leave

www.dti.gov.uk/files/file18061.pdf

Fixed Term Employees

www.dti.gov.uk/employment/employment-legislation/employment-guidance/page18475.html

The Department for Education and Skills has responsibility for Union Learning Representatives and issues guidance on these representatives
www.dfes.gov.uk/learning&skills/pdf/GUIDE.pdf

The Health and Safety Executive is responsible for health and safety issues and provides the following three pieces of guidance of particular relevance to health and safety representation :

‘Safety Representatives and Safety Committees’

(This provides guidance on the law and the two Codes relating to safety representation for recognised unions).

‘Guide to the Health and Safety (Consultation with Employees) Regulations 1996’

(This gives guidance on arrangements at workplaces without recognised trade unions on the duty to consult employees or their representatives on safety issues).

'Guide to the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989' (This deals with safety representation of those workers on offshore installations).

The Department for Work and Pensions is responsible for pension policy and provides guidance on occupational and personal pension schemes for employers, employees and workplace representatives

www.dwp.gov.uk/publications/dwp/2005/occ_pen_schemes/occ_personal_pens_schemes_reg_s06.pdf

List of Consultees

Below is a list of organisations that were sent the consultation document:

AA Democratic Union	Balfour Beatty Group Staff Association
ACAS	Better Regulation Commission
ACCORD	Bevans Solicitors
Advertising Producers' Association	Birmingham Law Society
AEGIS The Aegon UK Staff Association	Birmingham Union of Club Stewards
Alliance and Leicester Group Union of Staff	Birmingham Wholesale Fresh Produce Association
Ambulance Service Union	Boots Pharmacists' Association (BPA)
Amicus	Britannia Staff Union
ANGU - Abbey National Group Union	British Air Line Pilots Association
Associated Chiropodists & Podiatrists	British Association of Colliery Management
Associated Society of Locomotive Engineers & Firemen	British Association of Dental Nurses
Associated Train Crew Union	British Association of Journalists
Association for College Management	British Association of Occupational Therapists Limited
Association of British Orchestras	British Clothing Industry Assoc. Ltd
Association of Cambridge University Assistants	British Dental Association
Association of Circus Proprietors of Great Britain	British Dietetic Association
Association of Educational Psychologists	British Exhibition Contractors Assoc.
Association of Flight Attendants	British Glove Association
Association of Indian Banks in the UK	British Marine Federation -East Anglia
Association of Licensed Aircraft Engineers (1981)	British Medical Association
Association of Local Authority Chief Executives	British Metals Federation
Association of London Government	British Printing Industries Federation
Association of Management and Professional Staffs	British Retail Consortium
Association of Plastic Operatives and Engineers	British Union of Social Work Employees
Association of Plumbing and Heating Contractors	Broadcasting, Ent., Cinematograph & Theatre Union
Association of Principal Fire Officers	Builders Merchants Federation
Association of Professional Ambulance Personnel	Business Services Association
Association of Professional Music Therapists in Great Britain	Cabinet Office
Association of Professionals in Education & Children's Trusts	Card Setting Machine Tenters Society
Association of Revenue and Customs	Central Arbitration Committee
Association of School & College Leaders	Chartered Institute of Personnel and Development
Association of Somerset Inseminators	Chartered Society of Physiotherapy
Association of Teachers and Lecturers	Cheshire Building Society Staff Association
Audit Commission Staff Association	City Screen Staff Forum
Bakers, Food and Allied Workers' Union	Communication Workers Union
	Community - the union for life
	Community & District Nursing Association
	Community and Youth Workers' Union
	Confederation of British Industry
	CONNECT
	Construction Confederation
	Construction Plant Hire Association
	Co-operative Employers' Association

Department for Communities and Local Government	General Union of Loom Overlookers
Department for Culture, Media and Sport	Glass and Glazing Federation
Department for Education and Skills	GMB
Department for Employment and Learning	Greater London Authority
Department for Environment, Food and Rural Affairs	Guild of Professional Teachers of Dancing
Department for International Development	Hammonds Solicitors
Department for Transport	Harrods Staff Union
Department for Work and Pensions	Health and Safety Commission
Department of Constitutional Affairs	Health and Safety Executive
Derbyshire Group Staff Union	Heating and Ventilating Contractors Association
Diageo Staff Association	HM Prison Service
Directors Guild of Great Britain	HM Revenue and Customs
Distribution Staff Association	HM Treasury
Dunfermline Building Society Staff Association	Home Office
East of England Regional Assembly	Hospital Consultants and Specialists Association
Educational Institute of Scotland	Hyde and District Textile (Technicians and Operatives) Association
Electrical Contractors Association of Scotland	Ice Hockey Players Association (Great Britain)
Employers Forum on Statute and Practice	Immigration Service Union
Employers in Voluntary Housing Limited	Independent Federation of Nursing in Scotland
Employers' Organisation for Local Government	Independent Pilots Federation
Employment Appeal Tribunals	Institute of Directors
Employment Law Bar Association	Institute of Football Management and Administration
Employment Lawyers Association	Institute of Journalists
Employment Relations Services	International Labour Office
Employment Tribunals Service	Irish Bank Officials Association
Engineering Construction Industry Association	IRS Employment Review
Engineering Employers' East Anglian Association	Lancashire Textile Manufacturers Association
Engineering Employers' Federation (EEF)	Lancaster, Morecambe and South Lakeland
Engineering Employers' Sheffield Association (South Yorkshire and North Midlands)	Master Plumbers Association
Engineering Officers Technical Association	Law Society
England and Wales Cricket Board Limited	Lawson Mardon Star Ltd Managerial Staff Association
Equity	Leather Producers' Association
Eversheds Solicitors	Lecturers Employment Advice and Action Fellowship
FDA	Leeds and Holbeck Building Society Staff Association
Federation of Professional Railway Staff	Leek United Building Society Staff Association
Federation of Small Businesses	Lloyds TSB Group Union
Federation of Window Cleaners	Local Government Association
Fire Brigades Union	Local Government East Midland
Fire Officers Association	Local Government Yorkshire and Humber
Foreign and Commonwealth Office	Locum Doctors' Association
Forum for Private Business	Low Pay Commission
G4S Justice Services Staff Association	Low Pay Unit
Gallaher Sales Staff Association	Malt Distillers Association of Scotland
General Dental Practitioners Association	
General Federation of Trade Unions	

<p>Mastic Asphalt Council Mid-Anglia Engineering Employers' Association Ministry of Defence Musicians' Union NAPO National Assembly for Wales National Association of Colliery Overmen Deputies and Shotfirers (South Wales Area) National Association of Colliery Overmen, Deps & Shotfirers National Association of Colliery Overmen, Deputies and Shotfirers (Scottish Area) National Association of Co-operative Officials National Association of Farriers Blacksmiths and Agricultural Engineers National Association of Head Teachers National Association of NFU Group Secretaries National Association of Schoolmasters Union of Women Teachers National Car Park Workers Union National Employers Organisation for Local Government Services National Farmers' Union National Farmers' Union Staff Association National Federation of Retail Newsagents National Federation of Sub-Postmasters National Fillings Association National Hairdressers' Federation National Health Service National House Building Council Staff Association National Joint Industrial Council for the Slag Industry National Pharmacy Assoc. Ltd National Sawmilling Association National Society for Education in Art and Design National Trainers Federation National Union of Journalists National Union of Mineworkers National Union of Rail, Maritime & Transport Workers National Union of Teachers Nationwide Group Staff Union Nautilus UK Nestle Field Sales Staff Association NISA North East Regional Employers' Organisation for Local Authorities North of England Zoological Society Staff Association Office for Standards In Education</p>	<p>Offshore Industry Liaison Committee Paper Federation of Great Britain Ltd PCS Portman Staff Association Prison Governors Association Prison Officers' Association Prison Service Union Prison Staff Association Producers Alliance for Cinema and Television Professional Association of Cabin Crew Employees Professional Association of Teachers Professional Cricketers Association Professional Footballers' Association Professional Rugby Players Association Prospect Publishers Association Recruitment and Employment Confederation Retail Book Stationery and Allied Trades Employees Association Retail Motor Industry Federation Retained Firefighters Union Retired Officers Association Royal College of Midwives Royal College of Nursing RSPB Staff Association Scarborough Building Society Staff Association (SOCASS) Scottish and Northern Ireland Plumbing Scottish Carpet Workers Union Scottish Decorators Federation Scottish Engineering Scottish Executive Scottish Grocery Trade Employers Association Scottish Newspaper Publishers Association Scottish Pharmaceutical Federation Scottish Print Employers Federation Scottish Secondary Teachers Association Scottish TUC Sheffield Wool Shear Workers Union Shield Guarding staff Association Skipton Staff Association Small Business Council Smithfield Market Tenants' Association Society of Authors Limited Society of Chiropodists and Podiatrists Society of Local Council Clerks Society of Radiographers Society of Registration Officers (Births, Deaths and Marriages) South East Employers South Western Provincial Employers Organisation</p>
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<p>Stable Lads Association Staff Association of Bank of Baroda (UK Region) Staff Union West Bromwich Building Society The Association for Clinical Biochemistry The Association of Newspapers and Magazine Wholesalers The Bar Council The British Amusement Catering The British and Irish Orthoptic Society The British Chambers of Commerce The British Lace Federation The British Lock Manufacturers' Assoc. The British Precast Concrete Fed. Ltd The Cinema Exhibitors' Association Ltd The Construction Confederation The Department of Health The Electrical Contractors Association The Employers' Federation of Textile Finishers The Federation of Dredging Contractors The Federation of Master Builders The Labour Relations Commission The Law Society Scotland The National Association of Master Bakers The National Probation Service The Newspaper Society The Showmen's Guild of Great Britain The Vehicle Builders and Repairs Association Limited Thermal Insulation Contractors Assoc. Trades Union Congress Transport & General Workers Union Transport Salaried Staffs' Association Twenty first (21st) Century Aircrew UBAC UCU - The University & College Union Undeb Cenedlaethol Athrawon Cymru Union of Construction, Allied Trades & Technicians Union of Country Sports Workers Union of Democratic Mineworkers Union of DHL Workers Union of Federation of Employed Door Supervisors and Security Union of Finance Staff Union of General & Volunteer Workers Union of Shop, Distributive & Allied Workers UNISON United and Independent Union United Road Transport Union Unity</p>	<p>University of the West of England (Stephanie Tailby, secretary of the British Universities' Industrial Relations Association) Wales TUC Warwick International Staff Association Welsh Rugby Players Association West Midlands Local Government Association Whatman Staff Association Working Lives Research Institute Writers' Guild of Great Britain Yorkshire Glass Manufacturers Association Yorkshire Independent Staff Association</p>
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Code of Practice on Consultation

The Consultation Code of Practice Criteria:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The complete code is available on the cabinet Office's web site, address <http://www.cabinetoffice.gov.uk/regulation/consultation/code/index.asp>

Comments or complaints:

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Mary Smeeth
Consultation Co-ordinator
Better Regulation Team
Department of Trade and Industry
1 Victoria Street
London SW1H 0ET

Telephone: 0207 215 2146
Email: Mary.Smeeth@dti.gsi.gov.uk