InfPreventa

UK Country Report: Supplement

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This supplement to the UK country report submitted for the InfPreventa project in November 2014 covers the following topics: the declining coverage of employees by collective bargaining, the replacement of 'old' by 'new' pay models and the rise of merit pay within companies; the relationship of collective bargaining to consultation; patterns in workplace conflict, with reference to strike activity 2009-12; the growing significance of employment tribunals in handling employees' grievances; the introduction of fees in 2013 in an attempt to stem the growing use of employment tribunals; possible effects on conflict. It begins with a brief reminder about the industrial relations background in the UK.

The industrial relations system in the UK: background

The industrial relations system in the UK today is dominated by the company and workplace as the focus for collective regulation – where it exists at all – of both procedures and pay and conditions. Legislation has established a basic individual and collective regulatory framework, to which a national minimum wage, improved trades union recognition procedures and family friendly employment policies have been added since 1997. Despite elements of state planning in the post-war period up until the election of the Conservative government in 1979 under Margaret Thatcher, the role of the state today is limited. It has helped to establish employment policy in areas like active labour market policies and life-long learning and, over the years, has created regulatory agencies at national level to monitor particular policy areas, such as the Equality and Human Rights Commission. There is accordingly no tradition of continental-style corporatism in the UK. Rather, the system is based on 'voluntarism' – that is, autonomous relationships between the parties, in which legislation has rarely played more than a minor role.

Multi-employer bargaining, sometimes known as sector-level bargaining, has declined dramatically in recent years, and there has never been intersectoral regulation through peak employers' and union confederations. The result has been a process of what has been

described as ‘disorganized decentralization’ (Traxler 1995) as companies and workplaces have moved centre-stage in collective bargaining and industrial relations regulation. In the industrial relations arena, then, there is a reliance on market relations providing managers with greater freedom to determine corporate strategy and to hire and fire personnel than in most other European countries (Marchington *et al.* 2011). The relationship between employer and worker is therefore principally contractual, and has been termed a ‘conflict model’ (Coupar and Stevens 1998: 146). Notwithstanding the rhetoric of human resource management and ‘partnership’ approaches, it has seldom developed into ‘high trust’ relationships. In non-unionized companies – 84 per cent of the private sector in 2011 (Van Wanrooy et al. 2013: 22) – workers can do little to remedy poor employment relations, so conflict has arguably increasingly taken the form of individual disputes referred to employment tribunals rather than collective forms, such as strikes (Dix et al. 2008). Industrial relations within small and medium-sized enterprises may be characterised as heterogeneous, depending on sector, structure of ownership, management style and so on (Curran and Blackburn 2001).

Trends in collective bargaining

As Table 1 shows, the percentage of employees covered by collective bargaining has continued to fall over the period 2004-11. The decline in the public sector has been most marked, with a 25 percentage point drop, though the decline in the private sector appears to have stabilised. However, overall, across the whole economy, only 23% of employees in the UK are now covered by collective bargaining.

Table 1: Employees covered by collective bargaining in UK (%)

(Source: Van Wanrooy 2011: 22)

	Public	Private	All
2004	69	17	29
2011	44	16	23

This decline has been matched by the emergence of the so-called new 'pay paradigm', based on the idea that organisational effectiveness depends on the closest possible fit between corporate strategy and reward system. As a result, reward systems have been increasingly individualised as economic environments have become more turbulent through globalisation, privatisation and deregulation. Table 2 contrasts the principal differences between the models. Basic pay rates are replaced by variable pay, based on individual and organisational performance indicators, which leads to their fragmentation. Performance-related pay, bonuses and commission become the norm, with pay systems used to manage performance rather than to reward achievement.

Table 2: the 'old' and 'new' pay models

(Source: Bratton and Gold, 2012: 377)

'Old' job-based pay model	'Strategic' pay model
Base wage or salary	**Variable pay**
Based on cost of living and labour market	**Based on organisational performance**
Evenly distributed between employees	**Differentiated**
Correlated with length of service	**Based on individual performance**
Bonuses based on individual performance	**Bonuses based on team and organisational performance**
Reward flows from behaviour	**Reward used as means of communicating…**

These trends can be observed in trends towards payment by results and merit pay in the UK. Table 3 demonstrates that, overall, two-fifths of workplaces in 2011 were covered such individualised pay systems, though they are considerably more common in the private sector and their rise appears to have stabilised over the period 2004-11.

Table 3: Any payment by results/ merit pay in the UK

(Source: Van Wanrooy et al., 2013: 25)

% workplaces	Public	Private	All
2004	**17**	**43**	**40**
2011	**17**	**45**	**41**

Relationship of collective bargaining to consultation

The relationship between consultation and collective bargaining – and the extent to which unions use information gained from consultation procedures for the purposes of collective bargaining – is therefore complicated by this decline in the coverage of collective bargaining. But, in fact, consultation and collective bargaining were always kept apart, as processes, by unions in the UK, which has always regarded the former as the 'poor relation' of the latter. As Hall and Purcell point out, 'consultation performs a different function [from collective bargaining] and is less dependent on the exercise of power, relying on trust and cooperation, a willingness of senior managers to discuss proposed measures in time to allow employees to express their views and to exert some influence…' (p.163). The appeal of collective bargaining to the unions is clear – they can force even reluctant employers to negotiate terms and conditions through the threat of strike action. By contrast, consultation boils down to little more than a listening exercise, with employers open as to whether or not they even take workers' views into account. And while employers have to take collective bargaining seriously, they would prefer individualised forms of employee involvement – as successive Workplace Employment Relations Surveys (WERS) demonstrate – and sometimes regard joint consultation as expensive and time-wasting.

The enactment of the ICE Regulations has not so far changed the position, nor do they seem likely to, at least in the immediate future. Hall and Purcell refer to the paradox that lies at the very heart of discussions about consultation: '…while [consultation] is often seen as a means of creating co-operative and constructive relationships between management and employees … in practice employers are, for the most part, lukewarm and trade unions

ambivalent' (p.160). It is not that employers do not appreciate the benefits of consultation, but rather than their perception of consultation is different from that of the unions, focusing on 'improving communications' rather than specifically on early discussion of strategic issues. Indeed, employers continue to prefer top-down direct forms of communication than any other, as WERS 2011 has since made clear. While the incidence of joint consultation has declined in multi-site organisations between 2004 and 2011, the incidence of direct communications has burgeoned: 80% of workplaces now have all staff meetings (75% in 2004), while 66% hold team briefings (up from 60%) (Van Wanrooy, 2011: ?). It would, indeed, appear that 'little has changed in the conduct or scope of consultation despite the implementation of the ICE regulations' (Hall and Purcell, 2012: 159).

Patterns in conflict

The decline in the coverage in collective bargaining has had an impact too on the expression of conflict and resistance across employment relation in the UK. Table 4 reveals recent trends in strike activity.

Table 4: Strike activity 2009-12

(Source: ONS, 2013)

	Stoppages	Days lost (000s)
2009	**98**	**455**
2010	**92**	**365**
2011	**149**	**1390**
2012	**131**	**248**

The lowest ever number of stoppages at work since records began was registered in 2010 (92). The number increased dramatically in 2011 as a result of major public sector strikes over pensions, but fell again in 2012. In that year, 68% days lost resulted from pay disputes,

while 79% days lost were in the public sector. However, 52% stoppages took place in the in private sector, with 48% in public sector.

Just as pay systems have been increasingly individualised in the UK, so too has the expression of conflict and resistance. The role of employment tribunals in resolving individual grievances brought by employees has gained prominence just as the role of collective bargaining has declined. Trends over the last 30 years have been well summarised as follows:

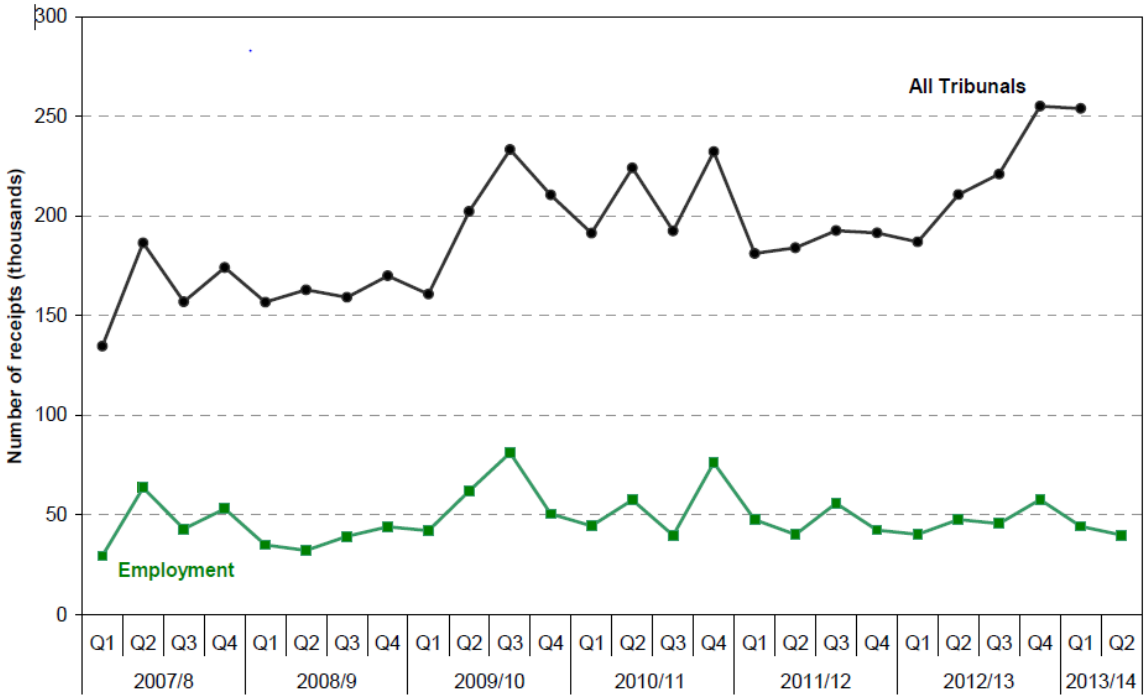
> The 1980s saw a small downward trend [in employment tribunal cases] with applications falling to 29,000 in 1988… The picture changed again in 1989 when in excess of 34,000 applications were submitted and the 1990s heralded a new era of considerable growth, with tribunal cases soaring to in excess of 100,000 by 1999 and reaching 130,000 cases in 2000/2001. Since the 1990s, employees have been given new rights to bring cases relating to Breach of Contract (transferred from the courts in 1994), and discrimination on grounds of disability (1995) and age, sexual orientation and religion or belief (2006). Applications have remained high, but fluctuated, falling below 100,000 in two separate years, but peaking again in 2006/7 (the most recent published figures) when 132,500 applications were registered (Dix et al., 2008: 9-10).

Since then official figures reveal that, over the period 2007/08 to 2013/14, applications have climbed to around 200,000 a year and then stabilised, despite volatility in monthly and quarterly receipts. Her Majesty's Courts and Tribunal Service (HMCTS) – which is responsible for all criminal, civil and family court cases across the UK – notes that employment tribunals account for about a quarter (23% in 2012/13) of all its tribunal receipts:

> In 2012/13 the Employment Tribunal received on average 50,000 new claims per quarter, roughly the same level as in 2007/08 (Ministry of Justice, 2013: 5).

Figure 1 reveals receipts for all tribunals, as well as those for employment tribunals, over the period 2007-14.

Figure 1: Employment Tribunal Receipts (quarterly), April 2007 to September 2013



(Source: Ministry of Justice, 2013: 5)

However, the figures also reveal a drop of 73% in the number of receipts between October 2013 and March 2014 of 73% over the same period the year before (Doward, 2014). In summer 2013, the UK coalition government introduced a new fee structure that could require claimants to pay up to £1,200 if they wanted to register a case against an employer. The government argued that the move would reduce vexatious or frivolous cases. It was welcomed by business groups, but condemned by unions which maintained that it would price employees with genuine grievances out of the tribunal process (Diversitylink, 2014).

Indeed, research from Citizens' Advice has showed that seven out of ten potentially successful cases that could have gone before tribunals were not going ahead. The findings were based on an analysis of 182 employment cases brought to Citizens' Advice in June and July 2014, a year after the introduction of the new fees system. The charity discovered that in over half the cases fees or costs were the principal reason that people decided not to pursue their claim. The majority of claims involved unfair dismissal, withholding of wages and holiday pay. Citizens' Advice quoted the case of an employee who worked 40 hours a

week for more than two months as a kitchen porter and was entitled to holiday pay of a little under £300. On realising that the fees to access the tribunal would be £390, he abandoned the claim (Doward, 2014).

So as the coverage of collective bargaining has fallen, and with it the rate of strikes, the expression of conflict began to re-emerge in more individualised forms, notably through recourse to employment tribunals. However, in an attempt – and apparently quite a successful attempt – to stem the rising tide of cases, the coalition government introduced a system of fees to register cases.

The question is whether workplace conflict can be reduced in this way, and the answer is certainly not. The inability to express conflict at work simply re-appears in other more covert forms, maybe through absence, stress-related illness or higher rates of labour turnover. Recent newspaper articles have reported research carried out in each case by the Confederation of British Industry (CBI), the country's largest employers' organisation into the economic costs of these forms of conflict. According to the CBI:

- strikes since the formation of the Coalition Government in May 2010 have cost the British economy £400 million (*Daily Express*, 2013);
- negative stress may result from a bullying climate where threat, coercion and stress-related illness cost UK industry and taxpayers £12 billion each year (bullyonline, 2013);
- absenteeism costs British economy around £13.2 billion (freshbusiness thinking, 2013) – over 30 times as much as strikes…

These trends are likely to continue or worsen until a more coherent and analytical approach towards reducing conflict at the workplace is adopted – an approach that would certainly involve the unions in resolving the sources of conflict through information disclosure, consultation and negotiation.

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