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Department of Trade and Industry

Research Paper for the Department of Trade and Industry

REDUNDANCY CONSULTATION: A STUDY OF CURRENT PRACTICE AND THE EFFECTS OF THE 1995 REGULATIONS

Contents

Summary

Regulations introduced in 1995 made important changes to the statutory redundancy consultation requirements, mainly by obliging employers to consult either recognised trade unions or other elected employee representatives about proposed redundancies. This study carried out a set of eight case studies designed to assess the effects of the Regulations and to examine the contemporary management of redundancy more generally. Five cases involved unionised organisations while three were non-union. Two came from distribution, two from further education and one from manufacturing, while three were in various private sector service operations.

Operation of the Regulations

The impact on non-union organisations. Of the three non-union firms, one (***TeleCo***) followed the Regulations to the letter by establishing a new elected committee. Management expressed no concerns about any inflexibility that the Regulations might have produced.

In the other two cases, however, management avoided the effects of the Regulations by asking staff whether or not they wanted representatives and, having received negative replies, proceeded to consult on an individual basis. In the first of these (***ComputerCo***), staff were informed of their right to be represented, at a meeting and subsequently by letter. No one asked for representation. Our interviews with staff identified two reasons for this: the absence of any clear sense of grievance and the lack of any collective tradition. In the light of any clear guidance from the Regulations, management followed the individual route.

In the final case (***FoodCo***), there was a less transparent process of visits by managers to departments. Employees claimed that they were not informed of their rights to consultation. Some spokespeople emerged informally.

In both these latter two cases, managers felt that the Regulations gave insufficient guidance. The objective was to regulate as lightly as possible, but the effect was some uncertainty. Managers would have preferred clearer guidance on how they should consult and also on the details of elections.

Unionised organisations and the new option to consult through non-union elected representatives. The cases were selected from a search of DTI's database on advance notifications of redundancies. Out of 2,048 cases in the database, covering the calendar year 1996, only four could potentially have involved this choice, and there were doubts as to whether they did in fact represent non-union consultation in respect of a unionised work-force. Rumours identified one other such case. The research tracked it down, and found that, in fact, though the company recognised a union for its manual workers, the staff involved in a potential redundancy were office workers for whom there was no recognised union. Use of this option thus appears to have been extremely rare.

How representatives are elected. At ***TeleCo***, representatives were elected from each of the firm's divisions, with the process being handled by the personnel department. There was some feeling among representatives that a more independent electoral process might have been desirable, but this was not a major concern.

Do committees established for redundancy consultation requirements act as stimulants to the establishment of permanent consultation committees? There was no evidence of any direct stimulus and, indeed, at ***TeleCo*** a redundancy subsequent to the one discussed here was handled through another single-issue body. There may have been some indirect influences. For example, ***ComputerCo*** was establishing a staff committee, which might be used for redundancy consultation in the future, but this plainly did not reflect any direct experience of redundancy consultation.

The substance of consultation

As for the substance of consultation, the research found that consultation is more effective than is sometimes suggested. It is true that there were limits to consultation. Legislation requires consultation to embrace ways of avoiding the redundancies, but in practice the key decisions were made by management, with consultation focusing on the process of handling job losses and not the principles.

Our unionised cases provided examples where consultation made a difference:

- In an engineering firm (***EngCo***), the union was able to defend the established principle of last in, first out, and also to shape the definition of how the principle actually worked. It also made some suggestions for re-organisation, which were felt to have saved four or five jobs out of 65.
- In a security firm, where redundancies arose when two sites were merged, some of the

terms and conditions of workers were protected, while all those selected for redundancy were offered alternative positions with the firm.
- At a further education college, some staff (about 15 out of 80) were retained, albeit only for a limited period.

The same was true of ***TeleCo***, the one non-union firm with an elected committee. The key contribution of representatives was to persuade the company to qualify its initial insistence on selecting for redundancy on merit-based criteria by allowing volunteers. A range of more specific issues such as pension entitlements were also identified and resolved.

The more positive outcomes occurred where management took a participatory and flexible approach, which was in turn influenced by the context. ***EngCo*** produces high value-added goods, had little history of redundancy and was engaging in a substantial modernisation process. ***TeleCo*** was merging two organisations and sought to build up a new corporate culture from scratch. In such situations, working with staff may seem natural. At the opposite extreme came ***FoodCo***, where management was faced with extreme product market competition and felt the need to press through change; workers here had some collectivist tradition and it was the clash between a determined management and a sceptical workforce which led to a relatively bitter process. In the other five cases, redundancies tended to be seen as inevitable if undesirable.

Implications: developing the management of redundancy

In February 1998, DTI issued a consultation document covering proposed changes to the 1995 Regulations. The proposals include the following:

- Where an employer recognises any trade union in respect of the workers affected by the proposed redundancies or transfer, consultation must take place with representatives of that union. Consultation with elected representatives of the affected workers may take place only in the absence of a recognised union.
- A new provision will be introduced so that where the employer genuinely provides the opportunity for the election of representatives but the employees do not take this up (e.g. no candidates are willing to stand for election), employers may discharge their obligations by giving the required information directly to the individual employees affected.

The research was completed before these proposals were published, and the proposals had at the time of writing to be finalised; direct comment on them is thus impossible. But there are two indirect implications. First, it was found that the 'non-union option' has been used rarely. Second, ***ComputerCo*** and ***FoodCo*** illustrate some of the circumstances under which firms may wish not to use representatives and hence some of the issues which would need to be addressed in assessing the employer's genuineness in offering consultation through representatives. More generally, many of the employers in the research would have welcomed clarity, and had difficulties with the scope that the 1995 Regulations permitted.

In addition to whether or not to consult collectively, there are issues if representatives are chosen. These are likely to be particularly salient in non-union firms, for representatives here will tend to have less experience than their unionised counterparts. Two issues that stood out were ensuring that representatives are trained and have the information to perform their role. Employers may find it helpful to develop guidance for their staff, possibly using their employers' associations or professional bodies to indicate good practice. There may also be a role for ACAS in developing guides to good practice in this field.

The research has found benefits from consultation with representatives. Ways of strengthening such activity are likely to spread these benefits more widely.

One

LAW AND PRACTICE IN THE MANAGEMENT OF REDUNDANCY

Regulations introduced in 1995 made important changes to the statutory consultation requirements in the event of redundancies and transfers of undertakings, principally by obliging employers to consult either representatives of recognised trade unions or other elected employee representatives. Previously, the obligation to consult was restricted to employers who recognised trade unions in respect of the employees affected. This report sets out the findings of a research project commissioned by the Department of Trade and Industry, a key objective of which was to:

> '…investigate employers' arrangements for consultation with trade unions or employee representatives over collective redundancies and/or transfers of undertakings; and any changes made to those arrangements as a result of the coming into effect of the Regulations.'

Although the Regulations cover both redundancies and transfers, the study made redundancies the central focus. The main reason was practical. Information on redundancies was available through the statutory notification procedure, discussed in Chapter 2, which provided a sample from which to select cases for study. There is no similar database in respect of transfers of undertakings, and the time available for the study did not permit the development of a set of cases using other means. However, the consultation procedures for redundancies and transfers are broadly parallel, and the issues involved are essentially the same. Our conclusions relating to consultation arrangements in respect of redundancies will also apply generally to those in respect of transfers of undertakings.

Moreover, as DTI's research specification quoted above makes clear, the aim of the report is not simply to assess the impact of the 1995 Regulations, but to examine current practice in the area more generally. The first section of this introductory chapter sets out the legal context for consultation over redundancies and transfers. Second, we survey existing literature on the management of redundancy in practice, to set the framework for our own analysis. The third section briefly highlights the key issues that the study set out to address and explains the structure of the rest of the report.

1 The legal background

Statutory requirements for consultation over impending redundancies, now contained in sections 188–198 of Trade Union and Labour Relations (Consolidation) Act 1992, were first introduced in this country by the Employment Protection Act 1975, reflecting the provisions of the EC Directive on collective redundancies of the same year. The rationale for the required consultation procedure as set out in the Directive was to promote discussion about ways and means of avoiding redundancies, reducing the number of employees affected and mitigating the consequences of the redundancies.

The Employment Protection Act required employers to consult recognised unions in advance about any proposed redundancies, and laid down certain minimum consultation periods dependent on the number of employees involved. Employers were also required to notify the Secretary of State of proposed redundancies involving ten or more employees. Where the required consultation did not take place, unions could complain to an industrial tribunal which could make a 'protective award' requiring the employer to keep up the remuneration of the employees concerned for a 'protected period' related to the minimum consultation periods. Crucially, therefore, the statutory provisions were only procedural in character: neither the union nor the Secretary of State had any powers to prevent the redundancies. Moreover, the right to consultation was limited to recognised trade unions – a pattern followed subsequently for the consultation requirements of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (the TUPE Regulations) introduced in response to the 1977 EC Directive on employees' rights in transfers of undertakings.

In the event of an undertaking being transferred, the TUPE Regulations obliged both transferor and transferee employers to inform and consult unions recognised in respect of employees who may be affected by the transfer on measures taken in connection with it. The Regulations required specified information to be conveyed to the union long enough before the transfer to enable consultations to take place over measures envisaged in connection with the transfer, and obliged the employer to consider any representations made by the union representatives, reply to them, and state reasons if rejecting them. Where employers failed to fulfil their duty to inform and consult, industrial tribunal complaints by unions could result in compensation awards to affected employees.

Since they were first introduced, the consultation provisions in respect of redundancies and transfers have undergone a number of amendments:

- In July 1979, the statutory minimum consultation period was reduced from 60 to 30 days where employers proposed to make redundant between 10 and 99 employees.
- The Trade Union Reform and Employment Rights Act 1993 made a series of amendments to both pieces of legislation. These were in response to infringement proceedings initiated by the European Commission on the grounds that UK implementation of the 1975 collective redundancies Directive and the 1977 transfer of undertakings Directive was deficient, and also took account of the revision of the collective redundancies Directive in 1992. The most important amendment was to specify that consultation under the TUPE Regulations should be 'with a view to seeking… agreement' to measures to be taken in relation to affected employees, and that redundancy consultation should be 'with a view to reaching agreement' about ways of avoiding, reducing the number of and mitigating the consequences of the redundancies.
- The 1993 Act also widened the definition of redundancy and required additional information – on the method of calculating any non-statutory redundancy payments – to be given to trade union representatives. The maximum compensation award per employee for failure properly to inform and consult about the transfer of an undertaking was increased from two weeks' to four weeks' pay.
- In June 1994, the European Commission's infringement proceedings culminated in a ruling by the European Court of Justice (ECJ) that UK law did not comply with the requirements of the two EC Directives on collective redundancies and transfers of undertakings. This resulted in the third and most significant set of amendments, namely the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 1995. The Regulations came into effect on 26 October 1995 and applied to collective redundancies and transfers of undertakings occurring on or after 1 March 1996.

The central issue in the ECJ case concerned the fact that under British law the obligation to consult employee representatives on impending redundancies and transfers was restricted to employers who recognise trade unions. The ECJ found the UK to be in breach of its obligations under the two Directives because of its '[failure] to provide for the designation of employee representatives where an employer does not agree to it'. The ECJ decided that the ability of employers to 'frustrate the protection provided for employees' by the Directives must be regarded as contrary to the Directives. More generally, member states were required to take all appropriate measures to ensure that employee representatives are designated with a view to complying with the information and consultation obligations laid down in both Directives.

The 1995 Regulations amended the redundancy consultation provisions of the Trade Union and Labour Relations (Consolidation) Act 1992 and the Transfer of Undertakings (Protection of Employment) Regulations 1981, and provided that employers must consult 'appropriate representatives' of the employees affected by redundancies or transfers. Appropriate representatives are either representatives of a recognised independent union or representatives elected by the employees affected. In the latter case, the elected representatives must be employees of the company. The choice of which representatives to consult lies with the employer. Appropriate existing consultative bodies are a permissible channel for the required consultation provided their membership is elected.

The Regulations do not require the election of standing employee representatives: to comply with the Regulations it is sufficient for an employer to invite employees who may be dismissed or affected by a transfer of the undertaking to elect representatives as and when required and long enough before the time when the consultation is required. (It remains the case that consultation must begin at least 90 days before the first dismissal takes effect where 100 or more redundancies are proposed, and at least 30 days before the first dismissal in all other cases.) Nor do the Regulations specify how many employee representatives should be elected or by what means. Complaints that employers have not consulted in accordance with the statutory requirements are determined, as before, by industrial tribunals, and the sanction for non-compliance remains a 'protective award' in redundancy cases and an award of compensation in cases of business transfers.

The Regulations also incorporated two explicitly 'deregulatory' provisions. The more far-reaching of these restricted the obligation to consult to cases where the employer proposes 20 or more redundancies over a 90-day period. This is in line with the threshold contained in the EC collective redundancies Directive, but under previous British legislation the duty to consult was triggered by the proposed redundancy of a single

employee. The Department of Trade and Industry estimated that this change removed the requirement to consult via employee representatives from some 96 per cent of UK businesses. The second provision relaxed the previous requirements concerning the timing of redundancy consultation. The Regulations state that this should take place – as per the wording of the Directive – 'in good time' rather than 'at the earliest opportunity', which was the formulation used in the previous UK legislation.

The employer must grant the employee representatives access to the employees concerned and appropriate accommodation and other facilities. Elected representatives are also given similar rights and protections to those accorded to trade union representatives in respect of paid time off to carry out their duties and protection against dismissal or action short of dismissal on grounds of their status or activities (protection which also applies to candidates for election and former representatives).

The reforms introduced by the 1995 Regulations are of considerable significance. Traditionally, recognised unions have constituted the 'single channel' through which collective statutory employment rights have been applied. However, this policy was effectively overturned by the ECJ. To comply with the judgements, it was necessary for the UK Government to make provision for the designation of employee representatives for the specific purposes of information and consultation under the two Directives in situations where there are no recognised unions. In other words, in these two areas the UK has introduced issue-specific employee representation mechanisms to fill the increasingly wide gaps left by reliance on voluntary trade union recognition by employers. A broadly parallel set of Regulations was subsequently introduced to allow for consultation over health and safety issues in non-union workplaces.

The 1995 Regulations were strongly criticised by trade unions, particularly because employers who recognise unions have the legal option of bypassing existing union machinery and consulting elected representatives instead (TUC, 1995). Other union criticisms focused on the absence of any statutory provision governing the method of election of the employee representatives, and the absence of any procedure – other than tribunal applications for a protective award – by which employees may challenge electoral procedures instituted by the employer, with which they are unhappy. On this basis, the TUC pressed the European Commission to initiate further proceedings against the UK, and the Commission reportedly informed the then UK Government that it considered that the Regulations do not meet the terms of the ECJ ruling (TUC, 1997: 10). Three trade unions (GMB, NASUWT and UNISON) brought a judicial review case to challenge the Regulations but were unsuccessful at the High Court hearing. At the time of writing, an appeal was outstanding.

Following the 1997 general election, the incoming Government initiated a review of the adequacy of the Regulations and in February 1998 published a consultation document outlining proposed changes to the 1995 Regulations (DTI, 1998). The main changes the Government proposes to introduce are as follows:

- Where an employer recognises any trade union in respect of the workers affected by the proposed redundancies or transfer, consultation must take place with representatives of that union. Consultation with elected representatives of the affected workers may only take place in the absence of a recognised union.
- In future, it will be specified that the non-union employee representatives must be both capable (i.e. suitably mandated) and independent. They may be elected either on an ad hoc basis or as a standing body, or may be members of an appropriate existing representative body.
- Rules for the conduct of elections will be laid down to ensure that representatives are genuinely and independently chosen by the employees (e.g. no one who is a member of the affected workforce may be unreasonably excluded from standing for election, and all members of the affected workforce must be entitled to vote and in secret). The employer will have the responsibility of arranging the election, but employees will have the right to challenge the arrangements made.
- A new provision will be introduced so that where the employer genuinely provides the opportunity for the election of representatives but the employees do not take this up (e.g. no candidates are willing to stand for election), employers may discharge their obligations by giving the required information directly to the individual employees affected.
- The new legislation will make clear that, in the case of both redundancies and transfers, the obligation to consult applies in respect of all those who may be affected, either directly or indirectly.
- Both lay trade union officials and other employee representatives will be entitled to paid time off for training in handling consultations over redundancies and transfers.
- The level of the 'protective award' of compensation available to employees will in

future be up to 90 days' pay in all cases of inadequate consultation.

- The Government also 'has it in mind' to remove the current exemption from the consultation requirements of cases involving fewer than 20 redundancies within a 90-day period, and is seeking views on such a step.

The present research was conducted before the publication of these proposals and does not relate directly to them. It found, however, some cases which throw some light on perhaps the most significant proposal, namely, that an 'individual' route may be followed if genuine efforts to find representatives fail. We found two cases where companies were in effect doing this, even though the 1995 Regulations did not allow for the possibility. The implications of this are considered in the final chapter.

2 The management of redundancy

Pattern of redundancies

The extent of redundancy is assessed in the Labour Force Survey (LFS), which, since 1989, has asked a sample of people whether they had been made redundant during the three months prior to the interview. Field (1997) reports that in the spring 1996 LFS, 207,000 people were counted as having experienced redundancy. Expressed as an annual rate, the figure suggests that approaching 4 per cent of the workforce experience redundancy annually. The extent of redundancy naturally varies with the state of the economy: numbers peaked in 1991, at almost 400,000, before falling to about half this number in each of the years 1994–96.

The LFS also shows experience of redundancy to be widespread across the economy (Field, 1997: 141). As against an average rate per 1,000 employees in spring 1996 of 9.4, the range was from 13.8 in craft and related industries to 5.1 in 'associate professional and technical' groups. Managers and administrators and clerical and secretarial groups were not far below the national average, which is consistent with evidence on the prevalence of managerial 'delayering' (e.g. Collinson and Collinson, 1997). As for sector, redundancy was particularly common in the construction industry (25.5 per 1,000), more common than average in manufacturing (14.0) and least common in services (6.9).

Employer surveys show that their experience of redundancies is more widespread than it is for individual employees. The 1990 WIRS, conducted when the total number of redundancies was somewhat below the 1994–96 level, showed that 10 per cent of establishments reported the use of compulsory redundancy, and 6 per cent voluntary redundancy, in the course of a year (Millward *et al.*, 1992: 321). A survey commissioned by the then Employment Department (ED) in 1992, when the level of redundancies was relatively high, found that 20 per cent of employers had made a redundancy in the previous year (Spilsbury *et al.*, 1993). Business and financial services were somewhat above the average (25 per cent) and education, health and local authorities higher still (36 per cent). WIRS also reports that business services made more compulsory redundancies than average: they were reported by 13 per cent of establishments, against an average of 10 per cent; the figure for higher education was at the average, though small numbers make the estimate unreliable (Millward *et al.*, 1992: 345). The implication is that, to study the distribution of cases of redundancy, as opposed to the individuals who experience redundancy, attention is needed to sectors such as education as well as to the more heavily researched industries such as manufacturing.

The redundancy process

The Employment Protection Act 1975 was careful to require consultation and not negotiation about redundancies. As Davies and Freedland (1984: 237) suggest, this approach may have been taken so as not to 'commit the trade union to responsibility for approving the redundancy or selecting the employees to be made redundant to the degree that a joint agreement over these matters does'. Nonetheless, some form of joint discussion over such fundamental issues as the reasons for a redundancy and the alternatives such as re-deployment might have been expected. The research literature points to constraints on this possibility. In reviewing it, we must stress the implicit reference point: that consultation procedures will give to worker representatives the means to question fundamentally the need for a redundancy and the process by which it is carried out. This needs to be put in context by reference to the purpose of the legislation.

The purpose of the initial legislation in the field, the Redundancy Payments Act 1965 (RPA), was, it is widely noted, to promote the mobility of labour and not directly to encourage bargaining on the subject (e.g. Daniel, 1985). Clegg's (1972: 288) conclusion was that the RPA encouraged voluntary redundancy and that firms would be likely to increase the statutory payment. 'Where this is done,' he went on, 'the shop stewards can have little ground for obstructing the redundancy arrangements.' As Turnbull and Wass (1997: 31)

note, the RPA confirmed in law management's position as the sole arbiter of the necessity of job losses. Daniel (1985: 78) argues that trade unions were involved mainly in discussing the ways in which redundancies could be made 'voluntary' and the size of the payments, rather than the wider principles of redundancy. One reason for the lack of discussion of such issues is the rarity of formal agreements covering redundancy. The ED survey of 1992 found that over half of employers (57 per cent) had neither an agreement nor a policy, formal or informal, covering redundancy (Spilsbury *et al.*, 1993). Only 14 per cent had a formal written agreement, a figure which rose to only 27 per cent where a trade union was recognised. Where there was a written agreement, unions were involved in formulating the arrangement in 22 per cent of cases (which represents 3 per cent of the whole sample). Such studies conclude that the broad issues of workforce reduction have not been brought within the scope of bargaining.

Surveys of the literature such as those by Daniel (1985) and Turnbull (1988) suggest that it is rare for the need for redundancy to be questioned. Case studies conducted in the 1970s, for example, found, in a non-union firm, no worker questioning of the rationale for the redundancy (and, indeed, here the main complaint concerned a worker who wanted to 'take her redundancy' but was refused). In a strongly unionised brewery there was certainly negotiation about timing and the rights to compensation of workers choosing to leave between the announcement of a redundancy and the final closure of the plant, but the principles of re-organisation did not seem to have been an issue (Wood and Dey, 1983: Chapters 3 and 4).

More generally, studies routinely report that provisions on redundancy payment and consultation did not restrain managerial choice (White, 1983). Some studies (summarised by Turnbull, 1988: 202–4) indeed show managers reporting an improvement in their ability to introduce changes in working practices. The goals of the RPA of reducing resistance to change thus seem to have been met.

As for selection for redundancy, Daniel (1985: 82) notes the increasing reliance on age as a criterion, since older workers gain the most from severance packages, and the result that principles such as 'last in, first out' (LIFO) are likely to be replaced by a more individualised approach. The LFS shows a strong age effect: in the spring 1996 LFS, workers aged 50 or more experienced a rate of 11.5 per 1,000, compared to 8.2 per 1,000 for those aged 25–49 (Field, 1997: 139). WIRS certainly shows that LIFO remains in existence: managers in half of all cases of compulsory redundancy cited it as a criterion (Millward *et al.*, 1992: 325). However, the extent to which LIFO is the predominant principle in selection has been questioned by Turnbull (1988). He notes that LIFO is strictly relevant only with compulsory redundancies, and will thus affect only a proportion of all cases of job loss, and summarises evidence from the 1984 WIRS, a series of ACAS surveys, and other surveys to show that individual efficacy is a more common criterion than LIFO. He also shows that many agreements on LIFO follow the principle only when 'all other things' such as skills are equivalent and that managements can influence who is to be made redundant by, for example, defining exactly which groups of jobs are defined as no longer required. Thus LIFO will not generally mean what it is sometimes taken as implying, namely, that a given number of jobs is to go from an establishment and that staff will leave in reverse order of seniority.

The point has been taken further by Wass (1996) in a study of 'voluntary' redundancy in the coal industry. The scheme here was unusual in that management was formally unable to refuse an application for redundancy, so that it should act as an extreme example of worker choice. In fact, a case study of the Markham colliery in South Wales found that management influenced selection in several ways. First, the decision as to which pit to close and when, was management's. Second, the choice was not between redundancy and staying at work, but between redundancy and relocation to another colliery, with all the implications of uncertainty about the work there and about the effects on domestic life. Third, the terms of the voluntary scheme were directed towards older workers even though they might be expected to be the most attached to their work. In short, the structure of the scheme strongly affected who chose to take voluntary redundancy.

Setting this case alongside those of steel and the docks, Turnbull and Wass (1997: 38–40) add that another influence on worker choice is the way in which work is reorganised. On the docks, for example, widespread changes in workers' duties encouraged those unhappy with the changes to volunteer to leave. Moreover, in all three cases, workers were commonly rehired as sub-contractors, often on terms less favourable than those prevailing formerly and on a casual basis. The process of redundancy could, these authors conclude, be used to increase managerial control of the labour market and to aid the restructuring of work.

Turnbull and Wass add that the costs of redundancy are often borne by the state, in financing the scheme, or by workers, in job losses combined with the use of lower-paying work. In the case of the docks, for example, the direct costs of the redundancy scheme were borne by the state (£131m) as well as by employers (£98m) (Turnbull and Wass, 1995). But, in addition, employers used the scheme to reorganise work and press through changes in working practices.

Conclusions

In short, existing research suggests that the handling of redundancy remains within parameters that are largely defined by management. The needs for job reductions are rarely questioned by workers, the principle of LIFO is often used only after other criteria have been employed, and statutory provisions have not limited managerial discretion. Indeed, they may have strengthened it by providing some compensation for job loss. Consultation, where it occurs, appears to be about the specific terms of redundancy packages. It should be added that there has perhaps been a tendency to assume that restricting managerial freedom was both feasible and desirable. The research has certainly shown why it is hard for unions to bargain over the principles of redundancies, but it is not clear how far such an ability has been among their goals. Consultation has had some limited objectives, but it may have helped to make such issues as selection for redundancy more open than would otherwise be the case.

3 Key research issues and structure of the report

Against this background, the aim of the research reported in this study was to explore contemporary practice in redundancy consultation in the light of the statutory changes introduced by the 1993 Act and the 1995 Regulations. Key issues include:

- How do the consultation requirements actually work, and have the recent reforms affected employers' practices? For example, on what aspects of redundancies do employees consult representatives, and over what time period?
- The concept of consultation 'with a view to reaching an agreement' appears to imply a process between consultation, in which employee views are simply taken into account and full-scale negotiation. Have there been any implications for the way in which the process is handled?
- The Regulations require for the first time the election of non-union representatives. How, then, are they chosen, what training do they receive and what issues do they aim to raise with management?
- Are there questions as to the representativeness of those elected, and their independence from the employer?
- What election processes have been used, and why?
- What impact if any has the change in the timing of consultation made ('in good time' rather than 'at the earliest opportunity')?
- Is the perceived effectiveness of union and non-union systems different?

Chapter 2 explains how we addressed these issues. We began with the database of employers, which is compiled by DTI from employers' returns notifying expected redundancies. We explain the analytical use that we could make of these data and offer suggestions for their improvement before laying out our main research method. The above questions highlight the process of handling redundancies, which in turn calls for a case study approach which can explore the process. We explain how cases were derived and introduce each case study organisation. The main cases, eight in number, were supplemented with information on other significant examples which came to light during the fieldwork.

Chapter 3 lays out the results from the case studies, dealing in turn with: reasons for the redundancies; the timing of consultation; the selection of representatives; the main issues that arose in the process of consultation; and the outcomes of the process. Chapter 4 draws out the implications of the evidence.

Two

THE REDUNDANCIES DATA AND THE CASE STUDY ORGANISATIONS

We first discuss the uses that can be made of the data supplied from the Advance Notification of Redundancy files held by DTI. We then describe how cases were selected from this database for closer study. The third section of the chapter introduces these cases.

1 The Advance Notification of Redundancies data

The starting point of this study was the data supplied by employers through the Advance Notification of Redundancies form. The intention was to analyse the pattern of redundancies revealed by the data. Some analysis proved to be possible though there were some features of the data which prevented as full a treatment as had originally been hoped.

Advance notification data

Employers are required to notify DTI of proposals to make 20 or more employees redundant within a 90-day period. It should be noted that it is the proposal to make a redundancy which requires notification, and evidently the extent and timing of any actual redundancies may vary from the initial intentions as notified. We were supplied with a data set, anonymised through the removal of details of the employer and the address of the establishments affected, containing all notifications during the year 1996. The file contains 2,048 cases.

The questions relevant for analysis are listed in Table 1. In principle, it should be possible to conduct several analyses, which are not feasible with other data sets. The LFS deals with individual experience rather than organisational policy. General employer surveys would need very large numbers to obtain 2,000 cases where a redundancy had taken place. However, several difficulties arose.

If we consider first Question 8, on how employees were to be selected, there is the potential for valuable information on selection criteria. For example, how common is LIFO? The data set does not code the entries on the form but simply reproduces what is written on the form, in up to two categories. We therefore considered building up a coding frame and examined a randomly chosen 10 per cent of cases. Of these 205 cases, only 17 mentioned more than one reason and we thus focused on the first reason given. The results are set out in Table 2. Much the largest category, comprising 35 per cent of the total, could be classified only as 'unclear' or 'not stated'. This group of 71 cases included 34 which simply said 'selection criteria' or other unspecific remarks, 15 where the reason was left blank and 10 saying that the criteria were agreed with the union without saying what they were. As can be seen from Table 2, a further 16 per cent of cases specified 'closure', which does not help much: it could imply that everyone was made redundant, but it is also possible that some staff in such cases are redeployed elsewhere. Some of the other categories, such as 'business needs' are also not very illuminating, while in relation to the 'voluntary' category it is not clear whether there was any selection of volunteers or whether anyone asking to leave was allowed to do so. In short, as many as 85 per cent of cases offered no useful information as to selection criteria, and we concluded that a coding exercise for the whole sample would not be very constructive.

Table 1: Key questions on the Advance Notification of Redundancies form

4.	Please tick one or more boxes to show the main reasons for the proposed redundancies [5 reasons plus 'other' listed]
5.	Staff numbers and redundancies [Number of employees and of possible redundancies in categories: manual, clerical, professional, managerial/technical, other, total]
6.	Do you propose to close the establishment?
8.	Please give brief details of how you will choose the employees to be made redundant.
9.	Are any of the groups of employees, who may be made redundant, represented by a recognised trade union? [If yes, please list them] Have you consulted any of the trade unions listed above? Have you consulted elected representatives of the employees?

Table 2: Main reasons given for selection of employees (per cent)

Closure of establishment	16	Management selection	1
Last in, first out	8	End of fixed term contract	7
Voluntary	20	None stated/unclear	35
Skills or aptitude	7		

Base: Ten per cent sample of cases; n = 205.

Replies to Question 4, on the reasons for redundancy, which used a pre-coded system unlike the open-ended format of Question 8, are shown in Table 3. As can be seen, approaching a quarter of respondents did not reply to the question. 'Other' reasons were the most common; inspection of the listing of such stated reasons indicated that the main ones were financial pressure, insolvency and company reorganisation. It appears that the main driver of redundancies is the economic situation of the business, as opposed to the reduction of labour demand within a stable or growing business. Spilsbury *et al.* (1993) report that in their survey 84 per cent of employers stated that the main reason for redundancies was the economic climate.

Table 3 shows a comparison with WIRS, which is most relevant for our purposes since the overall number of redundancies in 1990 was similar to the number in 1996. As can be seen, the present figures are very different from those obtained by WIRS, which found more stress on reorganised work methods and cost reduction and efficiency than did the present data. This could reflect different bases: redundancies of at least 20 workers, as opposed to any workforce reductions which was the WIRS focus. Thus it is possible that the effects of labour-saving innovation come through in the relatively small and frequent changes picked up by WIRS rather than in large formal redundancies.

A cross-tabulation of our data found no clear association between the reasons given for redundancy and whether an establishment was to be closed. About a quarter of establishments were expected to be closed, a proportion similar across all reasons except, as would be expected, a higher proportion where 'transfer of work' was specified.

Table 3: Reasons for redundancy

	Redundancy notification forms		*WIRS 1990*
	% of all cases	*valid %*	*%*
Lower demand	24	31	37
Contract complete	9	12	–
Transfer of work	7	9	–
New technology	2	3	10
Reorganised work methods	8	11	37
Improved competitiveness, cost reduction, efficiency	–	–	29
Cash limits	–	–	18
Other	27	34	
(Missing)	22	–	

Base: all cases.

Source: Millward *et al*. (1992: 322–3); the WIRS category for new technology is 'automation'.

Patterns of redundancy

As might be expected, some of the other data on the form are missing or unreliable. For example, numbers made redundant sometimes exceed total numbers of employees. There are, however, aspects of the data which throw some distinctive light on the handling of redundancy.

In terms of total numbers of staff to be made redundant, the mean number of people expected to be made redundant was 66, with a range from 10 to 2,360. As Table 4 shows, 10 per cent of reported cases in fact fell below the reporting threshold of 20 people to be made redundant. It can be seen that the great majority of cases involved fewer than 100 workers, indicating that most redundancies are relatively small in scale. However, some of the cases will evidently be connected if they involve different sites of the same company making widespread changes.

Table 4: Number of workers expected to be made redundant (per cent)

10–19 workers	10.2
20–49 workers	51.9
50–99 workers	26.2
100–499 workers	10.7
500 or more workers	0.9

Base: all cases.

The distribution of cases by industry is shown in Table 5. The most notable finding is the substantial number of cases in sectors where redundancy has traditionally been rare. These include several parts of the service sector, including business services, government and education.

The table also shows an attempt to estimate relative incidence. We used the figures reported in the 1990 WIRS as a rough indicator of the number of establishments in each sector and then used this as the denominator of an index, which has a mean of 1.0. As would be expected, sectors such as manufacturing and construction have an incidence of redundancy higher than the average. Nonetheless, some of the service sectors were not far from the mean of 1.0. In particular, and in view of the fact that most studies of redundancy have focused on manufacturing or traditional blue-collar industries such as coal, education or health would seem to warrant some further investigation.

Table 5: Distribution by industry

	per cent of cases	*estimated relative requency*
Energy, water	5.4	5.2
Metals, chemicals	4.9	1.8
Engineering	13.3	2.0
Food, drink, tobacco	6.0	3.9
Clothing etc.	5.1	1.9
Construction	11.5	2.6
Distribution	7.8	0.5
Hotels etc.	1.0	0.2
Transport, communications	2.6	0.4
Banking and finance	3.5	0.6
Business services	8.4	1.2
Government	6.8	0.9
Education	10.3	0.8
Health	2.9	0.9
All	**100**	**1.0**

Base: all cases.

Source: Millward *et al*. (1992: Table 1A).

We also considered what proportion of staff are made redundant in any particular exercise. As can be seen from Table 6, overall, about half the cases involved making a quarter or less of the workforce redundant. There was some variation between industries. Government and education and health establishments were the least likely to make large proportions of their staff redundant, while, surprisingly, distribution and hotels stood out as the most likely to do so. This was confirmed by the figures on intended closures. Only 5 per cent of education establishments were reported as being planned for closure, which is what might be expected. By contrast, 65 per cent of hotels and 57 per cent of distribution depots were expected to be closed. In these two sectors, the picture seems to be one of relatively small sites being subject to total closure.

Table 6: Proportions of staff to be made redundant

	manual staff	*clericals*	*professionals*	*managers*	*all*
N	*550*	*468*	*153*	*471*	*2,048*
Up to 25%	35	38	39	39	45
25–95%	31	27	39	30	31
95% or more	34	37	22	31	24
All	100	100	100	100	100

There was an interesting association between the proportion to be made redundant and the stated reason for the redundancy. Across those giving a reason, the mean proportion to be made redundant was 46 per cent. It was highest (57 per cent) where work was to be transferred and lowest where new technology or new methods were specified (23 and 33 per cent respectively). This is consistent with the idea that labour-saving innovation is associated with small-scale job losses (albeit, perhaps, on a continuing basis), as against the larger redundancies arising from economic downturns.

We also took account of trade union presence. Across the sample, 62 per cent of respondents mentioned at least one recognised union that represented workers to be made redundant. It is possible that unions are able to dissuade employers from making redundancies. The raw figures were striking: the mean proportion of the workforce made redundant in union cases was 38 per cent, against 57 per cent in non-union cases. Of course, many other influences may be at work, not all of which can be assessed with this set of data. For what it is worth, we ran a regression of the percentage to be made redundant against whether or not the establishment was unionised and whether new technology or new methods were mentioned as reasons for redundancy. We also controlled for four industry sectors with distinctive features: construction; distribution; business services (including finance); and government, education and health. Finally, we controlled for whether closure was specified. This very simple model performed well, with an adjusted R^2 of 0.42. The measures for union status and use of reorganisation both had the expected negative effects.

Since redundancy may affect only one part of a workforce, which may have distinct characteristics, we also restricted the analysis to the 544 cases where manual redundancies were specified. A regression using the proportion of manual workers to be made redundant as the dependent variable had very similar results, though the 'reorganisation' measure lost significance. From this evidence, it appears that unionisation may reduce the threat of redundancies. This is consistent with the WIRS evidence: though the shedding of labour occurred at a similar rate in union and non-union firms, compulsory redundancy was more common in the latter. Of cases that had made workforce reductions, 46 per cent of the non-union establishments, against only 17 per cent of unionised ones, had used compulsory redundancy (Millward *et al*., 1992: 324).

We also looked at each occupational group. Evidently, not all establishments employ a given grade of worker, so the numbers vary and are less than the overall total. Yet the comparison is valid, for we are considering all the cases where a given type of worker was present. Some of the missing data will cover cases where a type was present but where figures were not given, but there is no reason to expect that such non-reporting will be systematically larger in relation to one occupational group rather than another. The picture seems clear: there was little variation between types of worker. It is not, for example, the case that manual redundancies tend to hit a whole workforce while white-collar redundancy affects only a small proportion. For example, the proportions of manual and managerial staff made redundant were very similar (means of 54 and 49 per cent respectively). In the 86 cases in which figures for both groups could be calculated there was a strong positive correlation (0.73) between the two proportions. When redundancies hit, they seem to cut across all grades of staff.

Conclusions

We have been able to reach some limited conclusions about the extent and nature of redundancy, notably the wide spread of the phenomenon. Methodological suggestions for the collection of data are also indicated above. As for further work, some sectors such as education seem worthy of further study.

2 Selection of cases

The remit for the study called for case studies of eight organisations, with a reasonable divide between union and non-union cases and between manufacturing and service sectors. A particular issue was the probably unusual situation in which a firm was unionised but chose to consult about redundancies through non-union channels only. A search of the data identified six cases where this could have happened, but it appeared from the available details that some of them in fact related to the same instance, a suspicion which DTI staff were able to confirm. This left four cases. Two of these had closed, which, as discussed below, would have made research difficult, while in others it was not clear whether in fact they were unionised. The effort to find a relevant case from the database was thus abandoned. We heard of one other case of this type which we followed up alongside our main case studies. As discussed in Chapter 3, it did not actually turn out to be an instance of the practice in question.

To find cases for detailed work, we scanned the database according to the sector and union status (and also location within reasonable distance from Coventry) of an organisation. We also looked for cases where the site had not closed, on the grounds that establishments closed during 1996 would be hard to research, in particular in relation to finding employees who had been involved in the consultation process. A final criterion was that establishments should not be extremely small and should have a reasonably large number of redundancies. In effect, we sought cases where the redundancy was significant and thus where there may have been substantial issues for consultation. We then drew up a list of cases and, so as to protect anonymity, asked DTI to approach the organisations to see whether they would agree to being studied.

In addition, we already had access to one firm, as a by-product of another study. We added this case to the list.

The final eight cases comprised five that were unionised and three non-union. This proportion is close to the distribution of cases: as noted above, 62 per cent of all cases were unionised. In broad terms, two were clearly in manufacturing and four in services. The other two straddled the divide: one was involved in both, while the other manufactured products overseas and at some sites in the UK but the specific case studied involved its service workers. The details of the cases are discussed below, but it is worth highlighting here the choice of two education establishments. We have seen that education has quite a high position in instances of redundancy. In view of how little is known about redundancy in the sector, we felt that to take only one case might confuse its particular features with the sector as a whole and therefore felt it best to take two cases from the sector.

Finally, as mentioned above, we also pursued some other instances which were revealing but which we lacked the time to research in depth. We give brief details below.

3 Case study organisations

Methods

In all cases, there was a minimum requirement to interview a manager and a leading employee representative in detail, using a semi-structured interview schedule, about the consultation process and its outcome. Wherever possible, we also sought further interviews, using the ‘snowball’ technique of using one respondent to guide us to another, thus building up the ‘snowball’. Thus, where more than one manager was involved we sought extra interviews, and we also aimed to find other employee representatives who could similarly offer distinctive perspectives.

The first managerial respondent was generally the personnel manager. A ‘leading’ representative in the case of unionised firms meant a shop steward convenor or a trade union official. In only one non-union case was there an elected committee and this did not have a chairperson. In this case three employee representatives agreed to be interviewed, and the union official who had attempted to become involved was also traced and interviewed. In the other two cases, no representatives were in fact used, an important finding which we discuss in Chapter 3. Employees involved in the consultation process were therefore interviewed. In one of these, one person took on the role of representing his particular work colleagues, and he was also interviewed. In each case, wherever other persons involved in the consultations could be traced, and agreed to co-operate, further interviews took place.

We did encounter some difficulties with the management of the relationship between the researchers and the participating case study firms, which we think should be noted for reference in similar research situations in the future. Firms were contacted in the first instance, having been selected as appropriate from the database, by letter. The nature and purpose of the research was outlined. Subsequent telephone enquiries were then made to seek the willing participation of firms in the research, and further details about the nature and extent of the research

process were explained. Accessing the appropriate person in each firm, getting the research brief in front of them, and tracking down firms where there had been closures and takeovers, proved to be time-consuming.

Past experience had prepared us for this process. However, the time taken to make contact once participation had been agreed, and in tracking and contacting other persons involved in the redundancy case studies, proved to be overly lengthy. We were dependent both on the firms, in the first instance, to make the initial contact and later to name the other individuals involved in the consultations, and to negotiate their co-operation with us; and also on the unions for their co-operation and involvement. The many interviews required by the 'snowballing' technique employed, took a great deal of time. We were dependent, too, on these people for the receipt of documentation relating to the consultations. The timing of the research in the midst of the summer period added to delays. Nonetheless, we obtained a satisfactory degree of co-operation. The main limitation was that fuller details of employee perceptions of the process and outcomes of consultation would have been desirable.

'Core' case studies

Table 7 gives the pseudonym of each of the eight cases, together with some basic information on each and the number of interviews conducted. The table also gives an indication of the length of the consultation period and a checklist of the main selection criteria used in each case. The length of the period is important, since legislation requires that there be minimum time allowances, depending on the number of redundancies (30 days for 20 to 99 staff, 90 days for more). As can be seen from Table 7, all organisations met this criterion, though, as we will see, in practice several aspects of the process were handled with considerable speed.

DistribCo is part of a larger company and specialises in overnight distribution. Re-organisation led to the closure of a depot, and thus all workers were affected and there was no need for specific selection criteria. The firm is unionised, and consultation was through long-established channels. An interesting feature of the case is the fact that workers who moved to another depot did so on worsened terms and conditions: an example of the way in which redundancy is often part of a wider re-negotiation of the organisation of work.

EngCo is an engineering company with little history of redundancy but there was a perceived need to retain competitiveness and it was decided to outsource some activities, with resultant job losses. The firm had an established shopfloor union but no union among staff employees. The case is interesting for the effects of the Regulations on consulting with non-union staff in such circumstances.

SecurCo operates in the security services industry. The redundancy arose with the merger of two call centres, which went along with attempts to establish common terms and conditions. As at DistribCo, they were only one part of a wider rationalisation. Managers and unions felt that the process of consultation was successful, though this has to be seen in the context of management's establishment of a separate non-union business, which may have constrained the union's bargaining power.

Urban College and ***City College*** are both in the further education sector. They were chosen for the extent of redundancies in the sector, which follow the removal of colleges from local authority control and increasing financial pressure. They illustrate very extensive consultation periods in former public sector organisations, but there were interesting differences in terms of the approaches taken. Urban College followed the increasingly common practice of making their own staff redundant and hiring teachers through agencies while City College eschewed this approach.

TeleCo is a large overseas-owned firm with an array of interests embracing electronics and telecommunications equipment. The figure stated for UK employment covers the telecommunications division. The redundancy was the result of the takeover of part of the business of another firm and the integration of two businesses into one. After the redundancy, which was the main focus here, a further merger with another part of the organisation took place. We obtained some information on this second event, which provides a useful contrast with the main case. The parts of the business with which we were concerned are non-union, and a committee was set up specifically for redundancy consultation. Selection criteria turned initially on assessments of competence as listed in Table 7 but, as we will see, representatives succeeded in bringing in the principle of asking for volunteers. The case is especially interesting for the operation of a non-union single-issue committee.

ComputerCo is an American-owned computer services firm which was transferring an operation elsewhere in Europe. It is non-union. As at DistribCo, this involved the closure of a whole operation and no person-specific selection criteria. The key feature of this case is that no representatives were in fact used after staff voted

Table 7: Case Study Firms

	UK employment	*Number of redundancies*	*Trade union*	*Number of interviews*	*Consultation period*	*Selection criteria*
DistribCo	840	46	GMB	6	3 mths	Closure of depot
EngCo	530	65	AEEU	3	30 days	Last in, first out, with negotiation to maintain skills
SecurCo	7,000	14	GMB	2	3 mths	Last in, first out, with qualification that all other things be equal, i.e. qualifications, attendance, service, disciplinary record
Urban College	380	80	NATFHE	3	4–6 mths	Management selection: part-time staff
City College	276	9	NATFHE	5	6 weeks	Management selection based on qualifications, experience, skills, knowledge, abilities
TeleCo	900	200	–	6	4 mths	Voluntary, after management assessment based on personal conduct, teamworking, customer awareness, adaptability, technical ability, attendance and sick record, discipline
ComputerCo	1,500	30	–	3	2 mths	Closure of department
FoodCo	560	60	–	6	2 mths	Management selection based on length of service, attendance, accuracy, ability, motivation, time-keeping

Interviews with representative organisations (e.g. EEF) 6

Other organisations and individuals consulted 12+

Note: Figures for length of consultation are an approximate guide since timings of redundancies varied, and in some cases took place over a period of time.

to consult on an individual basis. This was despite the fact that the timing (i.e. after 1 March 1996) and number of redundancies clearly placed the firm within the legal requirement to consult using representatives.

FoodCo is the third non-union company. Reorganisation entailed the integration of two existing operations in the packing and distribution of chilled food products. Redundancies were announced in January 1996 to be effective at the end of March, so again the firm was covered by the legislation. In this case, management set out to consult on an individual basis, but informal staff groups emerged and some discussions took place with them.

It is evident from these sketches that the eight cases cover a range of situations. Apart from the issue of union status, the organisations come from a variety of sectors, and several represent the growing service and distribution sectors of the economy, with only one, EngCo, being a purely manufacturing operation. There was also a range of selection criteria: broadly, two complete closures, two cases using LIFO, and four instances of management selection. Finally, there was an array of approaches to collective consultation, running from the two cases where it was avoided to two (TeleCo and EngCo) where particularly extensive consultation in substantive issues took place.

Other cases

Since our goal was to assess contemporary practice, we sought further information on particular current issues, in two ways. First, we obtained some information on three other cases with features of interest. ***StoreCo***, a retail chain store, is interesting for consultation through non-union channels. Though representatives were elected, the union in the industry, USDAW, claims that the process was unsatisfactory and that consultation was not in fact in good faith. ***ChemCo*** is the one case that we could find where a union firm allegedly consulted through non-union channels; we established that this was not in fact the case. Finally, ***CarParts***, an auto components firm, illustrates consultation of office staff through a union channel and the relatively unusual use of the threat of industrial action by the union to affect outcomes. In each case, information was gleaned through telephone interviews with managers and the union involved.

Second, further contextual information was obtained through discussions with representative organisations such as the TUC and the EEF, and through information from ACAS on notable cases in which they had been involved. This part of the study, referrred to below as our ‘wider review’, was designed to obtain a broad picture of current developments and any particular issues that seemed to be active.

Three

CASE STUDY FINDINGS

This chapter lays out findings around the ways in which a redundancy case progresses. It thus begins with the reasons for the redundancy before turning in Sections 2 and 3 to the timing of consultation and the selection of representatives. The substantive issues are considered in Section 4, while the final section addresses a range of outcomes.

1 Reasons for workforce reduction

This section describes the process leading up to the redundancies in each of the eight case study organisations. Current legislation states that 'the consultation shall include consultation about ways of avoiding the dismissals' (Trade Union and Labour Relations (Consolidation) Act 1992, s. 188). Yet, as we saw in Chapter 1, existing research suggests that in practice the need for redundancies emerges from business decisions. Managements may be unwilling to engage in early consultation because plans are as yet still undecided, and there is a natural tendency to wait until fairly firm plans can be put to the workforce. This is a fundamental issue in understanding what consultation can meaningfully entail. We show how the process of business re-organisation shaped the way in which consultation could occur.

We need to paint a general picture of the situation in each organisation. We can draw out similarities and differences most effectively by beginning with the two manufacturing firms, moving on to four service sector organisations and then describing the distinctive situation in the two colleges.

The process at ***FoodCo*** began in April 1995 when the business which we are considering was bought by a larger company, which had also bought some other businesses. Up to that time, employment levels had been fairly stable and there was no history of significant redundancies. In June, the new parent instructed this particular business to integrate the chilled and frozen foods operations of the new organisation. A strategy was developed and agreed with the parent company at the end of 1995. It included the merger of two depots. A study of productivity in the relevant depots was undertaken and it was concluded that there was overmanning. Overtime was running at a high level in some areas but it was concluded that a reduction in overtime would not be sufficient to reduce labour costs sufficiently in what is a highly competitive industry. Managers stated that at this time they had to balance a desire to inform staff against the risks of creating uncertainty, which could mean that valued staff would leave. In the event, the formal announcement was made at the end of January 1996, though rumours had been circulating for some time.

EngCo is like FoodCo in not having had a history of redundancies, but it differs in being in a highly specialised niche market: it manufactures small-volume special products such as garbage trucks and fire tenders. In October 1996, a new managing director concluded that the firm was underperforming financially. A decision had to be made as to whether to invest in a new machine shop, replacing the existing outdated facility, or to outsource the work. Investigation beginning at the start of 1997 suggested that new investment would be very costly, and the decision was taken to close the shop. Redundancies were concentrated here, but there were a few further job losses resulting from associated reorganisation. Initial announcements were made to staff at the start of April.

TeleCo is the telecommunications service and distribution business of a large overseas-owned multinational. The business is the result of the merger of the firm's relatively small original operation with a larger operation which it bought from a British-owned company in 1995. That company had had a previous history of reorganisation and redundancy as part of the widespread restructuring of the whole sector. Managers claimed that the financial state of the new business was worse than they had been led to expect. This, together with the clear issue of a duplication of operations, meant that, according to one manager, 'within a matter of weeks from the purchase, large-scale redundancies were on the cards'. Formal notification to staff began in April 1996.

DistribCo used to belong to a very large security services company but in 1995 there was a management buyout, and it now has 22 sites employing about 840 people. The sector is fiercely competitive and customers will, according to DistribCo managers, change suppliers at very short notice depending on the price of the service. The main controllable cost is staff wages, particularly those of delivery drivers. It was decided to close a depot in south London which was distant from some markets and thus costly, replacing it with two smaller sites in Kent and Essex. The problems of the depot were apparent for some time, and the depot manager said that moving it had been part of the strategy of the company even before the management buyout. More specific indications of its demise

emerged at the start of 1996, with formal staff consultation beginning in April and the depot eventually closing in July.

SecurCo is also in the distributions business. The organisation studied is part of a large security services firm involved in the movement of cash and valuables. The firm had been through a large number of reorganisations over the previous few years, of which the most recent was a change in its regional structure which included the removal of a whole layer of management. The case involved the rationalisation of two control centres. Initial announcements were made in July 1997, with completion of the process being due three months later.

The study of ***ComputerCo*** involved its telemarketing business which, according to management, is a highly competitive industry with many new entrants offering the same services as existing suppliers. The firm is involved in systems integration, generating solutions to IT problems. The majority of staff are computer engineers, though there has been a switch towards recruiting more systems analysts. There has been a long history of reorganisations and redundancies going back to the 1960s. In the ten years from 1987 to 1996, for example, the number of engineers employed in the UK fell from 1,200 to 300.

A strategic decision was made at the American headquarters to review the European business. It was decided to concentrate several operations in Amsterdam. The decision was announced to employees at the end of May 1996, following rumours over about six months. The closure of the UK site was effective in early August.

For the two colleges, a key point was the Further and Higher Education Act 1992, which made each college responsible for its own pay and conditions of service. Cuts in public funding and the need to compete for business with other colleges have radically changed the atmosphere of industrial relations. It is estimated that there have been 15,000 redundancies in the Further Education (FE) and Higher Education (HE) sectors in the last six years. The mid-1990s saw a period of tense relationships as unions challenged redundancies and other features of reorganisations; the unions said that in 1994, in the Birmingham region alone, 14 colleges were being taken to industrial tribunal for failure to consult over redundancies.

At ***Urban College***, competition came from other colleges nearby and from schools and sixth form colleges. There had been several previous redundancies, which had, albeit on management's admission, 'only just' been handled on a voluntary basis. In 1995, a decision was made to outsource to an agency all the work done by part-time hourly-paid staff. A series of redundancies took place with the result that by September 1997 there were no such staff employed, as against a peak of 150 in the academic year 1994–95. This particular case involved 80 staff, in relation to whom an initial announcement was made in January 1996, with the redundancies taking effect between May and July.

At ***City College***, our specific focus was the redundancy of nine full-time staff, though subsequently to this event a much larger redundancy of part-time staff was announced. The need to lose some full-time staff reflected several influences including anxieties about recruitment levels of students to some 'A' Level courses and a wider review of staffing levels. The particular stimulus was a change in teaching contracts, with new contracts specifying an increased number of hours. It was felt most practical to make redundant some full-timers on old contracts. Initial information was provided to staff in February 1996, with the aim of completing the consultation by the end of March, though staff would not actually leave until the end of June.

2 Timing of consultation process

Timing involves two issues. There is, first, the broad question of whether consultation begins early enough for meaningful discussion to take place. Second, there are the specific requirements that it begin at least 30 or 90 days before the redundancies are to take effect (the longer period being applicable when at least 100 dismissals are involved).

To begin with the first, the duty to consult about ways of avoiding the redundancies implies that consultations should take place early enough for meaningful discussion to take place on how the redundancies might be avoided. It follows both from the legislation and previous legal cases, that consultation that begins *after* the date on which redundancy notices are issued to individual employees is likely to prevent such discussion.

Though the employer's duty to consult with a view to reaching agreement does not impose a duty to bargain or imply the joint regulation of the redundancy process, it obviously means more than issuing a notice of proposed redundancies and listening to the responses of appropriate representatives. The implication is that there should be a genuine attempt to reach some form of accommodation or understanding on the issues raised. Lord Justice Glidewell in *R* v B*ritish Coal Corporation ex parte Price and others*

(quoted in 1996 *Industrial Relations Law Bulletin* 538: 8) suggested that 'fair' consultation means consultation at a point when proposals are still at a formative stage, and giving the persons consulted a fair and proper opportunity to understand fully the matters about which they are being consulted and to express their views on those matters.

The normal practice in the case study organisations was for the organisation's proposals to be announced formally, with this being taken as the start of the consultation process. At ***TeleCo***, for example, managers were clear that they developed a business plan and identified the need for redundancies before initiating consultation. At ***ComputerCo***, mnagement decided to close the site concerned, and letters notifying redundancy were sent the same day. At ***FoodCo***, slightly more time was allowed, with initial announcements of the planned redundancies being made during January, and at the end of the month the first formal correspondence was sent to each employee, stating that if no work could be found he or she would be made redundant with effect from the end of March. In two cases, even where the trade union was recognised and used for consultations, the announcement of the firm's proposals to make redundancies activated the consultation process. This was, for example, the practice at ***DistribCo***.

Only at the two colleges did consultation pre-date the notification of redundancies. For example, at ***Urban College*** unions were told of planned redundancies in January 1996, with an intended start date in May. This practice probably reflects the fact that, at both colleges, there had been a continuing series of redundancies over a period of years, so that the current consultation was a continuation of previous exercises rather than a new and distinct event.

As for the requirement to consult over either a 30-day or a 90-day period, few problems were reported. Most employers accepted that the consultation period was built into their planned timetable and felt that the processes were not handicapped by this. The only misgiving that was voiced occurred in situations where sabotage of business might take place by unhappy employees and the security of the company and its business might be jeopardised by a long procedure. This point was made by ***FoodCo*** management, who also stated that the length of time involved could prove costly to the company because employees might have to be employed and paid for a longer period of time than would otherwise be the case.

Employee representatives in ***TeleCo*** made the interesting point that when consultation was engaged in properly there were no problems with the time taken, and that the process would help employees feel better about the whole situation. However, subsequent to the redundancy that was the main focus of our study, there was a further exercise which was felt to have been handled much less sensitively. In this situation, the length of time taken only 'strung out the misery' as one representative put it.

Two conclusions stand out. First, the minimum legal requirement on the length of the consultation period was adhered to in all cases. Second, however, the requirement that the consultation must entail ways of avoiding the redundancy was, in practice, not seriously addressed because the key decisions had been made before the start of the consultation process. In some cases, as at ***Urban*** and ***City Colleges***, redundancies were part of a long process of reorganisation. In others, for example ***ComputerCo***, a redundancy was the result of a broad strategic decision made at company level. In some others, such as ***TeleCo***, ***SecurCo*** and ***FoodCo***, the business was being re-organised in the face of competitive pressures. As we have seen, in all eight cases, managements reviewed their operations over a period of several months before reaching a particular proposal. The implication is that management will have become committed to the logic of the proposal and that consultation about the basic need for the redundancies may be seen as superfluous.

It is also worth noting that a redundancy situation is often part of a wider restructuring agenda. In at least four cases there were obviously other matters to be resolved. At ***DistribCo***, a redundancy in one depot was associated with wider changes in terms and conditions. Specifically, the company was opening new depots and, as part of its efforts to increase competitiveness, was introducing employment packages that involved lower wages than those in the south London depot which was being closed. There had been some 'market testing' in Kent, with it being found that drivers could readily be attracted at the new rates. Some existing staff agreed to move, and one claimed that he could be up to £5,000 worse off a year as a result.

At ***SecurCo***, different sites with different terms and conditions were being merged. Because the remit of the representatives was confined to the specific redundancy situation, they were unable to insist on further information from employers, who were generally unwilling to consult on future business plans and the consequences for

employment. A notable development here was the establishment of a new company, which was intended to operate on a non-union basis alongside the existing unionised organisation. Since August 1996, new staff have been recruited to this new company, which offers higher basic pay than the old company but no overtime premium and which also calls for more flexible patterns of working. Responses to the specific redundancy case are bound to have been shaped by such wider developments of managerial policy.

At ***Urban*** and ***City College***, redundancies were linked to managerial moves to alter the structure of the workforce, with permanent staff being replaced by temporary employees. In short, here and elsewhere there was consultation about the specifics of making workers redundant but not about the business issues that led to the redundancies or the wider developments of which the redundancies were part.

3 Selection of representatives and the non-union option

This section examines two issues: whether unionised organisations took up the opportunity to consult through non-union channels, and how non-union organisations faced the requirement to consult.

Union avoidance

The 1995 Regulations introduced the possibility of an employer, who recognises a union in respect of the workers affected by a proposed redundancy, to decide to consult via elected representatives instead. The consultation document issued in February 1998 (DTI, 1998: para. 19) proposes to close this option. We saw in Chapter 2 that use of the option seems to have been very rare.

A large, national, department store organisation has recently been accused by USDAW of acting in this way. We therefore included it among our supplementary cases. The management of ***StoreCo*** in fact denies that it recognises unions, except in so far as it consults them in cases of individual dismissals. In relation to the redundancy exercise, management could see no reason to involve the union, particularly because they felt a need to proceed quickly. Representatives were elected from each store, and there were frequent consultations with them at store level, as well as weekly national consultations. Management felt that this system meant that the concerns of staff could be answered quickly. The union remained concerned, however, that each different re-organisation involved the election of different representatives and that as a result no overall view of the process could develop.

We also found reports that another major employer with a long-term relationship with the unions had used non-union employee representatives for consultations. We looked into this case (***ChemCo***, our second supplementary case) and found the reports to be largely inaccurate. It was found that the organisation is largely staffed (about 80 per cent) by senior administrative, scientific and managerial staff with no history of union membership. A consultation took place over the transfer of some operations, in which staff representatives were involved alongside union officers, to ensure proper representation of the workforce.

As for the unionised organisations in our eight main cases, the option of using a non-union channel of consultation did not appear to be attractive. In the tense and difficult atmosphere of a redundancy situation, managers were in all cases happy to use existing and negotiated consultation procedures. At ***City College***, however, staff were invited to consider whether they wished to elect new representatives in place of representation through the union. When they chose the latter, management accepted the decision.

Non-union procedures

Before looking at the three wholly non-union cases, the situation at ***EngCo*** merits comment. Most of the workers affected by the redundancy were shopfloor employees who were represented by a long-established union. There were also some clerical and secretarial staff for whom there was no recognised union. Management wrote to the staff involved and asked for nominations of representatives. They made it known that if a 'reasonable' number of people came forward they would 'run with it' rather than insist on formal elections. Six people came forward, and they duly acted as representatives.

The legislation imposes on employers the duty to consult with employee representatives elected either on an ad hoc basis for a single consultation or as a standing committee, which may or may not relate specifically to redundancy or transfer situations. None of the three non-union case studies had a standing committee, so they were all faced with the issue of electing a new body.

TeleCo, who experienced a redundancy situation very soon after the Regulations were in force, were careful to organise the election of representatives and hold a series of consultative meetings 'in the spirit of the Regulations', as a manager put it. Managers felt that there was a lack of detailed guidance in the Regulations on such issues as constituencies and election procedures. Their approach was to follow the

broad principles of the legislation and then develop specific mechanisms. 'You can't,' said one, 'go wrong if it doesn't say.'

Two committees were established. One covered supervisory staff, for they would have to decide which of their subordinates to make redundant and it was felt fairest to have a separate system for them. The other covered non-supervisory employees. In each case, the firm's nine regions were taken as the constituencies, and nominations for the committee were to be sent to each regional manager and were required 8 days from the date of posting the letter to employees explaining the situation. There was no problem in finding nominees, though in some regions only one person stood. Where necessary, elections were conducted by the personnel department. The representatives whom we interviewed felt that sufficient time was allowed and that the speed of the operation did not in any way prejudice the equity of the process. There was, however, some concern that the process was handled by the personnel department rather than a more independent body.

As for the rights of representatives, managers made it clear that they did not see the role as involving communication to staff, an activity which managers themselves would handle. The job, rather, was to represent employee concerns to management. Representatives were allowed use of company facilities and could, with the relevant manager's agreement, talk to employees as they chose. They were given a briefing document at their first meeting, which outlined the requirements of the Regulations but no other training.

Meetings between elected representatives and managers were held each week, with formal agendas and minutes. The parties felt that a meaningful consultation took place and there was evidence that employees' interests were well represented. We scrutinised the minutes and found evidence of discussion of an array of topics and the communication of important information from management about the redundancy process. The substantive content is discussed further in Section 4 below.

Employers' organisations and ACAS have been approached by firms for guidance concerning the conduct of elections. Their advice is to run a secret ballot, with a nominations process independent of management, and to make sure that the process is conducted in a democratic fashion. The EEF did say that, if left to the company, 'there can be all sorts'; they often 'leave it to the lads'. They would also recommend that there should be basic minimum qualifications for representatives, along the lines of a minimum of two years' experience with the employer, a good disciplinary record, and so on. Their experience is also that consultation committees are elected solely for a specific redundancy or transfer situation, and are then disbanded. Companies fear that if the groups are maintained the agenda would broaden to include more general industrial relations issues. Our case evidence sustains such points, for we found no committees with a remit wider than the specific situation. Indeed, at TeleCo a redundancy subsequent to the one studied here was handled through a new, single-issue committee rather than through a standing body.

The situation at ComputerCo and FoodCo was less clear, though neither set up a committee. At ***ComputerCo***, staff were asked at a meeting whether they wanted a representative group; a vote was taken and no one voted for this option. Subsequently, all staff were informed by letter of their right to be represented. Again, no one chose this option. It is possible that the language of the letter may have had some effect here, for it seems to imply that consultation via representatives would prevent individual consultation. But two other reasons were perhaps more important. First, staff whom we interviewed said that the general view was that they had had reasonable warning of the redundancy and that the terms were quite generous. There was thus no clear grievance that might stimulate the formation of a group. Second, the staff had no experience of any form of collective organisation, and may have felt that it had no real relevance to their situation.

Managers in this firm expressed, in interview, some concern about the lack of clarity of the Regulations. They were not clear whether they were required to consult via a committee or only to give employees this option, or whether individual consultation would also be required if a committee was formed. They felt that, by giving employees the choice of being represented, they had reasonably fulfilled the requirements of the Regulations.

The firm then proceeded to discuss arrangements with individual employees. These arrangements included an incentive to stay until the closure of the office (designed to encourage staff to remain and thus keep the office fully functional), listings of vacancies elsewhere in the company, and counselling and advice from an outplacement agency.

At ***FoodCo***, a less transparent process was followed. A team of managers visited each affected department and met workers from each shift. This approach was adopted to be able to speak to reasonably sized groups directly, thus avoiding what one manager called 'Chinese

whispers'. Employees were then invited to consult on an individual basis. Over a period of two days, a personnel officer spoke to each member of staff either individually or in small groups. Subsequently, several days were designated as workshops at which the officer was available for staff to raise any issues that still concerned them. Management's justification to us of this approach was that the Regulations did not provide sufficient guidance as to what kind of consultation to undertake, and they were thus reluctant to impose a particular structure. They felt that more specific guidance as to the format of consultation committees would have been helpful, and they might have followed it.

Employees to whom we spoke claimed that they were not informed of their right to collective consultation. Despite this, in parts of the company some spokespeople emerged informally. One individual in particular emerged from a frozen food distribution business which had been acquired by FoodCo just before the current re-organisation. Since meetings were informal and no minutes were taken, it was hard to establish how often this person met managers or what the effects of the discussions were. It appears, however, that this person, and one or two others, acted to voice the concerns of some specific groups of employees. They had no formal position but seem to have been accepted by managers.

Finally, at ***StoreCo***, the employees were briefed in a meeting on a Monday. They were handed a booklet explaining the consultation process and in which the nomination and ballot forms could be found. Absent employees constrained the process to some extent, but even with this handicap nominations were closed on Wednesday. Employees could elect up to two representatives per store. In most cases, only one person stood. The results were made known on Thursday morning and the first meeting was held on Friday morning. The company claims that the level of participation was high. Managers of each store were asked to meet their representatives every two days. In addition, five meetings were held at national level with a forum which included 12 of the store representatives.

Discussion

TeleCo and ***StoreCo*** plainly met the requirements of the Regulations in holding elections from defined constituencies. ***ComputerCo*** did not meet the letter of the Regulations, which specified that consultation shall take place through elected representatives. However, since the Regulations give no guidance as to what to do if employees do not wish to be represented, it is not clear what else the firm might have done. As we have seen, it gave employees two opportunities to ask for representation. ***FoodCo***, by contrast, would seem not to have met the letter or spirit of the Regulations, in failing to give to employees any clear guidance as to their rights.

The 1998 consultation document (DTI, 1998, emphasis original) proposes that:

> where the employer genuinely provides full opportunities for the election of representatives but **the employees do not take this up**, the employer may discharge his or her obligations by giving directly to the individual employees in the affected workforce the information which would have been provided to their representatives had there been an election.

The cases of these two firms illustrate some of the situations to which these proposals would apply, and some of the issues of employer genuineness that would have to be resolved in any given case.

In all three of the core case study non-union firms (i.e. excluding StoreCo, on which we have no relevant information), managers expressed a preference for more, and not less, guidance through some form of code of practice. For some, there was uncertainty whether collective consultation actually precluded consultation with individuals. Others wanted guidance on how representatives should be chosen. More generally, we would argue that merely telling employees that they have the right to be represented does not go very far. Employees at ***ComputerCo***, for example, seem to have had no view as to what point such representation would serve. It is possible that it was not so much that they rejected representation on principle but that they had not thought what it might entail. Had they been offered some basic information as to the purpose of representation (for example, a means for managers to explore options and take account of staff views, and a forum in which the common principles of a redundancy package can be agreed), they might have opted for it.

As for the selection and function of representatives, if they are chosen, our findings point to two implications. First, the ***TeleCo*** example illustrates the issue of constituencies, for the firm was sensitive to a possible conflict of interest between supervisors and their staff, and decided to have separate consultation committees as a result. This is a matter on which the Regulations and the 1998 consultation document are silent. It may warrant attention as discussed in the concluding chapter. Second, there is the larger issue of the ability of representatives to carry out their functions, in terms of training in their role

and access to facilities. The unionised cases offered no particular light on this, except to the extent that union representatives tended to be familiar with the issues, and they also had access to the advice of the union as required. There were some comments by managers that some union representatives lacked skills and experience, but this is not an issue peculiar to redundancy cases and it would need to be addressed by means other than regulations on redundancy consultation. As for non-union cases, the representatives at ***TeleCo*** had no special training. This may not have been too much of a limitation, for they came from a skilled group of workers, many of whom were experienced in communicating with customers. These representatives are likely to have had generic skills that allowed them to perform effectively, but this may not be true in all cases. It could also be important that they have the means to seek independent advice. The 1998 proposals (DTI, 1998: paras 31–3) suggest establishing clearly that training in matters relevant to a redundancy consultation is a right, for union and non-union representatives. We return to training provisions in the concluding chapter.

4 The issues subject to consultation

As we saw in Chapter 1, much existing research suggests that managerial decision-making is little affected by consultation. We saw in Sections 1 and 2 of the present chapter that this picture applied to our organisations as far as the overriding principles of the need for redundancy were concerned. There has, however, been rather little attention to what actually happens once redundancies are announced. In this section we examine the substantive topics of discussion, and argue that in several cases representatives, both union and non-union, were able to influence the decisions in quite significant ways.

Our wider review of developments included one case in which ACAS had been approached by a union which claimed that consultation was not adequate because of the lack of information (and time) involved. This involved a large company in the insurance sector, with a recognised trade union, which had been going through a period of change to make it more competitive. Although the company is apparently willing to consult, there have been complaints that the lack of information is outside the spirit of the legislation. We did not come across any other such cases. Our case study organisations that had representatives (i.e. six out of the eight) would certainly not fit the picture of merely superficial consultation.

Unionised organisations

We begin with ***EngCo***, where redundancies had been rare and where the shopfloor union was well entrenched. One might expect here some substantial response to a new and possibly challenging issue.

Eight representatives of the union were involved. They had all been trained by the union so that no further training was required by the company. The company believed this training to be excellent, indeed ‘too good at times’, as a manager ruefully remarked. Four meetings a week were held for three weeks; they were all minuted by a shop steward. Management’s goal was to introduce a series of changes in one exercise, thus avoiding a long-drawn-out and morale-sapping period of uncertainty. Detailed information was provided on the business case for new working arrangements, and particularly on a move away from separate production bays towards a line system embracing teamwork.

The main issues raised by the union were the selection method for the redundancies and the compensation package. The former was the more salient. A LIFO system had been negotiated in the past and incorporated into terms and conditions of employment. Though management considered challenging this, legal advice persuaded them otherwise. However, they offered a substantial encouragement of about £3,000 to persuade older workers to volunteer to leave. For other workers, there was discussion about the precise meaning of LIFO. It was agreed, for example, that workers with less than a year’s service with the firm as a whole should go and that thereafter LIFO should operate within specific categories of worker. The least senior skilled workers, for example, were subject to redundancy even if they had more seniority than, say, labourers. The union was also successful in protecting some jobs. For example, it proved possible to save four or five welders’ jobs following suggestions from the union.

As for the non-union office staff, representatives also made suggestions as to how to avoid some redundancies, for example through reducing the use of temporary staff and through redeployment. In the event, only two office staff were made redundant, including one volunteer who wished to leave the area.

At ***DistribCo***, the union regional organiser believed that the fundamental goal of management, to re-site the distribution depot, was unlikely to be changed. Debate focused not so much on the redundancies as on associated changes in terms and conditions for staff who remained in

employment. For example, a shift to staff status for workers moving to the new depots that were replacing the one being closed implied the loss of bonus and overtime payments. The union view was that there was little that they could do, given management's ability to attract staff on the new conditions; they felt that they were 'plastered into the ground'. Some small concessions were made, for example over when redundancy pay was actually provided, but union and staff remained unhappy about having to accept significantly changed working practices, albeit recognising that, given competitive conditions in the industry, some changes along these lines were inevitable. The management view was that the changes had generally been introduced successfully.

At ***SecurCo***, a LIFO agreement operated if 'all other things were equal', illustrating Turnbull's (1988) point that even where LIFO is present it is not necessarily the dominant criterion. Six of the 14 potential redundancies were filled by volunteers, with the remainder being chosen according to capability plus LIFO. Since the case involved the merger of two separate operations, several issues concerning terms and conditions arose, such as the merging of sick-pay schemes. The union felt that they had made some gains, for example protecting the holiday entitlement of one group of staff. More generally, there were few redundancies and all those selected for redundancy were offered alternative positions, with two people accepting. Thus, as a union representative put it, 'not one person ended up where they didn't want to be'.

The union was also conscious of the implied threat of the firm's new non-union operation. This may have shaped its response to the redundancy exercise, which was nonetheless felt to have been reasonably constructive.

At the two colleges, union representation was well established and there was a general public sector tradition of discussion and dialogue. As Clegg (1972: 195) noted over 25 years ago, 'the public services and nationalised industries' have been 'well provided with redundancy schemes'. In both cases, it was thus taken for granted that there would be early notification and a long period for discussion. Nonetheless, union participants believed that they had been able to have little effect on the process.

At ***Urban College***, the main choice faced by management concerned hourly paid staff known as Visiting Teachers (VTs). Pay and conditions were inferior to those of permanent staff, and some legal rulings suggested that this distinction might be untenable. The choice was thus to integrate VTs into the standard contractual situation or declare them redundant and use agency staff (who already covered about a fifth of the curriculum) instead. The latter option was felt to offer the greater flexibility as well as the lower cost. Over a series of meetings the union was successful in persuading managers to retain some of the longest serving VTs (numbering about 15) on permanent half-time posts. Since the majority of VTs were women, this move may also have helped to forestall the union's threat of a challenge to the redundancies on the grounds of indirect sex discrimination. The contracts were, however, continued only for one further year, and several of the staff involved have subsequently been declared redundant.

At ***City College***, the agency option had not to date been pursued and the issue was instead the redundancy of some permanent staff. The general union view was that as a branch it was 'tired' after six sets of redundancies in two years. Issues raised in this particular case included whether the financial situation in fact required staff cuts, whether money could not be moved between budgets, and selection criteria. The union view was that little headway was made on any of these. There was, in particular, suspicion that staff were being selected if they refused to leave the old 'Silver Book' terms and conditions. Among these was the branch secretary, who eventually reached an out-of-court settlement after taking his case to an industrial tribunal. Management felt, by contrast, that the redundancies were necessary in the circumstances and that they had been carried through in a fair manner.

Non-union cases

The key illustration here is how the consultative committee operated at ***TeleCo***. Were there any discernible differences from the unionised cases in terms of what issues were included in the consultation process or the concerns of representatives? One obvious candidate is the size of severance payments. In fact, this was not an issue since the firm simply replicated a package used in a previous exercise and made it clear that it saw the terms as generous and not open for negotiation. The representatives accepted this. Three issues became the focus of discussion.

First, the redundancy stemmed from a reorganisation, which also entailed a change in the number of regions. This meant in turn a reduction in the number of supervisory positions available. Management sought agreement that a supervisor could step down to engineer level and be rated as an engineer, that is, be in their pool, believing that some supervisors should have the opportunity to step back and thus not lose their job altogether, especially, for example, if it were

a recent promotion. The engineers opposed the proposal, but management insisted on the opportunities being available to the supervisors. However, in the event, only one or two of the supervisors took up the offer and both eventually left the organisation, so that management did not consider the battle on their behalf to have been worth the effort and the bad feeling it caused. It was a major problem for the managers, which illustrated the representatives' ability to challenge managerial preferences, though plainly it is possible only to speculate on the outcome had the issue needed to be pressed to resolution.

Second, management evolved a checklist for the assessment of each member of staff, to be used to grade capability. Representatives asked for copies of the forms for each member of staff. This was refused, and it was explained that the forms would be used only for this exercise and not for any future purpose. With this assurance, the issue was dropped.

Third, the most important question concerned the selection criteria. The original company proposal was to select people to be made redundant on the basis of capability. The representatives raised the issue of using volunteers. Initially, most line managers were adamantly opposed, believing that they had to be able to retain the best staff. The personnel manager was less worried about this, and after attending a meeting, at which passions were aroused, the principle was conceded. The approach was not, however, entirely voluntary since managers would not allow key staff to go, and would permit volunteers only from those whom they were willing to lose.

Other matters raised by representatives included the details of pension entitlements and procedures for appeals against redundancy. A series of six weekly meetings permitted such issues to be thrashed out in detail.

At ***ComputerCo***, by contrast, there was little substantive discussion with individual members of staff. As we have seen, severance terms were seen as attractive, and there were no major issues that an individual could raise. Some points might not have been on the agenda even had there been an elected committee. For example, the whole office was being closed so that there was no question as to who was selected for redundancy.

At ***FoodCo***, where, as we have seen, ad hoc and informal consultation emerged, several issues arose. A good example was accrued holiday pay. One group of workers who had been taken over with another company had earned such pay with that company and were concerned that FoodCo would not honour this commitment when it made them redundant. Their spokesperson told us that the company was 'trying to get away with what they could'. Eventually, about six months later, the money was paid. The workers felt that, had they not stood together as a group, they would not have been successful.

At an individual level, staff also queried how the redundancy would affect them personally. This included selection for redundancy, the amount of redundancy pay, and the terms and conditions to be applied following the redundancy. We were told, however, that individuals found it hard to raise issues effectively. The main reason was workers' dependency on management, for moving to another job was an alternative to redundancy and there was a feeling that challenging redundancy decisions might harm an employee's prospects of being offered such a move. It was also felt that managers did not release information on the nature of these jobs or on individuals' chances of gaining one, with the result that there was uncertainty in employees' minds as to what they should do.

Discussion

Several themes stand out from these cases. First, redundancies are often connected with wider restructuring and in several cases such as DistribCo it was the restructuring and not the specifics of the redundancy package that was the key focus of discussion. This raises issues about the boundaries of redundancy consultation and more general processes of discussion about workforce issues. In practice, managements seem to have been willing to discuss the wider issues as well as the specifics.

Second, the effectiveness of consultation seems to have varied. Certainly, union participants differed in their perceptions, from those at EngCo who felt that the process had been reasonably fruitful, to those at the colleges who felt relatively powerless. Overall, the content of the consultations was, in these few case studies, dependent on how flexible the managers of the organisations were. Particularly at TeleCo, EngCo and SecurCo, managers were seen to be flexible and willing to agree to change some of their plans, with the result that they achieved successful outcomes in terms of both their final agreements and subsequent employee relations. At TeleCo, the principle of voluntary redundancy was accepted by management. At EngCo, the union was able to retain the existing 'last in , first out' agreement against managerial wishes to change it. And at SecurCo, where two control centres were being merged, the union influenced the terms of the merger on matters such as pay rates, sickness schemes and holiday arrangements.

The question naturally arises as to why a relatively participative style was adopted in some cases and not others. This study was designed to explore processes rather than causal conditions and we cannot offer definitive answers. However, some points seem to have emerged. First, the fact that one of the more participative cases was not unionised (TeleCo) while the other two (EngCo and SecurCo) were, suggests that union status is not in itself decisive. The kinds of issues raised by representatives at TeleCo were broadly similar to those covered in the consultations in the unionised cases. Second, a good deal turns on managerial objectives. TeleCo was establishing a new organisation from two very different ones, and managers were clear that they had to create a culture from scratch. In these circumstances, they wished to take staff along with them. In a subsequent redundancy, which representatives felt had been conducted less sensitively, managers seem to have felt that the needs of rapid reorganisation, involving a new structure with more than three times as many staff as were involved in the first reorganisation, called for a more assertive approach. EngCo is a specialist engineering company with little history of redundancy, which has sought partnership with its unions. In these conditions of relatively high value-added manufacture of a specialist product and with the continued commitment of staff being important, a participative approach fits the firm's overall direction.

The case of SecurCo is less clear, for here was an organisation in a heavily competitive market. It was also, interestingly, setting up a non-union company in parallel to the main unionised business. In these circumstances, management might have taken a very hard-nosed approach, and yet the union representatives felt that the handling of the redundancy had been satisfactory. Three features stand out. First, the union's focus was specifically on the redundancy itself and not on the wider questions of the firm's strategy, so that views about the redundancy should not be taken as wider endorsements of policy. Second, the fact that the unions were well established here may have encouraged management to work through them rather than risk confrontation. Third, in some areas of the country there was a shortage of key staff, and managers may have felt a need to proceed with caution.

FoodCo, by contrast, stands as a good example of the confusion and lack of clarity that can arise when two conditions hold: a fairly strong pre-existing group orientation of employees who feel that there are substantive issues that they wish to pursue, combined with a wish by management to avoid collective consultation. In such circumstances, employee interests may lack an adequate means of expression.

Meaningful consultation, albeit on the ways of handling redundancies and not the overall principles, thus took place in several of the organisations. The extent to which representatives could influence the process reflected the context of the redundancies and the nature of managerial objectives. Representative structures are no guarantee that effective discussion takes place but they generally provide a forum and a structure for issues to be identified and resolved.

5 Effects of redundancy consultation and responses to the Regulations

In this section, we look at some of the outcomes of redundancy consultation, including any effects that can be traced to the 1995 Regulations. It is naturally difficult to identify cause and effect, and the discussion is more dependent on analysis and interpretation than were the earlier sections. Some of the interpretation is that of our interviewees, that is, their perception of the process, while some of it is our own. For each topic considered, we assess the effects on unionised and non-union organisations separately.

Employer flexibility

We saw in Chapter 1 that existing research suggests that the requirement to consult has not made it more difficult for management to introduce change. Indeed, there was some evidence that the process of redundancy as a whole, that is, taking into account the widespread use of inducements to voluntary redundancy, eased the negotiation of change by reducing employee and union resistance.

As noted in Chapter 1, in 1993 the requirement was added to the legislation that the consultation must be 'with a view to reaching an agreement'. In the absence of detailed information on how our organisations behaved prior to this requirement, we cannot be sure of its effects. It was the case, however, that our interviewees did not themselves mention this requirement. For example, managers did not feel that it imposed any more new constraints in terms of having to find agreement. We saw in the previous section that the nature of consultation varied. At one extreme, ***EngCo*** sought the active agreement of its unions in the reorganisation of the production process while, at the other, ***DistribCo*** felt that it had to press through some necessary changes, with the view of the union being that of grudging acceptance. As the personnel manager at DistribCo explained,

> 'If there is a recognised union, there is no reason why you shouldn't use them. It is a sign of a working relationship, so the worst thing is to exclude them.'

There was thus willingness to seek agreement about or at least closure of the issues concerned though the meaning of 'agreement' will vary according to circumstance. We explained the difference between these two cases in terms of their competitive and industrial relations climates.

Similarly, at the two colleges no effect of the consultation requirement was evident. Managers at both said that they would try to exceed minimum requirements, in particular by beginning to consult as soon as possible. As a manager at ***Urban College*** put it, if an organisation recognised a union it must be for a purpose and it seemed natural to wish to consult about redundancies. Managers at ***City College*** made two main points. First, consultation was in many ways 'confirming the inevitable' and 'a sign of reasonable communications'. That is, managerial decisions were still put into effect. But, second, 'We will carry on consulting come what may, regardless of legislation. We have a workforce who must have faith and trust in management.' The point here was that consultation was a means of cementing trust, even though substantive decisions were not much changed.

The Regulations make no change in the minimum time period for consultation, but it is possible that, in the light of perhaps heightened competitive pressures, the period is seen as too long. We found no perceived problems of this kind. As just noted, at the colleges lengthy consultation was the preferred route. The personnel manager at SecurCo, for example, also said that the timescale was not normally an issue.

Timing was somewhat more of an issue on the union side, with some concerns being expressed, for example at the colleges, about the difficulty of obtaining the required information and having time to consider it properly. In these two cases, however, quite detailed information was provided, and meetings took place over a period of months. It is natural for representatives to feel that management is keeping something from them, and it is not clear how more time would have resolved such doubts.

Turning to the non-union cases, ***TeleCo*** was the only one with a functioning elected committee. Managers reported that the process had been beneficial in allowing them to demonstrate that they had no hidden agenda and that they were being fair in the selection criteria. They had no problems with the time involved or with any possible loss of flexibility. How common such a response might be is of course hard to say, but the context of the organisation is relevant. As we saw in section 4, TeleCo had taken over another firm and it was trying to develop a new culture. TeleCo managers felt that procedures in the firm taken over, in general business matters as much as in human resources, were poor. In particular, its main role had been to sell a product, so that efficient labour utilisation was not a concern. The new organisation was more focused on servicing a current client base and was interested in the long-term development of its assets. It believed strongly in procedures and a systematic approach. A programmed consultation over redundancy fitted naturally into this framework. As we have seen, the firm set up a process with a clear timetable and formal agendas. It may be that it is in firms of this type that requirements to consult collectively fit most naturally.

It is certainly true that the other non-union firms had more difficulty with the concept. Thus TeleCo simply adopted the collective route while both the other two, ComputerCo and FoodCo, asked workers whether they wanted it. The consultations in which they engaged did, however, meet the requirements of the Regulations in terms of the time allowed. At ***ComputerCo***, this was not felt to have delayed implementation in any serious way; as the personnel manager put it, 'you build in the consultation process anyway'. At ***FoodCo***, managers and workers agreed that in broad terms the redundancy was handled in the same way as previous cases. As an employee put it, 'we just thought, "here we go again"'. There was some managerial concern about time delays, and managers expressed fears that morale would suffer while staff awaited the redundancy to take place and that sabotage of operations might occur. It is very hard to judge how real such concerns were, and we were given no specific evidence that delay had indeed led to outbreaks of sabotage. The point is probably best taken as a symbol of managerial concerns in this kind of business about speed and flexibility, together with generic doubts about the trustworthiness of staff. The contrast with the ordered approach of TeleCo is evident.

Encouragement of unionisation or collective consultation?

At the time of the 1995 Regulations there was some suggestion that they might work as a stimulus to union recognition, either because a management might prefer to deal with a union in preference to setting up a wholly new and perhaps inexperienced body, or through an indirect process wherein collective consultation is practised and it then leads further in the direction of collective bargaining. Alternatively, redundancy consultation could act as a spur to the establishment of permanent non-union representative committees. Four cases have some

bearing on these questions, the three non-union organisations and EngCo.

To start with ***EngCo***, we have seen that the non-union office staff formed an elected committee alongside the union structures. This did not, however, lead to any lasting structure, either through the unionisation of the staff or through a non-union joint consultative committee. Presumably, had there been a strong desire for such representation among the office staff they would already have sought it, given that they had the example of the shopfloor union nearby. In this case at least, no longer-term effects of the redundancy consultation were evident.

At ***TeleCo***, there were two apparently contradictory developments. First, the firm was planning a permanent consultative system, with groups from each main function meeting three times a year. Second, however, following the redundancy, which is our focus, a further event took place. According to the representatives, managers used another single-issue committee rather than an established structure. More importantly, they felt that it had been handled in a much less participative way, possibly because of the involvement of higher level managers who believed in only minimal consultation. The representatives felt that this event left a 'bad taste', for they had wanted to retain the consultative style from the first redundancy and had been assured initially that there was no need for a permanent body, since no further redundancies were likely. Yet more mergers and reorganisations did indeed take place. The representatives acknowledged that the managers with whom they had dealt had themselves had no knowledge of these events, which had reflected decisions made at a much higher level in the organisation, but they still felt let down by the company as a whole.

In relation to ***ComputerCo***, we were told by the personnel manager after the completion of the study that the firm has now established consultative structures, which it would use in any future redundancy. There was also reported to be a European Works Council in operation. The consultative committees meet every month or two and are seen largely as means to improve the flow of information. Nonetheless, there was some evidence that employees could question some decisions. Thus we were told that, in relation to a later potential redundancy, representatives objected to the company policy of allowing staff to leave and then be re-employed. The issue remained unresolved at the time of the study.

Finally, at ***FoodCo*** there was no evidence of any plans to develop consultative mechanisms. The case was also one where feelings of bitterness remained.

It is evidently hard to generalise from such cases. We would suggest that our cases represent the more 'sophisticated' of non-union firms. TeleCo and ComputerCo, in particular, are large and long-established organisations operating in advanced industries and employing highly skilled staff. The general principles of staff involvement are well established within them. As mentioned in Chapter 2, TeleCo has been studied more widely in a related project. It generally has a well-established personnel function with several structures for staff involvement, as in a total quality programme. In firms such as these, some systematic approach to personnel matters is to be expected. In this context, the fact that TeleCo's move towards consultation was not evidenced in the second redundancy and the absence of any such move at FoodCo suggests that advances towards collective representation may not be very common. Finally, there was certainly no evidence that consultation was leading specifically to the use of a trade union channel. In firms adopting a less systematic and long-term view of human resources, the likelihood of any move towards collective representation structures would be less than it is here.

Response to the Regulations

In terms of the new requirement to consult, two main points stood out from the non-union firms. First, they would have welcomed guidance as to whether they were required to consult collectively. As we have seen, managers at ComputerCo were very unclear about this, and would no doubt have welcomed the clarifications contained in the 1998 consultation document. Second, guidance as to the procedures to follow in terms of how to establish constituencies and conduct elections was also sought, and again recent clarifications address this point. The implication is worth stressing. It is not that firms simply prefer a lack of regulation. If there is to be regulation they prefer it to be systematic and detailed so that they know what is expected of them. A little regulation can be a dangerous thing.

As for the threshold of 20 introduced by the Regulations and identifed as an issue for comment in the 1998 proposals, there did not seem to be any significant effect on the consultations that took place in the union organisations. Most of the case studies involved more than 20 persons. All parties affirmed that negotiated union procedures would be followed and these would normally be activated even in cases where fewer than 20 people were affected. SecurCo followed a consultation process for just 14 people. However, in one case, Urban College, managers stated their intention of not holding

consultations with representatives where a small number, that is fewer than 20, was involved. This may have reflected the relatively radical view of personnel management that was adopted in this college, as illustrated by the active pursuit of the use of agency staff. Certainly at City College, where a less radical policy was followed, consultation was expected to continue on the existing basis. The evidence from our cases suggests that the 20 threshold was not a central issue.

Four
DISCUSSION AND IMPLICATIONS

To set our results in context, we first identify three broad positions on the management of job loss. We then relate our evidence to these positions, beginning with the most specific issues of the mechanisms for consultation before turning to wider questions of how far employees and their representatives can be involved in the management of redundancy. It would not be appropriate to comment in detail on the 1998 proposals, which we summarised in Chapter 1: these were published after the research was carried out, and our evidence cannot bear directly on them. At the time of writing they remained as proposals rather than definitive statements, and we do not wish to enter judgement on what may not become a final view. Instead, we draw together some broader policy comments in section 4 of this chapter.

1 Approaches to job loss

The first view of job loss, which may be called the ***laissez faire* approach**, holds that consultation is irrelevant since job losses are driven by market imperatives. It would note that the requirement to consult was introduced as part of the Social Contract legislation of the 1970s and argue that this was about bargains between unions and the government and not the effective regulation of industry. It would also note that at the time the TUC wanted redundancies to be forbidden until the consent of the relevant unions and government department had been gained (Davies and Freedland, 1993: 358), and draw the inference that the motive for the eventual provisions was union influence and not the effective negotiation of an issue of substance. Consultation would either have no effect or would damage an enterprise by imposing delay and increased costs.

The opposite, **radical**, position shares the view that current provisions do not work but sees this as reflecting the inadequacy of the provisions. On the basis of the research evidence reviewed in Chapter 1, it would argue that consultation has not significantly altered managerial discretion over the extent of redundancies. It would also suggest that redundancy consultation focuses on details of who is made redundant and when, and not on the wider principles, and that a much more rigorous control over the whole process of job loss would be required.

Third, **an intermediate position** would reject the conclusion that nothing much can be done to affect how redundancy decisions are handled. It would suggest that there are practical issues on which consultation can be relevant. It has two main variants. The first suggests that quite major changes need to be made to regulate the redundancy process. It comes close to the conclusions of Turnbull and Wass (1997: 41–4). They note that in other European countries there are significant legal restraints on the right of dismissal (see Emerson, 1988). They go on to argue that if redundancy is easy then firms are encouraged to pursue simple cost-cutting approaches; restraints may in fact encourage efficiency by promoting investment in human capital. For example, they argue that in the UK steel industry the ease of cutting jobs encouraged a focus on low value-added products. In other European countries, they argue, job losses were more difficult to press through and as a result employers took the alternative route of endeavouring to integrate the industry and to focus on higher value-added goods. This approach may be called one of **collectivist reform** because it sees the collective approach as necessary in all cases and seeks wider institutional change on a model based on that of works councils.

The second intermediate view, which we will term **traditional**, accepts that the primary decision on the nature and extent of redundancies is driven by business needs but suggests that there are choices to be made as to how the process is handled and that consultation can ease such choices. It would not impose mandatory works councils but would aim to provide a more limited framework within which employers and employee representatives could work.

Most of the following discussion concentrates on the intermediate positions, which believe that consultation does ‘make a difference’. We then comment briefly on the collectivist reform view and the two more extreme *laissez faire* and radical positions.

2 Collective or individual consultation

As explained in Chapter 1, current legislation is an attempt to transpose EC legal requirements into a British context. As in many other areas of EC labour law, the problem for the UK is that directives often assume a ‘continental’ structure of works councils or similar universal representative bodies, through which information and consultation procedures can be carried out (Hall, 1997). Their absence in Britain means that there is no natural body for such activity, while the declining extent of union recognition renders

the traditional reliance on the union route less acceptable as a general alternative. British provisions for the election of employee representatives are a necessary device to fulfil the requirements of EC law. However, statutory rights can appear to be merely formal if there is no established means of exercising them. Representatives who are elected at short notice and who lack the experience and independence to deal with a necessarily contentious issue may struggle to be effective.

We may deal briefly with the option allowing firms that recognise unions in respect of a group of workers subject to a proposed redundancy to consult through non-union channels. We have found that this has been used rarely if at all. We would expect most employers, faced with the delicate issues of redundancy, to use established channels of consultation rather than possibly heighten tension by choosing another route. Removing this option would not of course affect a firm's right to derecognise a union or to do as ***SecurCo*** was doing, namely, to set up a separate non-union company.

As for the election of representatives, a key finding of the research was that, in two of the three non-union organisations, representatives were not in fact elected. We have seen that at ***ComputerCo*** clear efforts were made by management to allow nominations and elections, with individual consultation ensuing when no representatives came forward, while a less transparent process took place at ***FoodCo***. The problem for managers at both firms was a lack of guidance as to what to do if no one came forward. They were reluctant to impose a structure of representation and retained their existing approach of individual consultation.

The 1995 Regulations did not offer any guidance to firms in this situation. The approach that the firms took was consistent with the established British approach, whereby they develop consultation arrangements that suit their own circumstances. Continuing such an approach would fit what we have termed a *laissez faire* model, which would leave choices on consultation entirely to firms. It would also be consistent with the 'traditional' model, which would provide some framework to encourage consultation. This model might also expect an approach closer to that of ***ComputerCo***, where employees were given the option of choosing representatives, than that of ***FoodCo***, where free choice was much more constrained. In circumstances such as those at ComputerCo, where managers were prepared to consult on an individual basis and where there was a degree of acceptance among workers as to the need for the redundancies, the approach might work well. However, we saw in the case of ***FoodCo*** that in other conditions there can be unresolved discontents which promote bitterness; indeed, in this case, there emerged unofficial spokespersons who were responding to the absence of any structure through which employee concerns could be expressed. We cannot judge the costs, from a managerial view, of such bitterness or compare them with the presumed benefits of avoiding the use of representatives, but it may be in the interests of some firms in this position to pursue collective consultation rather than risk the uncertainties of the alternative.

Even though representatives do not come forward, it need not follow that employees actually prefer individual consultation. To assume that they do is to adopt an approach to employee rights which is *individualist* and *rationalist*. It is individualist in assuming that matters of redundancy can be reduced to the interests of individuals such as the amount of compensation. But there are also larger issues to do with how many redundancies are required and the underlying principles to be followed. As the representatives at TeleCo argued, it may be in the interests of the workforce as a whole for the idea of volunteers to be introduced. At EngCo, there were issues concerning exactly how selection principles were to be implemented. These matters of the overall process of a redundancy may require some collective forum for discussion.

Assumptions are rationalist if they start from the position that employees have sets of interests of which they are fully aware and which they can then pursue. Yet interests are often implicit and poorly formulated. Asked whether they wish representatives to handle a redundancy, employees may initially reply in the negative because, for example, they can think of nothing that a representative might add or because of some generalised distrust of representatives: will they reflect employee concerns, will they be accountable, and so on? Yet, given the opportunity, employees may consider that there are benefits in representation. These are of two kinds. First, there are issues that are common, for example the principles on which redundancy selection takes place. It would be very hard for individuals to raise these matters, not least because of the limited power of each employee in isolation. Second, there are matters of individual interest, such as the amount of redundancy pay, which may be better handled by a group than by each individual acting alone.

It is worth underlining the benefits of consultation through representatives. First, all the organisations that practised it could see gains in terms of the

provision of a forum for discussion and communication. Managements were able to explain the reasoning behind decisions and to respond to employee concerns. As we saw in Chapter 3, there were several instances in which initial proposals were amended as a result. In some cases, the redundancy consultation mechanism was felt to have longer-term benefits, as at ***EngCo***, where the practice of intense discussion over a short period was being considered for regular pay bargaining. Second, issues pertaining to the process of redundancy as a whole, for example selection criteria, may be more readily handled through collective than individual means. Third, collective mechanisms may help in situations like FoodCo's, where tensions arose and there was no clear outlet; a representative structure may forestall such tensions.

As for the way in which consultation takes place, we have looked at the introductory notes provided by ***TeleCo***. In some ways these are exemplary, for example saying that though the regulations may not strictly have applied because of doubt as to whether the firm was making 20 or more staff redundant from one site, management had chosen to follow the system of consulting elected representatives. The nature of the information to be disclosed was also listed. However, there was no mention of the requirement of consulting with a view to reaching agreement or of training or advice for representatives. Employers who wish to consult fully might find it helpful to have advice from relevant bodies, such as employers' associations and professional bodies, on what those bodies see as good practice within their own fields, for example on the training of representatives.

Some further issues arise once a representative route is chosen. We have seen that the absence of guidance in the 1995 Regulations left some employers uncertain as to what to do. The 1998 proposals stress that representatives must be independent of the employer and state that no member of the affected workforce may be unreasonably excluded from standing as a candidate (DTI, 1998: paras 23 and 26). One of our findings is relevant here. We saw that at ***TeleCo*** there was an issue of the treatment of managers and supervisors. It could be argued that anyone holding a significant managerial role is not properly independent from management and should not take part in consultations affecting other employees. Where managers are to be made redundant, they may need to be treated as a separate group. The practice at TeleCo offers some pointers as to how appropriate groupings of employees might be identified in situations where there may be conflicts of interest.

3 Aspects of collective consultation

If a collective route is chosen, some specific issues arise on which we comment in turn. An initial issue concerns the number of redundancies that will trigger consultation. We have seen that some organisations already consult for numbers below 20, and we could find no particular problems with consulting in respect of small numbers of staff. As we saw in Chapter 2 (Table 4), only 10 per cent of redundancies involve between 10 and 19 workers, so requiring consultation in respect of such cases would not involve a great increase in the number of consultation exercises required.

Chapter 2 also showed that only 10 per cent of cases of proposed redundancies involve at least 100 workers (Table 4) and that in just over half of all cases more than a quarter of the workforce was affected (Table 6). We cross-tabulated Tables 4 and 6, to show what proportion of the workforce was affected in redundancies of a given size. For example, where between 11 and 19 staff were involved, in 41 per cent of the cases this constituted at least half the workforce. Given that such an event is likely to be seen as very significant to the life of the organisation, it would seem reasonable to expect some detailed consultation. In such circumstances, managements may gain from using a relatively long period of consultation even if this is not required by the legislation. In particular, if discussion of the principles of a redundancy and ways of avoiding job losses is to be serious, it is essential that the consultation start when job losses are being considered, and not when a firm plan has already been drawn up by management.

As for the period of consultation, present arrangements specify a minimum of 30 days for redundancies involving up to 100 staff, and 90 days where more staff are involved. Most of our cases involved periods longer than 30 days (see Table 7). In general, the time available was not a major issue, but there were some concerns from employee representatives about haste in some cases and about the difficulty of finding appropriate information. In some cases, there was often an atmosphere of speed, compounded by continuing uncertainty as to how many jobs were finally to go and whether redeployment remained an option. Such concerns are almost bound to arise, though they could be moderated if employers gave as much advance information as they could on likely business trends. More time for the consultation period would in itself probably make little difference.

The effects of the requirement to consult 'with a view to reaching agreement' are hard to assess, for much turns on what constitutes agreement.

Outcomes in our cases ranged from mutually acceptable arrangements through acceptance of the inevitable to a feeling among employees that change had been imposed on them. Those with long experience of redundancies, such as the two colleges, felt that they continued to try to reach acceptable outcomes regardless of the exact wording of the legislation. The language of seeking agreement is none the less useful in underlining that consultation should entail an effort to find acceptable solutions, rather than being merely formal.

We have noted that legislation requires consultation about ways of avoiding the redundancy. In practice, this seems to happen rarely, though at the two colleges early discussions did take place. This fact has led writers such as Turnbull and Wass (1997) to argue that a system based on works councils is required. The argument is that a permanent mechanism for discussing staffing arrangements is needed. For example, in Germany employers are required to develop 'social plans' to discuss with works councils proposals which could have significant effects on workers (Bosch, 1985).

The European Commission has put forward similar arguments to support its proposals for EC-level regulation of national arrangements for wider information and the consultation of employees. It remains to be seen how far such proposals will be realised, but they are evidently one way in which a more permanent forum for information and consultation on organisations' employment plans might be developed.

Plainly, there is no relevant experience in Britain from which to comment on such ideas. A works council system would be foreign to the British tradition of industrial relations. The 1998 *Fairness at Work* White Paper restates the Government's opposition to such a system.

Short of such an approach, we have seen that existing approaches to consultation can allow for meaningful discussion to take place. We have also seen that employers' needs for flexibility do not seem to have been compromised. Both the *laissez faire* and the radical approaches seem to adopt an unduly rigid view of what can be achieved. It is of course true that job losses are often driven by economic necessity, but this does not mean that consultation about the processes involved is worthless. A traditional approach would build on the voluntarist British model. It has two options. The first is to be agnostic as to the value of the collective route, leaving the choice to employees with relatively little guidance. This would come closest to the preferences of some employers who have chosen an individual rather than a collective approach to employee information and consultation. But it takes a passive view. The second approach recognises the benefits of collective consultation, and could be expressed through detailed guidance as to what these are. The UK legal framework in this area has evolved in response to pressures from Europe. The 'traditional' and 'collective reform' approaches offer two possible future routes for further development.

4 Policy issues

As noted at the start of this chapter, this study assessed redundancy consultation at a given point in time, and we do not comment on specific later developments. But we can stand back and make some broader observations, in relation to employers dealing with a redundancy and public policy.

Employers in our study would generally have pursued a 'traditional' approach of treating redundancies as the unfortunate consequence of wider business developments. They would stress the difficulty of predicting redundancies, the risks to morale if early and highly provisional projections of job losses become common currency, and the commercial risks of allowing reorganisation and merger plans to leak out prior to proper announcements. There are none the less two areas of possible action. First, sudden announcements of job losses are likely to provoke bewilderment and possible resentment. In several of our cases, extensive rumours developed before any formal announcement. Managements may find it in their interests to have proper discussion to avoid the uncertainties and damage to morale that rumour can generate. As the Institute of Personnel and Development notes in a position paper on employment relations,

> '…most people like to feel that their interests are being taken into account when important decisions are being considered. Particularly in large organisations, in which it is not easy for all employees to meet informally, some form of machinery – whether procedural or structural – to represent employees collectively can offer useful reassurance on this score' (IPD, 1998: 8–9).

Mechanisms that offer employees some information about business developments, even if they operate at a fairly general level, may help reduce a sense of shock. Organisations that subscribe to ideas of 'social partnership' may find it particularly important that they do not disrupt developing relationships based on trust. This does not, of course, mean that job losses can necessarily be prevented. It is simply a question of providing the rationale and context for decisions that may be unavoidable.

Second, where employers consult representatives about redundancies, they may find it beneficial to ensure that the representatives are able to perform their role effectively. This would include:

- going beyond formal statements about matters subject to consultation, to illustrate substantively key matters on which representatives can make an input. These might include the selection of staff to be made redundant and the details of redundancy packages, but individual firms should be able to indicate what from their own experience are the critical issues;
- training, particularly where staff may be inexperienced;
- allowing appropriate time off and the means to seek independent sources of advice.

As for public policy, we have indicated some issues around a 'works council' approach. Whether or not it is taken, there may also be benefits in sustaining good practice within a more traditional framework. This might comprise a guide to good practice, on the lines of those currently produced by ACAS on a range of subjects, that touched on the two points mentioned above.

First, the relevance of a general flow of information about business plans might be highlighted, together with the value of starting consultations as soon as possible. Second, there is guidance once a representative system is chosen. We have seen that the situation under the 1995 Regulations was one of some confusion because of a perception by employers that there was a lack of guidance as to how to behave. One area is the selection of representatives, where illustrations might be given as to appropriate constituencies. Appropriate training of representatives is also important. A guide might indicate the issues on which training should be given (for example, what sorts of information to seek from management and how to address the selection of staff to be made redundant) and also possible sources of such training. In addition, representatives may well need access to sources of advice, and it may be helpful to specify that they have the right to seek it and to indicate in the guide where they might go for such advice. A body such as ACAS might be able to offer useful indications of concrete good practice in this field.

In short, it is important to offer guidance as to what constitutes a genuine effort by an employer to provide for consultation through representatives, which would back up any legislative requirements. We have argued for a 'positive' approach which spells out the benefits of such consultation, as opposed to a more passive approach of allowing employers to present the issue in purely formal language.

We have seen that consultation can 'make a difference'. Redundancies are likely to be a continuing feature of the employment relations scene, and finding an effective way of handling a situation which is difficult in business and personal terms remains crucial to the management of change.

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