

UNITED KINGDOM : MARKET DRIVEN RESTRUCTURING

The framework of restructuring and the public discourse on change

The 1980s saw a transformation in the structure and nature of the UK economy with the decline of manufacturing and increase in importance of the service sector. The rapidity of this decline has been attributed to the historical lack of investment; the withdrawal of state aid; government macro-economic policies (the overvaluation of exchange rates and high interest rates) as well as the dominance of the deregulated finance sector prioritising short-term returns to shareholders. It involved waves of job losses; in 1978 the percentage of the labour force employed in manufacturing was 27 per cent, by 2004 it had fallen to 12 per cent. The figures also suggest regional variability; for regions and locations dependent upon certain manufacturing sectors the result has been de-industrialisation and the destruction of communities.

In the context of economic globalisation, the growth of the 'knowledge economy', the deregulation of labour markets and rapid technological advances the UK government has focussed attention on supply-side measures. Economic discourses linking lifelong learning to national competitiveness, productivity and flexibility have become especially powerful. UK government policy has increasingly reflected these concerns and the language of employability and skills formation largely dominates this discourse.

The importance of redundancies and dismissals

The transition to a predominantly service economy has not been a particularly smooth one; redundancy often resulted in long-term unemployment and between 1979 and 1984 unemployment more than doubled from 5.3 per cent to 11.7 per cent and remained above ten per cent between 1981 and 1988, when it fell before the recession of the early 1990s drove unemployment back up to 3 million. In the past decade unemployment has levelled off at around five per cent. Redundancies have fallen from 8.3 per 1000 employees in 1995 to 5.3 per 1000 employees in the three months to April 2005. This data is derived from the UK governments' Labour Force survey which is a quarterly survey of 60,000 households in the UK. The figures reflect those who reported having left a job through either compulsory or voluntary redundancy in the previous three months.

Work-related regulation and its actors

In the UK economic restructuring has taken place within a clear political context involving a shift away from Keynesian to more neo-liberal policies, with successive Conservative governments between 1979 and 1997 providing the ideological impetus. These governments sought to facilitate the restructuring of capital-labour relations by:

- Dismantling the tripartite semi-corporatist institutions that had developed throughout the twentieth century (for example sector-based Wage Councils, Training Boards);
- Enacting a series of legislative initiatives aimed at removing statutory provision and rights for workers and curbing trade union power and collective bargaining, especially collective bargaining above firm level (for example the right of workers to take secondary strike action);
- The ending of state ownership, opening up telecoms, rail and utilities to international competition and takeover;
- The introduction of the concept of the market into public services through competitive tendering, contracting out, the creation of internal markets and the commercialisation of public service provision.

The New Labour government has not radically altered this approach to the management of the economy or industrial relations. It has introduced a number of minimum safeguards for workers including; a National Minimum Wage and a statutory union recognition procedure, whilst one of the first acts of the Labour government was to opt-in to the EU's Maastricht Social Chapter.

The transformation of the UK industrial relations context weakened trade union strength and bargaining power leading to a dramatic loss of trade union membership, particularly in the manufacturing sector. In response there has been a certain amount of restructuring of the trade union movement itself, with the merger (as in Germany) of a number of large unions, making the prospect of one public sector and one private sector union a real possibility. In the face of decline three different, but not necessarily conflicting, strategies have emerged:

- 'Partnership' – characterised by a consensual approach to employment relations based upon joint commitment by employers and trade unions to the success of the organization;
- The 'organising model' – the investment of significant resources into recruitment and sustained organisation at workplace level – a participative form of union organisation rather than one based upon membership services;
- A third innovative approach has been pioneered by the former Iron and Steel Trades Confederation, now called 'Community', which in adapting to the decline of the UK steel industry has attempted to provide retraining to members following redundancy, but also services to their families and the wider community and to follow members into new employment and to organise these new workplaces on the basis of 'a union for life'.

The legal framework – information and consultation / Institutions and procedures

Dismissals

A distinction is made in British law between collective and individual redundancy dismissals. Yet, there is no meaningful legal concept of 'collective dismissal'; redundancy is a dismissal not related to the individual. Collective redundancies are subject to prescriptive legal measures, but employers have no obligation to inform or consult an employee representative or trade union representative if the number of redundancies falls below 20 employees. With regard to collective redundancies, of 20 or more, employers have statutory obligations to inform and consult employee or trade union representatives. The period of notification varies according to the numbers involved. Where between 20 and 99 employees are being made redundant in any one 90 day period a minimum of 30 days notice must be provided. For collective redundancies of over 100 workers, a 90 day notice period must be provided.

Information and consultation

It is not necessary in the UK for an employer to show any economic justification for making redundancies but they do need to show that their requirements as an employer have changed or diminished. Where the number of redundancies is 20 or more, the worker representatives must first be informed of the employer's proposals regarding the redundancies and the law states that sufficient information should be provided in order that the representatives of the workforce can constructively engage in meaningful consultation. Information and consultation procedures must be conducted via a trade union representative where a trade union is recognised for collective bargaining (27% of all workplaces with 10 or more employees according to the 2004 Workplace Employment Relations Survey). If the workforce is not represented by a trade union, the employer must inform and consult other appropriate representatives of those employees. These may be either existing representatives or new ones specially elected for the purpose; election procedures are also prescribed legally.

Consultation is to include ways of avoiding the redundancy situation or dismissals, or of reducing the number of dismissals involved and mitigating the effects of the dismissals. Unlike Germany, France and Belgium there is no requirement to produce a social plan.

The legislation does not require agreement to be reached but the employer must consult in good faith with a view to reaching agreement. From the trade union perspective the lack of obligation to reach an agreement is a serious shortfall in the legislation as in practice the employer only has to demonstrate that consultation has taken place in 'good faith'. Research from the Department of Trade and Industry (DTI 1998) indicates confusion among employers with regard to requirements in 'non-union' workplaces where no established employee representative exists. The provision for consulting employee representatives derives from European legislation and the natural forum for this would be works councils, a workplace institution that (unlike in Germany France and Belgium), is not widely manifest in the UK context. However, from April, 2005 in order to comply with the EC directive on Informing and Consulting Employees there is the introduction of a set of regulations which establishes information and consultation at individual company level. This commences with firms with 150+ employees moving to those with 50+ employees by 2008.

Selection rules

Employers are subject to statutory regulations in the selection of workers for redundancy. Dismissal on grounds of redundancy will be deemed unfair in law if the employee was selected for redundancy when others in similar circumstances were not selected. Reasons for this include trade union membership or activities; maternity or paternity related grounds or reasons related to the Working Time Regulations 1998 or to the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 or Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002. Dismissal on the grounds of redundancy may also be held to be unfair for some other reason (for example, if the employer failed to give adequate warning of redundancy or failed to consider alternative employment for the employee).

The reality of redundancy in the UK means that in most cases consultation is focussed not on mitigating or reducing the level of redundancies, but instead on the procedures for handling job losses (DTI 1998). Unions may influence who out of the workforce is chosen for redundancy, for example, by defending the principle of 'last in first out' (i.e. those employees that have joined the organisation most recently should be selected for redundancy first) The 'last in, first out' principle (LIFO which is a very strict rule enforced by law in Sweden) is not necessarily widespread, even within unionised workplaces, possibly given the greater benefits that accrue to older longer serving employees, but also because it can conflict with trade union demands that management seek volunteers from employees for redundancies. It can also be seen to undermine management's ability to select on the basis of skill and disciplinary and attendance records. In the public sector LIFO has been perceived by unions as discriminatory against black and minority ethnic workers.

Redundancy payment

The initial legislation for the provision of redundancy rights and benefits was introduced in the Redundancy Payments Act 1965 (RPA). In the UK it is the employer and not the state that incurs the cost of redundancy payments although entitlement to redundancy pay is prescribed by statute. The right to a redundancy payment exists regardless of the number of people affected. The statutory minimum redundancy entitlements are: for each complete year of continuous service between the ages of 18 and 21, employees receive half a week's pay; for each complete year of continuous service between the ages of 22 and 40, employees receive one week's pay; for each complete year of continuous service between the ages of 41 and 65 employees receive 1½ weeks' pay. The minimum redundancy pay entitlement in the UK is among the lowest in the EU (EU 15 member-states) although this does not necessarily indicate that employees receive the statutory minimum. There is a clear weakness in available data on actual redundancy payments in the UK as there is very little evidence relating to payments in firms that do not recognise a trade union. A 2002 survey by the CIPD found that nearly three quarters (72 per cent) of employers paid redundancy compensation above the statutory minimum. A 1991 survey suggested that where agreements exist they typically provided for twice the statutory figure. In some sectors organisations have offered generous redundancy or early retirement packages funded from their pension schemes.

A statutory redundancy payment has no effect on any entitlement to contribution-based Jobseeker's Allowance (JSA) and income tax on a statutory redundancy payment is zero although any redundancy payment above the statutory may be taxable.

Enforcement, encouragement, and outcomes

The rights of an individual employee to challenge redundancy are limited in the UK. A failure to consult only turns a *fair* (individual) dismissal into an *unfair* (individual) dismissal, although the right to a protected award does not automatically mean that the dismissal is unfair. However, employers have an implied duty to consult individual employees regardless of numbers. Only four per cent of cases taken to UK Employment tribunals in 2003 were on the grounds of redundancy pay. There is no data on how many 'unfair dismissal' cases related to selection or other redundancy issues but anecdote suggests these are not a significant number.

Organising transitions: The state and restructuring

Jobseeker's Allowance replaced Unemployment Benefit in October 1996. Unemployment Benefit was an entitlement to all unemployed persons who had previously paid National Insurance contributions. To qualify for JSA individuals must also be actively seeking and available for work.

The New Deal introduced in 1998 complements JSA by offering a state outplacement agency. The 'job seeker' is provided with a personal advisor to develop a programme to help find employment and/or training, including careers advice and specific training courses including guidance on interview techniques and CV preparation. It also offers incentives to employers to take on 'new deal applicants' through financial incentives.

UK government policies and initiatives emphasise that the notion of 'a job for life' has been replaced by individual employability across careers. In line with this a number of organisations have been created to play a role in labour force restructuring through training and life-long learning. The Learning and Skills Council, operates through 47 regional offices and works with employers, learning providers and community groups to narrow the 'skills gap' and provide opportunities for adults to improve their skill base. Local Learning and Skills Councils (LSCs) are charged with contributing to the delivery of the Regional Development Agencies' regional skills strategies by securing a range of training provision which links directly to local and regional economic needs.

Regional Development bodies are public bodies with boards appointed by government whose key task is to draw up an economic strategy for the region. In theory, the Regional Development Agencies (RDAs) and local LSCs work closely together to identify skill needs and to develop an effective strategy for targeting specific action in key sectors, particularly in areas where there have been problems with large-scale redundancy, retention and attracting inward investment. For example, in the case of 6000 jobs lost through the closure of Rover MG in 2005, the Government committed £150 million in order to help the transition of workers based at Longbridge, Birmingham, back into the labour market. Additional funding of up to £68 million was agreed from the existing European regional aid funds, much of which could be spent on training. This was channelled and administered through the local Regional Development Agency. Locally elected councils will also be involved in the RDAs and play a role through their own economic development strategies and policies.

More recently, the Labour government has also established a new UK-wide network of employer-led Sector Skills Councils (SSCs). These are independent groups of employers licensed by the Secretary of State for Education and Skills to develop a Sector Skills Agreement identifying skills gaps in their particular labour market. The government is also introducing Skills Academies as the employer-led linchpin of a new network of specialist colleges and training providers, aimed at providing the training for skill gaps identified by the SSCs, with the aim of having one Academy for each sector of the economy. Although there is trade union representation on the SSCs there is no suggestion that these engage in collective or sector level bargaining.

Critical issues

1. In the UK the reduction in the labour force participation of older men through early retirement has been attributed to employers using 'the pension scheme as the means of shedding unwanted labour' (Disney, 1999). Early retirement has become 'in many cases, a synonym for redundancy' (Casey 1998). Two thirds of UK pension schemes provide for an early pension to be paid with no, or partial reduction, to pension payments where retirement is at the 'employers request'. With pension programmes increasingly under strain, the extent to which these subsidies can continue is worth further examination in the UK context, particularly in the context of current debates around raising the standard retirement age.

2. Although a number of government initiatives on training and skills are employer-led it has included trade unions in the delivery of workplace learning. The Union Learning Fund was created in 1998 to increase the capacity of unions to promote training and learning opportunities to a wider base of employees and 'non-traditional' learners. During its first six years of operation the ULF has supported in excess of 450 individual projects, an investment by the government of £40 million.

Perhaps the most radical initiative has been the development of the workplace union learning representative role (ULR). From April 2003 statutory recognition was provided for the 8000 trained ULRs, providing a legal status for union learning in the workplace with the aim of having 20,000 in place by 2010. The UK Trades Union Congress (TUC) has also successfully lobbied the government for funding to establish a new Union Academy to support the growth of ULRs and establish regional centres of Union Learning and to support union representation on bodies concerned with skill development such as the SSCs, LSCs and Regional Development Agencies and to provide a progressive framework for skill and learning development for individual members and employees of the union.

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