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The Effects of Flexible Working on Employee Representation: UK and Germany Compared

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**Is flexible working a threat to traditional
union structures and practices?**

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**Anglo-German Foundation
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FLEXIBLE WORKING AND EMPLOYEE REPRESENTATION

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Contents

	Executive summary	iii
1	Introduction	1
2	Research issues and focus	2
2.1	The general debate and the research question	2
2.2	The concept of 'flexibility'	3
2.3	Gains for employers and employees	4
2.4	The literature on flexibility and employee representation	4
2.5	The Anglo-German comparison	6
2.6	Methodology	7
3	The incidence of flexible working	8
4	Flexibility and employee representation: general conclusions	11
4.1	Employers, management and flexibility	11
4.2	Flexibility as opportunity for representatives	12
4.3	Challenges to representatives and unions (1): 'greedy constituencies'	13
4.4	Challenges to representatives and unions (2): workforce differentiation	14
4.5	Challenges to representatives and unions (3): formulating a response	15
4.6	Representative roles and effectiveness in Britain and Germany	16
5	Summary conclusion	18
	References	19

List of tables

Table 1	Respondents with 200 and more employees	8
Table 2	Increases in time and contractual flexibility in Britain (UK) and Germany (D) (by % of organisations)	8
Table 4	Flexitime schemes (by % of organisations), 1999	9
Table 3	Increase in time and contractual flexibility by sector (by % of organisations), 1999	9
Table 5	Organisations reporting widening or narrowing job roles for major staff categories by sector (by % of organisations), 1999	10

Executive summary

This edited version of a longer report presents findings from an empirical investigation into the impact of flexible labour deployment on workplace representatives in Britain and Germany. The report's longer version includes six case studies, used as the basis for the conclusions drawn here. The main research question is: *What effects have flexible working practices had on employee representatives in their representative work?*

Workplace representation clearly plays an important role in ensuring that the benefits of flexibility for employees are realised in practice, since flexibility in and of itself does not automatically lead to work-life balance. Previous studies have been limited and, taken as a whole, have not provided a clear picture of how flexibility has impacted on representatives' effectiveness in representing employees' interests. The balance between opportunity to increase influence and threats to representative effectiveness has not been clear. The question is important as flexibility does not necessarily in practice lead to the benefits for employees that they often assume. Poorly tailored schemes can lead to increased turnover. If representatives' effectiveness is reduced, this may increase the likelihood of such an outcome and, more widely, undermine the viability of the 'European model' of employee representation.

Survey evidence is used to show a general trend to increased flexibility in the use of labour in the 1990s. The differential extent of flexible working in the two countries and in different sectors is demonstrated. In some respects German organisations have shown more marked trends to flexible use of labour than British.

In-depth case studies in different economic sectors were undertaken to investigate the main research question. These showed that management faced some difficulties in implementing flexible working. Workplace representation often assisted in their solution. However, the medium-term effects on representation tended to be negative.

These effects fall into three main categories. First, time flexibility could give rise to demanding or 'greedy' employee constituencies. This, in turn, threatened the representative bodies' capacity to reproduce themselves. Second, workforces became more differentiated and difficult to represent. Third, formulating a response to management initiatives posed complex problems.

To a considerable extent, the problems were shared by representatives in the two countries despite differences in legal rights and institutional arrangements. There were marked differences between the cases within countries. However, there was one case in which representatives actually strengthened their position. This German case showed the importance of long-term co-operative traditions in the workplace, strong articulation between the works councillors and their union, and a degree of political cohesion between the councillors. While these factors were supported by the legal framework, they also built extensively on it.

Overall, representatives acted as facilitators of flexible labour use. Yet flexibility itself tended to erode their capacity to act in this way.

1 Introduction

The subject of this report is the impact of flexible working on employee representatives in Britain and Germany. The issue is strongly related to employee experiences of flexibility, which are not necessarily positive. We have already published, or have in the press, some conclusions from the two-year project,¹ which was conducted by the International Trade Union Centre, Cranfield University, with the Institut für Sozialwissenschaftliche Forschung, Munich, and funded by the Anglo-German Foundation for the Study of Industrial Society. Here we present our main findings. We begin in Section 2 with an explanation of our research focus and how our study relates to pre-existing literature. In Section 3 we describe the incidence of different forms of flexibility in the two countries and in Section 4 we discuss the interaction between flexibility and employee representation. A summary conclusion draws these strands together.

¹ Croucher R. and Singe I. (2002) Flexible working time and interest representation in German and British Banking, in: I.U. Zeytinoglu (ed) *Flexible Work Arrangements: Conceptualizations and International Experiences*. The Hague: Kluwer Law International. Singe I. and Croucher R. (2003) The management of trust-based working time in Germany, in: *Personnel Review*, 32 (4), 492–509. Croucher R. and Singe I. (2004) Co-determination and working time accounts in the German finance industry, in: *Industrial Relations Journal* (forthcoming).

2 Research issues and focus

2.1 The general debate and the research question

Current discussions of work-life balance frequently assume that flexibility is an unalloyed benefit to employees, and it is indeed often the case that employee requirements have been a driver of flexible labour deployment. However, whether the potential benefits actually accrue to employees cannot simply be assumed and our evidence shows the importance of effective employee representation. This is particularly the case when employees explicitly reject taking their difficulties direct to management, preferring instead to complain to representatives.

There are two critical linked issues in government, practitioner and academic debate about work. One is the implementation of alternatives – in UK terms, ‘flexible’ employment – to the ‘standard’ (which may no longer in fact be ‘standard’) employment pattern. The second is about appropriate modes of employee representation to ensure that workers’ interests are adequately reflected in the way new forms of work are implemented. The discussions relate to the much wider issues of European industry’s competitiveness, and both the future and capacity to adapt of the European model of employee representation.

‘Flexibility’ has generated policy activity and extensive inquiry; so, too, has employee representation, whether through trade unionism or by works councillors within the German system of co-determination. While union membership has declined in both Britain and Germany, employee representation remains important. The ‘European model’ of employee consultation and involvement rests on both foundations. How the established systems of employee representation have interacted with flexibility has attracted rather less research than the issues considered separately. Yet the relationship, sometimes acknowledged, clearly mutual and two-way, but only poorly understood, is critical. Thus, while it is often suggested that flexible working benefits both employees and employers, there are few examinations of how posited mutual gains are realised, or the relationship with the efficiency and effectiveness of employee representation, despite the fact that implementation usually poses complex issues at individual and collective employment levels. This explains why our central research question is:

What effects have flexible working practices had on employee representatives in their representative work?

Such a question necessarily entails secondary questions concerning, for example, managements’ industrial relations behaviour, how representatives see problems, how they seek to influence practices and the circumstances that influence their perceptions of ‘successful’ outcomes.

The research necessarily engages in international comparison of issues (Hyman, 2001). Contextual differences are dealt with in relation to each issue.

2.2 The concept of 'flexibility'

As the discussion above indicates, the notion of 'flexibility' is central to our research. It is important, therefore, to be quite clear about its possible meaning.

Flexibility is not 'new'. Flexible use of labour has long been attempted. Indeed, it could be argued that the idea of relatively fixed terms of work is historically exceptional. Types of work such as overtime or flexitime are treated as forms of flexibility here because they diverge from 'normal' or 'fixed' working times, although it is recognised that they are not new.

There are national differences in interpretation (Kratzer, Döhl and Sauer, 1998): 'flexibility' itself is evidently flexible. The term has been used in various *organisational* senses. The occurrence, for example, of any kind of organisational re-structuring has been taken as an indicator of the existence of 'flexibility'. Organisational change is often associated with changes in labour flexibility. In terms of labour flexibility, a distinction has been made between *de facto* flexibility – such as widening job tasks – and *strategic* flexibilisation – demonstrated in the broad training of employees (Ackroyd and Procter, 1998; Cully *et al.*, 1999).

There are other ways of conceptualising labour flexibility. Atkinson and Meager (1986) discerned four types: 'numerical' (adjustment of numbers of employees in relation to changes in demand); 'distancing' (the provision of labour by external contracting or 'outsourcing'), 'functional' (changing views of what organisations should be doing based on competences and involving external contracting or 'outsourcing') and 'pay', performance-related pay, and so on) flexibility. Clearly, in this view 'distancing' and 'functional flexibility relate to the extent to which functions remain internal to organisations or are 'externalised', and Atkinson had this in mind when he spoke of the 'flexible firm' (Atkinson, 1984). He distinguished between a 'core' and a 'periphery', the boundary being defined by the degree of externalisation. The Atkinson model of flexibility has been much criticised but the distinction remains influential.

The 'core-periphery' model may be too sharply drawn. Sisson and Marginson suggest the issue is *how* external pressures are internalised (Sisson and Marginson, 1999). We use the term 'flexibility' here in a narrow sense, exclusively as a description of internal employment practices, which embraces much if not all activity subsumed under Atkinson and Meager's four types outlined above. Internal employment practices have been further categorised. For example, a distinction has been posited between 'active' and 'passive' flexibility according to the extent to which flexible practices are forced on managers or 'actively' initiated by them (Baret *et al.*, 2000).

For our purpose, all approaches, whether organisation- or employee-focussed, are relevant: they all offer rich possibilities for conceptualising a complex but operationally discernible nexus of related phenomena. Our particular focus, however, is on *changes in labour flexibility defined as such by managers, employees and their representatives*.

2.3 Gains for employers and employees

As our research question is concerned with the effects of 'flexibility' on employee representatives and their behaviour in response, the subject of the extent to which different forms of flexibility contain advantages and disadvantages for both employers and employees is relevant.

It has been noted in the literature that flexibility enables employers to match product and service demand with labour supply more closely and on occasions more cheaply. They may also be able to attract or retain labour more easily, as employees may achieve a more satisfactory 'work-life balance'. On the other hand, flexibility presents management with challenges to its administration and employee relations skills.

It is often assumed that flexibility, especially forms of working time flexibility enable employees to reconcile work and domestic demands, and that they always represent a gain to employees. However, they also potentially have to contend with lower incomes, less access to training and promotion and other problems (Brewster and Hegewisch, 1994). The issues have a strong gender dimension, since they are related to the interface between paid and domestic work (Gadrey, 2000; Stolz-Willig 2001).

So far there has been little reference to workplace social contexts. Yet the introduction of flexibility involves social, negotiated processes. Whether advantages are maximised and difficulties minimised for all parties depends, at least partly, on social interactions.

2.4 The literature on flexibility and employee representation

A limited amount of work, mainly concerned with the effect of flexibility on employee representation, has touched on social issues. At the most general theoretical level, there has been highly abstract discussions on the relationships between 'globalisation', work, 'individualisation' and the 'de-limiting of work' ['Entgrenzung der Arbeit'] (Döhl, Kratzer and Sauer, 2000) There is also some less abstract theoretical work. In the theoretical work and in empirical studies, broadly 'optimistic' and 'pessimistic' schools of thought can be identified. At the theoretical level, it has been argued that flexibility has predominantly negative effects for workplace representation. Hyman has argued that as working situations become increasingly heterogeneous, representatives can find it difficult to represent a more differentiated constituency: 'More diversified patterns of employee interests intensify the problem of filtering and aggregating constituents' expectations' (Hyman, 1997: 11). Bergmann, Bürckmann and Dabrowski (1998) and Trinczek (2000) have argued that destandardisation of employment patterns and differentiation of employee interest weaken representatives' position.

Others have also argued that flexibility has clear disadvantages for employee representatives (Croucher and Brewster, 1998). The disadvantages are held to be considerable:

- *Task flexibility*, for example, may weaken employee attachment to the 'craft' and by association to the union. It can bring disputes between occupationally-based unions and can mean representation is allocated to lay or full-time officials who understand little about individuals' performance roles
- *Working time flexibility* presents larger challenges. It can mean that there is often nobody present to represent the union and recruit members at certain times. Communication with members may also be rendered more problematic. Part-time workers may feel that they are not obtaining value for money from their subscriptions as a result.
- *Contractual flexibility* is an even larger problem as it contributes to the dissolution of work groups and therefore the base of representation (Müller-Jentsch, 2000; Trinczek 2000). Temporary workers or union members on fixed-term contracts may often be more concerned with training and job search than pay and conditions negotiations. It may well not be clear who the union should be negotiating with when attempting to assist members working on sub-contract tasks. With regard to task flexibility, these arguments find some support elsewhere (Geary, 1999). Many of these arguments could also apply *mutatis mutandis* to works councils.

The results of more empirical investigation have tended to indicate that flexibility, particularly externalisation through sub-contracting, has had negative effects on employee representation in the European construction industry, contributing to pressures on multi-employer collective bargaining (Druker and Croucher, 2000; Croucher and Druker, 2001). On the other hand, counter-examples also exist. Colling and Geary (1992) found management using shop-steward assistance in sub-contracting, while Edwards and Whitston (1993) showed representatives in British Rail using management requirements for overtime to advantage (Colling and Geary, 1992).

Company restructuring, internationalisation and decentralisation have been identified as negatively impacting on interest representation (Schmierl, 2000). Fairbrother (2000) has taken a more optimistic view, arguing in the British context that flexibility is part of wider developments, such as decentralisation of bargaining, which offer unions opportunities to renew their workplace organisation. In Germany there has been wide discussion of whether the 'German model' (itself at the centre of the 'European model') of employee representation is robust or undergoing erosion. The discussion here has focussed on decentralisation of the sectoral bargaining system. Decentralisation has been described as 'organised decentralisation' (Traxler, 1995) though others have emphasised 'wildcat co-operation' at workplace level and case studies have shown considerable collusion by employee representatives in allowing erosion of sectoral agreements (Artus and Sterkel, 1998). Even where workplace representation appears formally improved and participation of works councils in an increasingly broad range of workplace matters has increased in a decentralisation context (Müller-Jentsch and Seitz 1998; Müller-Jentsch, 2000; Dörnen, 1998), some have argued (Kotthoff, 1998; Trinczek, 2000) that this cannot be equated with increasing effectiveness and the capacity to ensure that flexibility's employee-friendly potential is maximised. The argument has been echoed in Britain (Gall, 1998).

There has been some limited investigation, centred on manufacturing, of the effects of flexible working on union organisation in Germany. These inquiries have also put forward a pessimistic view of the results of flexible working on workplace employee representation (Bergmann, Bürckmann and Dabrowski 1998; Herrmann *et al.* 1999).

Wienecke (2001) investigated relations between flexibility in banking and systems of employee representation, but gives little detail about the processes involved 'on the ground'. Dörre (2002) has dealt with a related subject in some depth. His work is based on research into employee participation in the implementation of new technology, innovative work processes and team working in manufacturing and banking, although it touches on flexible working. It shows how continuous change in the workplace undermines long-term political relations between managers and representatives. Feelings of insecurity develop among employees, accentuated by managerial political discourses. Pressure on articulation develops where councillors and management come to agreements that contradict union policy or supra-workplace interests (Dörre, 2002). In general, however, there has been little case study research on the effects of flexibility on employee representatives.

In short, scholars take different views on an inevitably complex issue. It is not surprising: management practices are greatly varied, as are styles of employee representation in both countries. Flexibility, as we have seen, is a very broad term and probably offers both challenges and opportunities to managers and employee representatives. The very complexity of the issues may have helped to deter investigators. Nevertheless, as we argued above, the relationships between flexibility and representation are important because of their implications for the future of employee representation in Europe, and further clarification is desirable.

2.5 The Anglo-German comparison

International comparative research into various aspects of our subject and between other European countries is underway elsewhere (Ministère de l'Emploi et de la Solidarité, DARES, 'Flexibilités et Performances: Quelles Evolutions du Travail et de l'Emploi?', Paris, 2002). The Anglo-German comparison has particular relevance in Europe, however, because the two countries have similarities and differences which combine to make the comparison potentially fruitful for examining the research questions. In some senses, the two countries are a 'close pair'. Both have well-established traditions of unionisation at a broadly comparable level, and relatively high levels of workforce consultation.

In other respects, the two countries provide a sharp contrast. German workplaces remain substantially more socially regulated than Britain. This is reflected in the national legal frameworks, but is also underpinned by different perceptions by the state, managers and unions. The differences, it has recently been argued, by the institutionalist 'varieties of capitalism' school, are more fundamental than often assumed. While the Anglo-American model is that of the 'liberal market economy', the German, in common with several others, is that of a 'co-ordinated market economy'. The latter is demonstrated by extensive tripartite regulation of the labour market rather than the more directly market-led relationships of the former. (Hall and Soskice, 2001). Hall and Soskice stress the importance of informal rules and understandings, long seen as important in British industrial relations. The effects of flexibilisation on these rules and understandings, and on the underlying relationships, may be significant. These are the primary reasons for making the Anglo-German comparison. The contrast in workplace representation systems, and in their legal and attitudinal underpinning, provides a good testing ground for looking at employee representation as managements attempt to increase flexibility.

2.6 Methodology

Since the issue for investigation concerns mechanisms, the case study method was used. Six case studies of episodes in which different types of flexibility were introduced were carried out between March 2000 and March 2002. Reported on in detail both in the fuller version of this report and the publications referred to in note 1, they constitute the empirical underpinning for the general conclusions presented here.

Three international pairs were chosen from private manufacturing, private services and the public sector in each country on the basis of several criteria. The aim was to minimise differences relating to sectors and organisations, in order to throw national characteristics into relief. First, some system of employee representation was required. Second, the size of the organisations and the type of work activity within the sectors identified above had to be similar. Third, flexibility had to be identified as a subject for discussion between management and representatives during the research period. Fourth, extensive in-depth access was required to allow serial, semi-structured interviewing of a wide range of actors, including managers at all levels, workplace representatives, union officials and employees.

These interviews constituted the main source of information. Interviews were transcribed and the transcripts checked back with respondents. However, a considerable amount of inquiry was also conducted by informal discussion, in person and by telephone, as well as by e-mail and letter exchanges. In addition, a wide range of material generated by management and workplace representatives was consulted. This included workplace newspapers, internal organisational documents, correspondence and reports.

The principal limitation of the approach derives from focussing on one episode in the introduction of flexibility. This generates no more than a 'snapshot' of a much longer process, and may also tend to marginalise the effects of other phenomena. A second limitation is the extent to which the viewpoints reflected are those of employee representatives, rather than those of employees.

We now present survey data on the incidence of flexibility in the two countries.

3 The incidence of flexible working

The data in this section come from successive rounds of the Cranet international survey of HR practices conducted between 1990 and 2000. The survey was addressed to the most senior HR specialist in organisations employing 200 or more employees. The data were collected through a standardised postal questionnaire. The unit of measurement was the organisation, defined as the company or subsidiary, or – in the public sector – as a specific local authority, government department or agency. In broad terms, the responses in each country reflected the underlying population distribution of organisations by size and sector of industry. The questions reported on here and the methods of data collection remained the same during all rounds of the survey. The number of respondents is given in Table 1.

Data are provided for five broad sectors: manufacturing; other industry (which includes agriculture, energy and water, chemical processing and construction); business services (including banking, finance and insurance); other services (which includes transport, wholesale and retail, hotels and catering); and the public sector (including public health, higher education, and local and central government). Our case studies in these terms derived from manufacturing, business services and the public sector. An average figure for all EU countries is given to allow comparison between the two countries and the EU in general.

Table 2 shows the generally upward trends in time and contractual flexibility in the two countries in the 1990s, though recession affected the trend in the mid-1990s. In Britain the

Table 1 Respondents with 200 and more employees

	1990		1992		1995		1999		4079
	UK	D	UK	D	UK	D	UK	D	
Number of respondents	2543	502	1247	1086	1184	548	912	580	4079

Table 2 Increases in time and contractual flexibility in Britain (UK) and Germany (D) (by % of organisations)

	1990		1992		1995		1999		EU
	UK	D	UK	D	UK	D	UK	D	
Part-time contracts	41	47	39	42	50	45	54	43	47
Temporary/casual contracts	50	23	39	22	60	22	49	33	41
Fixed-term contracts	26	56	29	47	48	56	40	61	49
Shift work	26	23	17	25	25	24	24	25	27
Weekend work	24	22	17	18	27	21	29	30	8
Annualised hours	7	8	11	8	15	15	16	29	25

Table 3 Increase in time and contractual flexibility by sector (by % of organisations), 1999

	Manu- facturing		Other industry		Business services		Other services		Public sector	
	UK	D	UK	D	UK	D	UK	D	UK	D
Part-time contracts	39 (13)	29 (4)	47 (2)	42 (4)	64 (0)	75 (2)	65 (2)	55 (0)	65 (1)	72 (3)
Temporary/ casual contracts	54 (9)	41 (16)	45 (8)	34 (25)	49 (5)	38 (40)	43 (4)	35 (30)	55 (2)	15 (77)
Fixed-term contracts	34 (29)	66 (2)	32 (32)	66 (3)	52 (7)	65 (8)	42 (23)	67 (5)	45 (8)	56 (1)
Shift work	36 (6)	40 (7)	25 (18)	25 (12)	29 (30)	12 (53)	21 (21)	18 (25)	12 (15)	1 (31)
Weekend work	27 (9)	38 (9)	28 (5)	30 (15)	40 (11)	34 (26)	33 (4)	36 (11)	27 (10)	3 (37)
Annualised hours	14 (75)	32 (48)	11 (74)	33 (53)	11 (79)	26 (57)	13 (73)	49 (42)	30 (45)	

Data in brackets = % of organisations **not** using that type of working flexibility within their workforce

most widespread growth occurred in the employment of part-time and non-permanent workers. There was no equivalent trend in Germany, although there was an increase across the decade in the proportion of temporary and casual contracts. Fixed-term contracts were more important in Germany than in Britain throughout the decade. Shift working remained relatively stable and there was a slight increase in weekend working in both countries. The incidence of annualised hours, by contrast, increased considerably in both Britain and Germany.

Table 3 shows the importance of sectors of economic activity in determining what form of flexibility is chosen by an organisation. In both countries, shift working has remained common in manufacturing. Most companies in this sector in Germany use fixed-term contracts, and annualised hours are also widely used. Business services have generally shown considerable growth in all types of flexibility. In business services, annualised hours are more common in German than in British companies. In the public sector, temporary and casual contracts are much more common in Britain than in Germany, as are weekend work and annualised hours.

Time flexibility is clearly important in both economies, and Table 4 compares the proportion of companies using flexitime schemes. The general contrast between the two countries' private sectors is striking. In this area, Germany has far more flexible working schemes than Britain.

Table 4 Flexitime schemes (by % of organisations), 1999

	Manu- facturing		Other industry		Business services		Other services		Public sector		EU av.
	UK	D	UK	D	UK	D	UK	D	UK	D	
Organisations with flexitime schemes	34	92	42	85	41	98	42	93	83	81	75
Organisations having increased the use of flexitime schemes	14	66	15	63	10	67	16	55	27	38	40

Table 5 Organisations reporting widening or narrowing job roles for major staff categories by sector (by % of organisations), 1999

	Manu- facturing		Other industry		Business services		Other services		Public sector	
	UK	D	UK	D	UK	D	UK	D	UK	D
Management:										
Jobs widened	56	68	53	65	48	63	55	65	49	57
Jobs narrowed	23	14	12	9	28	23	25	22	35	20
Professional/technical:										
Jobs widened	51	57	54	71	46	45	41	46	42	45
Jobs narrowed	21	27	14	11	26	52	21	34	30	14
Clerical:										
Jobs widened	56	48	47	54	54	38	50	43	45	41
Jobs narrowed	10	16	5	15	16	29	17	25	17	18
Manual:										
Jobs widened	57	48	35	45	20	9	41	24	34	16
Jobs narrowed	9	16	4	20	1	2	11	11	12	5

There was is a general trend in both countries towards widening job roles, or 'functional flexibility'. Outside the 'other industrial' category, this was most marked for German managers and British manual workers (see Table 5).

Some conclusions may be drawn from this data. First, the general trend towards flexibility in both countries during the 1990s is quite clear. Second, in Germany, time flexibility has increased considerably, which challenges the stereotype of German labour markets as inflexible. Third, British organisations have increasingly tended to widen manual and clerical workers' job roles. Fourth, there is a wide range of sectoral differences within each country in relation to different forms of flexibility.

On the basis of our case studies, we now discuss how flexibility interacted with employee representation in the two countries.

4 Flexibility and employee representation: general conclusions

Only tentative and provisional conclusions may be offered from our limited base of case studies. A need for brevity also limits our conclusions here, but as explained in the introduction, several issues (and particularly comparative questions) that are touched on are pursued in other publications.

Our central research question concerned the effects that flexible working practices have on employee representatives in their representative work. Secondary questions concerned management behaviours and the circumstances under which representatives have considered their mediation as successful.

A striking feature is the extent to which problems were shared in the two countries. These common features are therefore described first before turning to comparative issues.

4.1 Employers, management and flexibility

Re-organisation (mergers and acquisitions, 'marketisation', management re-organisation) constituted the background in every case. All the organisations displayed increased use of flexibility and a de-standardisation of employment relations as one element of this broader trend. Organisational change was the background to employment flexibility, compounding its effects.

Our cases suggest great variation in management practices. This puts pressure on unions, whose officials deal with an increasing range of situations and are decreasingly capable of advising representatives.

Flexibilisation can be a problematic process for management in terms of employee relations. In the case studies, many senior managers chose to introduce specific flexibility initiatives by agreement at the highest level of negotiation available. Designed to minimise opposition from employee representatives, this strategy could also detract from the practicalities of implementation and local management understanding. De-standardisation as a way to adapt flexibly to local circumstances (for example, customer demand) poses problems where managers at local level are not sufficiently trained, i.e. lack management competences, do not grasp the cultural change required, or see their competences curtailed. Articulation between different levels of management is particularly important where new policies have to be implemented at different organisational levels.

There is little evidence of employers deliberately using flexibility to undermine representative organisation or strength. Management motivations are mainly associated with the need to match labour supply with market or service requirements. Generally, the

need to adjust working patterns to social 'individualisation' and changed family patterns is mentioned by managements needing to attract or retain workers. Labour market situations can thus trigger relatively employee-friendly flexibility which finds the support of workplace representatives.

Two British cases showed managements timing increased flexibility to coincide with union weakness: the manufacturer introduced temps after winning an extended strike, and in the bank an annual hours scheme was introduced after re-organisation had significantly reduced the average employment size of branches, weakening local representational structures. In general, flexibility had a generally negative effect on 'partnership' in the British cases. A strong example here was that of the 'traditional' but increasingly important overtime issue, which in one case increased employee reluctance to changes that potentially threatened overtime and simultaneously put stewards under pressure from members.

The challenges to management are linked to the strength and representivity of workplace representatives. Where workplace representation is relatively strong, representatives can help re-negotiate mistakes, and flexibility becomes more of a tentative, negotiated process. It also becomes a more *continuous improvement* process than a 'pendulum movement' (*Pendelbewegung*) as described by Dörre in connection with the introduction of teamwork in the 1990s. Dörre (2002) argues that management introduces change, fails, recoils, revises and tries a new initiative. Strong representation can help transcend this process by 'smoothing' it.

4.2 Flexibility as opportunity for representatives

Our cases lend some support to the argument that flexibility can offer representatives opportunities. These are greatest when highly individualised systems, such as working time accounts, are concerned. In one German case, works councillors strengthened their position by mediating effectively in a potentially difficult situation. However, circumstances were relatively favourable. We return to this subject below. In one British case, local representatives broadened the scope of bargaining. In both cases, representatives had strong resources to draw on, including high levels of organisation and legitimacy with both members and management. They could present themselves as credible 'partners in change management'. The key distinction here is between (short-term) influence with management and (long-term) capacity to represent constituents.

Yet the problems created for representatives were more striking than the opportunities. These were related to their constituencies, since such benefits as employees derived from flexibilisation were generally ascribed to management initiative. Certain types of flexibilisation, such as out-sourcing or use of temporary workers, generated structural problems that were difficult to solve. Even measures relatively open to influence, such as flexitime, challenged their capacity to represent and carried the potential to undermine reproduction of the representative body.

We examine the challenges to representatives and unions in more detail below.

4.3 Challenges to representatives and unions (1): 'greedy constituencies'

Despite 'mutual gains' arguments, flexibility can establish dynamics that lead to exceptionally high volumes of complaints from employees for whom the reality of flexible working may clash sharply with expectations. Confronted with these problems, often linked to extra-workplace issues, representatives increasingly have to give a high proportion of their time to the counselling, 'social worker' aspect of their role. Some in the cases reported this to be emotionally demanding and in conflict with their view of their proper functions.

Trade unions have been described as 'greedy institutions': bodies that make apparently endless demands on union officials outside the workplace as well as on unpaid activists (Coser, 1974; Franzway, 2000). Our evidence is that flexibility, and especially individualised systems of time flexibility, can create situations where groups of employees also become what we would call *greedy constituencies* in relation to representatives. We define these as 'groups articulating unprecedentedly high volumes of individual complaints to representatives that cannot be dealt with under existing formal or informal arrangements'. Complaints may be deliberately hidden from management for reasons of employee insecurity and do not become formal grievances. Weak employee and representative bargaining positions obstruct collectively negotiated solutions. Representatives are viewed, as one representative revealingly put it, as 'fair game' for hearing complaints and expending 'emotional labour' on them. Emotional labour in this context means listening to constituents' complaints, and may include advising or counselling them. These activities can be time consuming. Consequently, representatives are simultaneously exposed to the demands of both greedy institutions (unions) and greedy constituencies.

Greedy constituencies clearly pose a challenge to representatives and their unions. The period for which they remain 'greedy' is an issue. The challenge is to re-regulate the situation before negative consequences ensue. The negative consequences are serious. Conflicts can be set up for representatives between their perception of their tasks as representatives on the one hand and a demand for their services as 'social workers' or 'counsellors' on the other. While they do not always accept the task of listening to complaints, awareness of it *deters others from putting themselves forward for representative roles. Over time, the task of representation falls on fewer people and thus intensifies*. Divisions of labour that allow specialisation in specific problem areas become more difficult. Re-regulation requires a considerable depth of representative resources. If it does not occur, greedy constituencies hinder the reproduction of representative bodies. Conversely, in the one case where a 'greedy constituency' arose but re-regulation occurred, employees showed an *increased* tendency to stand as councillors. Thus whether, and how quickly, the underlying issue is resolved is crucial to reproducing the representative body.

4.4 Challenges to representatives and unions (2): workforce differentiation

It has been suggested that the differentiation of employee work situations, status and interests creates problems for representatives and unions (Hyman, 1992, 1997). Flexibility operates powerfully in this direction.

The difficulties of reconciling the interests of different groups of employees for representatives in highly differentiated workforces are clear. Differential work situations, and especially working time arrangements, create logistical problems: in the case studies, representatives often stressed a need to find extra resources to maintain communication with employees on different work patterns. Communication is core to representative bodies' organisational capacities as sourcing intelligence, strategy development and competences for implementation together depend on effective communication. (For analyses of the micro processes involved see Batstone *et al.*, 1977; Fantasia, 1988; Kelly, 1998.) While it may generally be argued that the resources are more likely to be found in a German context, our cases also displayed strong intra-country differentiations. Representatives' politics, workplace cultures and traditions affect whether and how resources are deployed (Trinczek, 1989, 2000). The German bank and the public sector workplace were polar cases in this respect: union councillors in the bank tried to maintain communication via email, the *Vertrauensleutekörper* and a workplace paper. Leading representatives in another German case made no such effort and rejected employee requests for improved communication.

Status differentiations are also problematic. In both manufacturing workplaces contractual differentiation (temporary contracts in Britain and fixed-term employment in Germany) increased the proportion of clearly disadvantaged and insecure workers. The effects of this re-composition are not fully captured by core-periphery models because it is difficult to define which segments of the workforce constitute a stable core, as outsourcing targets core groups. Nevertheless, representatives tried to identify a core constituency in terms of groups with whom they could establish the most stable relations. This clearly had negative implications for women part time workers, shown most dramatically in a German public sector case

Equally, contractual flexibility creates problems for workers/ and or representatives. Fixed-term and agency workers frequently hope for transfer into regular employment. They have less interest in any medium- or long-term gains union membership might bring. They are anxious to prove their worth to the employer and fear that union membership might reduce their chances. Non-standard workers' shorter job tenure makes recruitment to unions a time-consuming and resource-intensive task that representatives largely ignore since it generates insufficient membership. The growth of non-standard contracts also impacts on those in regular employment and increases tensions between standard and non-standard employees as a consequence. Work intensification and the undermining of health and safety practices were remarked on by 'core' employees in the case studies. 'Core' workers in manufacturing fear taking days off sick due to increased competition from temporary workers. In a German manufacturing case, the readiness of fixed-term employees to work overtime pressurised core workers to accept 'voluntary' overtime themselves and undermined the works council's capacity to co-determine effectively on the issue. As a consequence, clandestine de-regulation of co-determination is taking

place. In another German case, worker segmentation was not associated with increased participation and 'micro-concertation' (Regini, 1995).

4.5 Challenges to representatives and unions (3): formulating a response

Formulating a response to management's propositions on flexibility entails complex evaluation processes. Representatives in the case studies frequently remarked on how complex many plans were. In addition, the (long-term) impact on employees and representative/ union structures has to be assessed. Specific initiatives must be located within wider management strategy. Effective co-operation is based on a knowledge of at least the basic strategic aims of management, as others have argued (Dörnen, 1998). Sourcing relevant information from management is negatively affected by organisational restructuring, since traditions and cultures of co-operation manifest and renew themselves in personal interaction between management and representatives. This is undermined by mergers, outsourcing and management turnover as well as (international) re-distribution of management tasks and competences. In a German case, although damage was limited by the councillors' participative style, 'amateurisation' occurred in the new plant that represented a step backwards for the councillors' overall level of organisation.

Flexibility schemes are often complex and new to representatives. This is particularly the case with working time accounts, where there can be more accounts than individual workers since each individual may operate more than one. Piecemeal introduction of change and medium- to long-term dynamics set in motion by particular measures (such as contractual differentiation of the workforce) further complicate the development of strategic responses. Representative-union articulation then acquires enhanced importance. In one of the case studies the German representative body that took a conceptually proactive role not only displayed a high level of internal capacity (as indicated by long spells of service, numbers of full-time representatives and qualifications), but was well integrated with other works councils and union structures.

Problems appear greatest where the initial locus of negotiation is set at the top level by management and a union's workplace structures are comparatively weak. This is most common in Britain. In a British public sector case, the distance between activists and the union leadership grew when the leadership agreed to a modernisation agreement that encapsulated flexibility while locally the scheme met with resistance. While this happened in a union already marked by rival political factions, flexibilisation highlighted and intensified factionalism.

Whether and how problems are tackled depends both on the capacity and resources of employees to articulate these and also on the ability and willingness of representatives to formulate a response and prosecute them. The cases showed a broad variation in this respect. At one extreme there was a workplace where part-time/ gender issues clearly existed but had not become 'public' because the leader of the works council rejected women councillors' attempts to discuss them. As grievances were linked to extra workplace issues (such as childcare), male councillors defined them as falling outside

co-determination. The case shows German legal regulation used by male councillors as a resource to suppress problems caused by flexibility.

One German case fell at the other end of the scale and also underlines the apparent significance of representatives' politics and ideology (Kelly, 1998; Darlington, 2002). The council was receptive to complaints, especially from women. It contextualised and politicised the issue of working time accounts: women's needs for reliable working times were referred to, as was working time legislation and health and social problems resulting from long hours. Re-regulation was achieved without widespread employee participation. It was expressly designed to serve the interests of women with domestic obligations.

We turn next to comparative issues.

4.6 Representative roles and effectiveness in Britain and Germany

The problems posed for representatives by 'greedy constituencies', workforce differentiation and formulating a response are clearly considerable. They were common to both countries. Even though cases were selected to highlight national differences, the problems that emerged were remarkably similar.

Our cases show three broad types of outcome for representatives: successful re-regulation, partially successful regulation and suppression of the issue. In the first five cases, the criterion for success was representational effectiveness as defined by the majority of representatives. In the sixth case, the criterion did not apply because only a minority of representatives recognised flexibility as a major issue. The four central cases cover a wide spectrum of outcomes in which success in representing members was felt by representatives themselves to vary from 'reasonable under the circumstances' to 'minimal'. Comparatively effective representative responses were possible in the British context.

The most effective reaction to problems caused by flexibility was generated by a German works council in a bank. This particular case provides an exception to the pessimistic overall judgement of Dörre (2002). The council strengthened its institutional position. Why was this?

Their success drew on traditions of co-operation with management in a legally recognised field for co-determination (working time) and management acknowledgement that any further time flexibilisation would require council agreement. Councillors were capable of designing an improved system because of long periods of tenure by councillors, stability, effective division of labour between councillors, and good articulation between different councils and between all of these and the union. An additional critical factor was the councillors' political cohesion. Councillors had an answer to the managerial discourses referred to by Dörre, and were able to dispute management's workplace political supremacy or *Deutungshoheit*. Council-union articulation, crucially, was based on the bank's importance to the union in sectoral bargaining. The German system was in fact

working as such, with each element supporting the others. The case is relevant in comparative industrial relations terms in that success was achieved with a very low union membership density, circumstances that make it highly unlikely that British representatives could have performed comparably. Similar functions were fulfilled by the union in the British public sector case, based on much higher levels of union membership. The traditions of co-operation had been fostered over many years by a group of representatives who had invested large amounts of time in building strong links between councils, between councils and union, and between themselves and members.

Co-operative traditions were tested in the German public service where problems moved outside statutory co-determination, as for example with part-time work. In the German public service, the law interacts with *Land* civil service regulations, the tradition of *Beamtentum* and local representatives to foster a narrow, bureaucratic style of representation inadequate for tackling issues springing from part-time work. The equivalent British case showed the potential strengths of British informality or 'voluntarism' where representatives had a degree of political cohesion and there were high levels of union membership. It is this case that provides most support for the 'renewal' thesis of Fairbrother (2000) in Britain.

In the UK, management-union relations are relatively unstable, and subject to abrupt change. Confronted with such change in a context where the law and collective bargaining contribute comparatively little to stability and provide few resources, British representatives find it more difficult to develop strategic responses to management flexibility initiatives. An important element here is the relatively limited access to union education offered to British representatives. In Germany, the recently revised *Betriebsverfassungsgesetz* further extends representatives' access to relevant education and seems likely to widen the gap in the capacity to respond.

How far the representatives can renew themselves in the workplace seems to depend to a large extent on organisational density, representative responsiveness to new problems and political cohesion among representatives. While these conditions were largely met in one British case, in others, workplace structures were less well embedded, which meant that representatives were poorly positioned to articulate issues effectively. Their worth to both members as representatives and to management as 'partners' was also reduced. Even where representatives adopted a relatively coherent partnership strategy, partnership in practice was less coherent: job insecurity, wage restraint and increased use of external labour put considerable pressure even on core workers.

It has been argued that British workplace representatives can fulfil roles that are 'functionally equivalent' to works councillors because of relatively high union density (for example Wienecke, 2001). Our evidence is that this is a more credible argument in the public than in the private cases used by Wienecke. In Britain, flexibility has led to representatives increasingly acting as individual grievance handlers. In Germany, although similar tendencies are visible, the system has continued to provide greater support for councillors dealing with matters collectively. Whether, however, this support is taken depends on councillors' political responsiveness and capacities.

5 Summary conclusion

In general, managements in the case studies did not introduce flexible working in order to weaken employee representation. In several cases, representatives helped management to solve difficulties arising from flexibility, and to ensure a more continuous pattern of implementation. However, flexibility generated considerable problems for workplace representatives and unions in both countries in terms of representing employees. Some forms of flexibility, such as working time accounts in banking, although often claimed to be contributions to 'work-life balance', could in fact work in the opposite direction in certain contexts. This gave rise on occasions to 'greedy constituencies', reducing employees' willingness to stand as employee representatives. Other forms, such as temporary work and out-sourcing, were also likely to lead to increased workforce differentiation and problems for representatives in aggregating interests. Representatives' response was to retreat to their 'core' constituency.

In only one of our cases were representatives unequivocal in claiming success for their reaction. This was a German case, in an area clearly covered by co-determination law. This was a stable corporate environment, with strong co-operative traditions shared by management and works councillors. In addition, there was a degree of political cohesion among the majority group of councillors, strong articulation between different works councils and between them and the main union. Councillors enjoyed the assistance of a group of supporters, developed through educational work over many years. These circumstances may not be typical. In all the other cases, representatives themselves felt that flexibility had to some degree weakened their representative capacity. Thus, though workplace representation generally plays a crucial 'lubricating' and mediating role in flexibility's introduction, flexibility itself generally tended to reduce representatives' capacity to fulfil that role.

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